

File No. 190463

Committee Item No. 9  
Board Item No. 1

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 17, 2019

Board of Supervisors Meeting

Date July 30, 2019

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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Completed by: Linda Wong Date July 12, 2019  
Completed by: Linda Wong Date July 18, 2019

1 [Lease of City Property - South End Rowing Club - 500 Jefferson Street - Gross Receipts  
2 Rent]

3 Ordinance approving a Lease between the City and County of San Francisco and the  
4 South End Rowing Club, a California non-profit corporation, for City property at 500  
5 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived  
6 from the Alcatraz Invitational and 4% of all gross receipts that are derived from the  
7 Alcatraz Invitational, for a term of 25 years to commence following Board approval,  
8 with an option to extend for 24 years, and general public access requirements; waiving  
9 the Administrative Code's market rent determination requirement that otherwise would  
10 apply to this Lease; and affirming the Planning Department's determination under the  
11 California Environmental Quality Act.

12 NOTE: Unchanged Code text and uncodified text are in plain Arial font.  
13 Additions to Codes are in *single-underline italics Times New Roman font*.  
14 Deletions to Codes are in ~~*italics Times New Roman font*~~.  
15 Board amendment additions are in Arial font.  
16 Board amendment deletions are in ~~Arial font~~.  
17 Asterisks (\* \* \* \*) indicate the omission of unchanged Code  
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Background and Findings.

21 (a) The premises at 500 Jefferson Street ("Original Premises") at the eastern portion of  
22 Aquatic Park is a recreational swimming and boating clubhouse, dock, and beach, under the  
23 jurisdiction of the Recreation and Park Commission ("Commission") and managed by the  
24 Recreation and Park Department ("Department").

25 (b) Under Chapter 88 of the California Statutes of 1923, a copy of which is on file with  
the Clerk of the Board of Supervisors in File No. 190463, the State of California granted the  
Original Premises to City for use in conjunction with other City property used as an aquatic

1 park.

2 (c) Under Charter Section 4.113, the Department is directed to promote and foster a  
3 program providing for organized public recreation of the highest standard.

4 (d) Under a lease dated as of July 1, 1979, as modified by a first amendment dated as  
5 of July 1, 1979 (as amended, the "Original Lease"), a copy of which is on file with the Clerk of  
6 the Board of Supervisors in File No. 190463, The South End Rowing Club, a California non-  
7 profit corporation ("Tenant"), leases the Original Premises for use as a non-profit recreational  
8 swimming- and boating-oriented recreational club.

9 (e) The Original Lease expires June 30, 2029. The Tenant and the Department have  
10 negotiated a new 25-year lease ("New Lease"), a copy of which is on file with the Clerk of the  
11 Board of Supervisors in File No. 190463, for the Original Premises and a portion of adjacent  
12 land and water (the "Dock Area") under the jurisdiction of the Port Commission ("Port") on  
13 which the clubhouse dock extends from the Original Premises, as described in a  
14 Memorandum of Understanding between the Commission and the Port dated as of  
15 September 20, 2018 ("MOU"), a copy of which is on file with the Clerk of the Board of  
16 Supervisors in File No. 190463.

17 (f) To ensure the Original Premises are available to the general public for aquatic  
18 recreational purposes, and to further a public purpose, the New Lease requires the Tenant to  
19 allow certain public access to the Original Premises and the Dock Area (together, the  
20 "Premises") for a daily use fee, make its membership open to the general public on a first-  
21 come, first-served basis subject to reasonable limitations, and to obtain the Commission's  
22 prior approval of any changes to the Tenant's bylaws, membership policies, public access  
23 fees, or dues.

24 (g) The proposed gross receipts rent for the New Lease reflects Tenant's public  
25 access and repair and maintenance obligations for the Premises.

1 (h) The Premises abuts the Hyde Street Pier, which is under the Port's jurisdiction, and  
2 to provide Tenant with the secondary access for the Premises required by the City's  
3 Department of Building Inspection, the New Lease grants Tenant a license for access over the  
4 portion of the Hyde Street Pier described in the MOU on the terms described in the New  
5 Lease and the MOU.

6 (i) On September 20, 2018, the Commission adopted Resolution No. 1809-008 to  
7 recommend that the Board of Supervisors approve the New Lease. A copy of said Resolution  
8 is on file with the Clerk of the Board of Supervisors in File No. 190463.

9 Section 2. Waiver of Administrative Code Requirement for Market Rent Determination.

10 (a) The New Lease requires an annual rent of 10% of all gross receipts that are not  
11 derived from the Alcatraz Invitational and 4% of all gross receipts that are derived from the  
12 Alcatraz Invitational. Because the Premises can only be used for aquatic recreational  
13 purposes, and the New Lease requires Tenant to provide general public access, it is not  
14 appropriate to determine the Market Rent, as defined in Administrative Code Section 23.2, of  
15 the Premises.

16 (b) Accordingly, the Market Rent determination requirement in Administrative Code  
17 Section 23.30 is hereby waived for the New Lease.

18 Section 3. Environmental Findings.

19 The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. 190463. The Board affirms this determination.

23 Section 4. Approval of New Lease.

24 (a) The Department's General Manager is authorized to execute and deliver the New  
25 Lease, to perform all acts required of the City under the New Lease, and to enter into


1 amendments or other modifications to the New Lease (including, without limitation, attaching  
2 and modifying its exhibits) that the General Manager, in consultation with the City Attorney,  
3 determines are in the best interest of the City, do not materially decrease the City's benefits,  
4 do not materially increase the City's obligations or liabilities, do not authorize any activities  
5 without pursuing all required regulatory and environmental review and approvals, and are  
6 necessary or advisable to complete the transactions which the New Lease contemplates and  
7 effectuate the purpose and intent of this ordinance.

8 (b) Within 30 days of the New Lease being fully executed by all parties, the  
9 Department shall provide the final lease agreement to the Clerk of the Board of Supervisors  
10 for inclusion in File No. 190463, the official file for this ordinance.

11 Section 5. Effective Date. This ordinance shall become effective 30 days after  
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
14 of Supervisors overrides the Mayor's veto of the ordinance.

15  
16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18  
19 By:

  
\_\_\_\_\_  
20 CAROL WONG  
21 Deputy City Attorney

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23  
24  
25

**LEGISLATIVE DIGEST**

[Lease of City Property - South End Rowing Club - 500 Jefferson Street - Gross Receipts Rent]

**Ordinance approving a Lease between the City and County of San Francisco and the South End Rowing Club, a California non-profit corporation, for City property at 500 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from the Alcatraz Invitational and 4% of all gross receipts that are derived from the Alcatraz Invitational, for a term of 25 years to commence following Board approval, with an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this Lease; and affirming the Planning Department's determination under the California Environmental Quality Act.**

Existing Law

Under San Francisco Administrative Code Section 23.30, leases that require the approval of the Board of Supervisors must have a determination of Market Rent (as defined in San Francisco Administrative Code Section 23.2) based on available and relevant data.

Amendments to Current Law

If adopted, the proposed ordinance would authorize the lease of City property at 500 Jefferson Street ("Premises") to the South End Rowing Club ("Tenant") without a Market Rent determination.

Background Information

The Tenant currently leases the Premises under a lease that is scheduled to terminate on June 30, 2027. The Tenant recently completed substantial improvements to the Premises and would like a lease term that matches the useful life of those improvements. Because the Premises can only be used for aquatic recreational purposes and the new lease requires the Tenant to provide general public access to the Premises, there is not available and relevant data to determine the Market Rent of the lease.

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<p><b>Item 9</b> <b>File 19-0463</b></p>	<p><b>Department:</b> Recreation and Parks Department (RPD)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed ordinance would approve a lease at 500 Jefferson Street between the Recreation and Parks Department (RPD) as landlord and South End Rowing Club (SERC) as tenant, for a term of 25 years, with an option to extend for an additional 24 years, and annual rent of 10 percent of gross revenues (four percent of gross revenues derived from the Alcatraz Invitational). The proposed ordinance would also waive the Administrative Code’s market rent determination requirement and affirm the Planning Department’s findings under the California Environmental Quality Act (CEQA).</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• SERC was founded in 1873 and is the oldest rowing club in the Western United States. Its current premises at 500 Jefferson Street contain a 17,262 square foot building that includes boat storage and boat repair space, a gym, locker rooms, a kitchen, a dayroom, and a boat launch dock. SERC has approximately 1,150 members and is open to the public three days a week. SERC’s current lease with RPD expires June 30, 2028. After completing recent capital improvements, SERC wishes to establish a new lease to update the boundaries of the premises, provide access through the Hyde Street gate, and provide a lease term that aligns with the useful life of the capital improvements.</li> <li>• The proposed ordinance would authorize a new lease with SERC for a term of 25 years, through June 2044, with an option to extend for an additional 24 years, through June 2068. SERC would pay rent equal to 10 percent of gross revenues, with the exception of four percent of gross revenues derived from the Alcatraz Invitational. As SERC is a non-profit that must provide public recreation and maintain its premises, RPD is requesting to waive the Administrative Code requirement to determine market rent.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• As SERC membership and gross receipts fluctuate year-to-year, and there is no minimum rent guarantee, revenues are difficult to predict. In 2018, RPD received \$78,518 in rent. With rent decreasing to four percent of gross revenues from the Alcatraz Invitational (which is a fundraiser for SERC), there would be a slight reduction in annual rent received.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>• Amend the proposed ordinance to (a) urge that SERC and the Dolphin Club be accessible to the public on all days and hours that SERC and the Dolphin Club are open to members; and (b) request the Department to amend the proposed lease to either (i) delete the extension option, or (ii) make the option to extend the lease solely at the City’s discretion.</li> <li>• Approve the proposed ordinance as amended.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

## BACKGROUND

The South End Rowing Club (SERC) is a non-profit organization that was founded in 1873 and is the oldest rowing club in the Western United States. It has occupied its current location at 500 Jefferson Street in Fisherman's Wharf since 1938. The premises contain a 17,262 square foot building that includes boat storage and boat repair space, a gym, locker rooms, a kitchen, a dayroom, and a boat launch dock. SERC has approximately 1,150 members and is open to the public three days a week. It also hosts swimming and rowing events that are open to the public.

In 1979, the Board of Supervisors approved a lease with SERC for a term of 25 years, from July 1979 through June 2004, with an option to extend for an additional 24 years through June 2028,<sup>1</sup> and rent equal to 10 percent of all gross revenues. The Recreation and Park Department (RPD) exercised the option to extend, and the lease is set to expire June 30, 2028.

SERC recently completed approximately \$2.6 million in capital improvements. SERC replaced its one-story lower boathouse with a two-story structure, expanding the locker rooms and workout rooms, improving access, and creating additional storage space for boats in the boathouse. RPD and SERC would like to establish a new lease to update the boundaries of the premises, provide access through the Hyde Street gate, and provide a lease term that aligns with the useful life of the capital improvements. In September 2018, the Recreation and Park Commission approved the lease.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would approve a new lease between RPD as landlord and SERC as tenant, for a term of 25 years, from approximately July 2019 through June 2044, with an option to extend for an additional 24 years, through June 2068. Under the lease, SERC would continue to pay rent equal to 10 percent of all gross revenues, with the exception that it would pay four percent of gross revenues derived from the Alcatraz Invitational.<sup>2</sup> SERC would be required to continue providing public access three days a week, with any changes to public access hours requiring RPD approval.

<sup>1</sup> The original lease had a 25-year option to extend through June 2029, but the First Amendment, also approved by the Board of Supervisors in 1979, reduced the option to 24 years, through June 2028.

<sup>2</sup> According to Ms. Suen, the percentage rent was decreased for the Alcatraz Invitational because it is annual fundraising event for SERC, used to fund repairs and maintenance of the premises. SERC's profits from the event have decreased in recent years, partially due to increased permitting fees from entities such as the San Francisco Fire Department, U.S. Coast Guard, and National Park Service. According to Ms. Suen, SERC had requested a full waiver of Alcatraz Invitational percentage rent, but RPD and SERC eventually agreed to four percent.



The proposed ordinance would also waive the Administrative Code requirement to determine market rent. According to Ms. Jackie Suen, RPD Property Manager, RPD is requesting to waive this requirement because of the non-profit nature of SERC's operation. Under City Charter Section 4.113, RPD must promote and foster a program of organized public recreation of the highest standards. To meet this goal, SERC must keep its membership and day usage open and affordable to the general public, ensuring a public recreational benefit and not an exclusive benefit only enjoyed by members of a private club. According to Ms. Suen, the purpose of the lease is to ensure public access to recreation, rather than revenue generation.

The proposed ordinance would also affirm the Planning Department's determination that the lease complies with the California Environmental Quality Act (CEQA).

### **FISCAL IMPACT**

Under the proposed lease, SERC would pay rent equal to 10 percent of gross revenues, with the exception that it would pay four percent of gross revenues derived from the Alcatraz Invitational. SERC has requested this exception because the Alcatraz Invitational is an annual fundraising event to fund repairs and maintenance of the premises.

The lease does not have a minimum guaranteed rent. According to Ms. Suen, SERC membership levels fluctuate throughout the years, but there are consistent costs to keep the premises open to the public and properly maintained. As SERC is a non-profit, all revenues it raises must be used to further its mission and improve the premises. According to Ms. Suen, since RPD does not incur costs from the property, no minimum guaranteed rent is needed.

Rents paid by SERC vary year-to-year, so they are difficult to project in future years. For example, SERC paid \$73,995 in 2016, \$55,705 in 2017, and \$78,518 in 2018. SERC paid \$9,886 from the Alcatraz invitational in 2018, with 10 percent of gross receipts paid in rent. If the Alcatraz Invitational rent had been reduced to four percent of gross receipts, it would have paid \$3,954 or \$5,932 less than it did.

### **POLICY CONSIDERATION**

Under the proposed lease, SERC allows public access to three days per week. Under City Charter Section 4.113, RPD must promote and foster a program of organized public recreation of the highest standards. According to Recreation and Park Commission policy, Recreation and Park Department property leased to private organizations is to be accessible to the public on the same terms as the members of the private organization. According to Ms. Suen, although SERC is open more than three days per week, the Recreation and Park Department determined that SERC needed to be open to the public only three days per week because the Dolphin Club, located next to SERC at 502 Jefferson Street, is open for public access on alternating days for the same \$10 day use fee. The two clubs coordinate facility use and events that allows for public access to the changing rooms, fitness facilities, and water six days per week. The Board of Supervisors should amend the proposed ordinance to urge that SERC and the Dolphin Club be accessible to the public on the days and hours that SERC and the Dolphin Club are open to members.

The proposed lease is for 25 years to allow SERC to fully amortize the improvements made by SERC to the property. The proposed lease provides for an option to extend the lease by an additional 24 years at the tenant's option.<sup>3</sup> Because the tenant improvements will be fully amortized at the end of the initial lease term, and because the City may have other priorities for the use of the site after 25 years, the Board of Supervisors should request the Department to amend the proposed lease to either (1) delete the extension option, or (2) make the option to extend the lease solely at the City's discretion.

### RECOMMENDATIONS

1. Amend the proposed ordinance to (a) urge that SERC and the Dolphin Club be accessible to the public on all days and hours that SERC and the Dolphin Club are open to members; and (b) request the Department to amend the proposed lease to either (i) delete the extension option, or (ii) make the option to extend the lease solely at the City's discretion.
3. Approve of the proposed ordinance as amended.

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<sup>3</sup> The option to extend the lease may not be exercised if the tenant is in default or has assigned the lease to another tenant.

**LEASE**

**between**

**CITY AND COUNTY OF SAN FRANCISCO, Landlord**

**and**

**SOUTH END ROWING CLUB, Lessee**

**For the Lease of**

**the Building at 500 Jefferson Street and the Associated Launching Dock  
at  
Aquatic Park,  
San Francisco, California**

**\_\_\_\_\_ , 2019**

**CITY AND COUNTY OF SAN FRANCISCO  
London Breed, Mayor**

**SAN FRANCISCO RECREATION and PARK COMMISSION**

**Mark Buell, President**

**Allan Low, Vice President**

**Kat Anderson, Commissioner**

**Gloria Bonilla, Commissioner**

**Tom Harrison, Commissioner**

**Eric McDonnell, Commissioner**

**Larry Mazzola, Commissioner**

**Philip A. Ginsburg, General Manager**

**RECREATION AND PARK DEPARTMENT  
LEASE  
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EXHIBITS

- EXHIBIT A-1 – Depiction of Premises and Boat Dock
- EXHIBIT A-2 – Depiction of Stair Area
- EXHIBIT A-3 – Description of Boathouse Improvements
- EXHIBIT B – Rules and Regulations
- EXHIBIT C – Port MOU
- EXHIBIT D – Resolution No. 16169a
- EXHIBIT E – State Grant
- EXHIBIT F – Management Plan
- EXHIBIT G – Approved Rates and Charges

## RECREATION AND PARK DEPARTMENT

### LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of \_\_\_\_\_, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and SOUTH END ROWING CLUB, a California non-profit corporation ("Lessee").

### RECITALS

A. Lessee is a nonprofit organization established in 1873 for the purpose of advancement and enjoyment of rowing, swimming, and other aquatic sports in Aquatic Park and San Francisco Bay, and handball and running. Lessee is open to the public three days a week for a day use fee and annual membership is open to all applicants. Lessee is managed by volunteer members, currently has approximately 1,150 members and hosts internationally known swimming and rowing events that are open to the public.

B. City and Lessee are parties to a Lease Agreement for South End Rowing Club at Aquatic Park, dated as of July 1, 1979, as amended by a First Amendment dated as of July 1, 1979 (as amended, the "Existing Lease"), pursuant to which Lessee leases from City the improved real property commonly known as 500 Jefferson Street, situated at Aquatic Park in the City and County of Francisco and further depicted on Exhibit A to the Existing Lease (the "Original Premises"). The term of the Existing Lease is presently scheduled to expire on June 30, 2027.

C. The Original Premises includes the building ("Building") and the portion of the connecting dock from the Building under the jurisdiction of the Recreation and Parks Commission (the "RPD Dock"), and Lessee leases the portion of the dock that extends beyond the Original Premises (the "Port Dock") from City, operating by and through the San Francisco Port Commission, pursuant to a Lease dated as of November 23, 1993 (the "Port Lease"), which is subject to that certain Settlement and Mutual Termination Agreement for Lease L-11843 dated as of \_\_\_\_\_, 2019.

D. Pursuant to a Permit to Use Property (the "Port-NPS Permit") fully executed as of March 26, 1997, between the San Francisco Port Commission and the National Park Service ("NPS"), NPS has the right to use the real property that abuts that eastern boundary of the Original Premises ("Port Facility 4001"), subject to its obligation to provide access to Lessee from the rear fence service entrance of the Original Premises to Jefferson Street over the portion of Port Facility 4001.

E. In addition to Lessee's right to use the Access Area under the Lessee Pier Permit, the San Francisco Port Commission executed an Amended and Restated Declaration of Restrictions recorded in the Official Records of San Francisco County on \_\_\_\_\_, 2019, as Document No. \_\_\_\_\_ (the "Access Declaration"), regarding access over the area described in Exhibit C to the Access Declaration (the "Access Area") for the Department and its Building lessees and licensees on terms and conditions of the Access Declaration.

F. Lessee recently completed substantial improvements (the "Boathouse Improvements") to the Building, which are comprised of a new lower boathouse with a relocated and expanded women's locker room, a relocated and expanded gym, and an expanded area for boat storage and further described in Exhibit A-3. The Boathouse Improvements have a projected

useful life of at least 40 years. Funding for the Boathouse Improvements was provided by a combination of donations and loans from Lessee's members.

G. In order that the lease term for the Original Premises and Port Dock more closely align with the useful life of the Improvements, Lessee wishes to terminate the Existing Lease and enter into a new lease for the Original Premises and the Port Dock for an initial term of twenty-five (25) years and an option to extend such term by twenty-four (24) years, and City is willing to terminate the Existing Lease and enter into such a new lease on the terms and conditions of this Lease.

#### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee hereby agree as follows:

##### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: \_\_\_\_\_, 2019

Landlord: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Lessee: SOUTH END ROWING CLUB,  
a California non-profit corporation

Premises (Section 3.1): The Premises are comprised of (i) the improved real property comprised of a portion of APN 0405-004 commonly known as 500 Jefferson Street, San Francisco, California (the "Land"), including the building ("Building") and all other improvements presently located thereon, and the RPD Dock, and (ii) during the term of the Port MOU (as defined in **Article 2**), the Port Dock, all as more fully described in **Section 3.1** and generally depicted on **Exhibit A-1**. The Premises are owned by City and, except for the Port Dock, under the jurisdiction of its Recreation and Park Department (the "Department"). The Premises do not include the real property or the waters underneath or adjacent to the RPD Dock, the Port Dock, or the real property or waters adjacent to the Land.

Term (Section 4): Twenty-five (25) years, as described in **Section 4**.

Commencement Date: \_\_\_\_\_, 2019

Expiration Date: \_\_\_\_\_, 2044

Extension Option (Section 4.2): Lessee shall have the option to extend the term of this Lease for one twenty-four (24)-year extension period, commencing on the date

immediately following the Expiration Date, on the terms and conditions set forth in **Section 4.2**.

Base Rent (Section 5)

Lessee shall pay Base Rent in the amount of (i) ten percent (10%) of all Gross Receipts (as defined in **Article 2**) that are not derived from the Alcatraz Invitational and (ii) four percent (4%) of all Gross Receipts that are derived from the Alcatraz Invitational received during the Term, payable in semi-annual installments, on the terms and conditions set forth in **Section 5**; provided, however, that Lessee shall pay the applicable monthly Base Rent amount specified in **Section 25.1** during any holdover period.

Use; Primary Purpose and Incidental Purposes (Section 7.1):

The "Primary Purpose" shall mean providing and operating facilities for aquatic activities and promoting and serving the public interest in the advancement of rowing, running, swimming, and other sports at Aquatic Park, all to be available to and for the benefit of the general public and a public purpose, and the performance of Lessee's obligations under this Lease. Lessee's use and operation may include the following uses incidental to the Primary Purpose (the "Incidental Uses"): club office and administrative uses, temporary private event activities, and such additional activities as are reasonably related to the non-profit promotion and development of aquatic sports at Premises and Aquatic Park, as more particularly described in **Section 7.1**.

Security Deposit:

None required

Notice Address of City (Section 27.1):

Recreation and Park Department  
Property Management  
McLaren Lodge Annex  
501 Stanyan Street  
San Francisco, CA 94117  
Re: South End Rowing Club

with a copy to

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate/Finance Team

Address for Delivery of Insurance Certificates (Section 19.3):

1. Hard (paper) copy to first Notice Address listed above.  
2. Electronic copy to \_\_\_\_\_@\_\_\_\_\_.  
Certificates must clearly indicate the Premises for which the certificate is issued

Key Contact for City:

\_\_\_\_\_

Telephone No.:

\_\_\_\_\_

Address for Lessee (Section 27.1):

South End Rowing Club  
500 Jefferson Street  
San Francisco, California 94109

Key Contact for Lessee: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Brokers (Section 27.8): None

Other Noteworthy Provisions:

Public Access (Section 7.3): Lessee shall make the Premises available for public use, as more particularly described in **Section 7.3**.

Approval Requirements for Fee Increases: (Section 7.4): Lessee shall not increase the amount of membership dues, Special Assessments, initiation fees or daily use fees charged in connection with the use of the Premises without the prior written consent of the Commission (as defined in **Article 2**).

## 2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Access Area**" has the meaning given in Recital E.

"**Access Area Tenant**" means any party that has a lease or license with City for the use of the Access Area during the term of this Lease.

"**Access Declaration**" has the meaning given in Recital E.

"**Additional Charges**" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in this Lease or otherwise payable by Lessee under this Lease.

"**Affiliate of Lessee**" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Anniversary Date**" means each annual anniversary of the Commencement Date.

"**Assignment**" has the meaning given in **Section 16.1**.



"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Base Rent**" means the Base Rent specified in the Basic Lease Information and described in **Section 5.1** during the Term; provided that Base Rent shall be as described in **Section 25.1** during any holdover period.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1**.

"**Boathouse Improvements**" has the meaning given in Recital F.

"**Building**" has the meaning given in Recital C.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.1**.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**Date of Taking**" means the earlier of (i) the date upon which title to a portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Lessee is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City or dedicated by City for public use and now or later located in, under, on or about any portion of the Premises or the Access Area, including, without limitation, sidewalks, plazas, utilities, street improvements, bulkheads, retaining walls, flumes, conduits, pipes, and any structures necessary of convenient in connection with City's municipal water supply system or other municipal purposes.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.3**.

"**Encumber**" means to create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 17.1**.

"**Expiration Date**" means the date on which the Term of this Lease expires as described in Section 4.1.

"**First Partial Payment Period**" has the meaning given in Section 5.1.

"**Final Partial Payment Period**" has the meaning given in Section 5.1.

"**General Manager**" means the General Manager of the Recreation and Park Department.

"**Gross Receipts**" means all amounts received or receivable from all sales, business, and operations conducted in, from or attributable to the Premises by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, including, but not limited to, amounts received from orders or bookings for the use or rental of any portion of the Premises, revenues, dues, initiation fees, daily use fees, locker fees, sub-rentals, dividends, trust income, Special Assessments, or any other income received from the use or operation of the Premises during the term of this Lease. For purposes of calculating the Rent, Gross Receipts shall not include gifts or bequests made to Lessee, but shall include any dividends, interest or other income subsequently received from such gifts or bequests.

"**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Lessee, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"**Hazardous Material Claims**" means any and all enforcement, investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"**Improvements**" means the RPD Dock, the Port Dock (to the extent the Port MOU remains in effect), and any and all buildings, structures, fixtures and other improvements on the Land as of the Commencement Date or constructed, installed or placed on the Premises by or on behalf of Lessee pursuant to this Lease, including, without limitation, the Building, the Boathouse Improvements, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, walks, fences, walls, stairs, poles, plantings and landscaping. Notwithstanding anything to the contrary in the foregoing sentence, if the Port withdraws the

right of the Department to use and lease the Port Dock to third parties at any time during the Term, the Improvements shall no longer include the Port Dock as of such withdrawal.

"**Incidental Uses**" has the meaning given in **Article 1**.

"**Indemnify**" means indemnify, protect, defend and hold harmless forever.

"**Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**Invitees**" when used with respect to Lessee means the clients, customers, invitees (including paying members of the general public), guests, members and licensees, assignees and sublessees of Lessee.

"**Land**" has the meaning given in **Article 1**.

"**Landlord**" means the City and County of San Francisco.

"**Launching Dock**" means the RPD Dock and the Port Dock.

"**Law**" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"**Lease**" means this Lease as it may be amended in accordance with its terms.

"**Lease Year**" shall be determined as follows: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12<sup>th</sup>) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the Expiration Date.

"**Lessee**" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"**Lessee's Personal Property**" means the personal property of Lessee described in **Section 8.3**.

"**Losses**" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"**Management Plan**" has the meaning given in **Section 7.1**.

"**Material Alteration**" means any (i) Improvement installed or placed on the Premises by or on behalf of Lessee after the Commencement Date, (ii) Alteration that costs \$100,000 or more to perform, and (iii) Alteration that changes the dock or the exterior of the Building.

"**NPS**" means the National Park Service.

"**Payment Period**" means a period between January 1 and June 30 or between July 1 and December 31.

"**Party**" means City or Lessee; "**Parties**" means both City and Lessee.

"**Permitted Uses**" has the meaning given in **Section 7.1**.

"**Port**" means the San Francisco Port Commission.

"**Port Dock**" has the meaning given in in Recital C.

"**Port Lease**" has the meaning given in Recital C

"**Port MOU**" means the Memorandum of Understanding M-13773 between the Port and the Commission, dated as of \_\_\_\_\_, a copy of which is attached to this Lease as **Exhibit C**.

"**Port-NPS Permit**" has the meaning given in Recital D.

"**Premises**" has the meaning given in **Section 3.1**. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include any Department Facilities nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Primary Purposes**" has the meaning given in **Article 1**.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed by or on behalf of Lessee, or in, on, under or about the Premises or Department Facilities or any portion of the Premises or Department Facilities.

"**Remediation**" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**Rent**" means Base Rent and any and all Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Resolution No. 16169a**" means City's Recreation and Park Commission Resolution No. 16169a, adopted on July 18, 1981, as amended, a copy of which is attached as **Exhibit D**.

"RPD Dock" has the meaning given in in Recital C.

"SFPUC" means the San Francisco Public Utilities Commission.

"Special Assessments" means any additional charges to be paid by Lessee's members to support operations at, or improvements to, the Premises or Lessee's obligations under this Lease.

"State Limitations" has the meaning given in Section 16.1.

"Sublease" has the meaning given in Section 16.1.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Term" means the term of this Lease as determined under Section 4.1.

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with Article 16.

"Unmatured Event of Default" means any default by Lessee under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

### 3. PREMISES; ACCESS AREA

3.1. **Leased Premises.** Subject to the terms, covenants and conditions of this Lease, including but not limited to the provisions of Section 3.2, City leases to Lessee and Lessee leases from City, the Land and the Improvements (collectively, the "Premises"), subject to the provisions of Section 3.2. Notwithstanding anything to the contrary in this Lease, Lessee acknowledges the general public has the right to (i) use the beach adjacent to and the bay in the vicinity of the Premises and (ii) access such beach and bay either by means of the bay in the vicinity of the Premises or by paying a daily use fee to Lessee to access such areas from the Building.

3.2. **Launching Dock; Extent of Leasehold.** City has the right to lease the Port Dock to Lessee pursuant to this Lease under the Port MOU. In addition to the requirements of this Lease, Lessee's use of the Port Dock shall be subject to such rules and regulations imposed by the Port from time to time and to the requirements of Port MOU. Notwithstanding the foregoing to the contrary, if the Port withdraws the right of the Department to use and lease the Port Dock to third parties at any time during the Term, the Port Dock shall no longer be part of the Premises as of the date of such withdrawal. The approximate line of Port jurisdiction showing the division of the Launch Dock between the RPD Dock and the Port Dock is shown on the attached Exhibit A-2.

All of the terms and conditions of the Port MOU are incorporated into this Lease by reference, including, but not limited to, the disclosures regarding the condition of the Port Dock in Section 2, Section 3, Section 12, Schedule 1, and Schedule 2 of the Port MOU. City and

Lessee agree that for the purposes of this Lease, the Premises shall not include the land or water underneath or adjacent to the Launching Dock at any time.

**3.3. Access Area.** The Access Area is comprised of the portion of the Hyde Street Pier between the rear fence service entrance of the Premises and Jefferson Street, as further depicted and described in Exhibit A-4. The Access Area is owned by the Port of San Francisco and used by NPS on the terms specified in the Port-NPS Permit and Access Declaration. Subject to the terms and conditions of the Port MOU and the Access Declaration, while this Lease is in effect, City grants Lessee a license to use the Access Area for access purposes only for reasonable access between the Premises and Jefferson Street in compliance with the terms and conditions of this Lease, the Port MOU, the Access Declaration, and all applicable laws. Lessee shall further comply with the terms of access reasonably required by Port and its Hyde Street Pier licensees and tenants. Lessee acknowledges the terms and conditions of the Port MOU are incorporated into this Lease by reference, including, but not limited to, the disclosures regarding the condition of the Access Area in Section 2, Section 3, Section 12, Schedule 1, and Schedule 2 of the Port MOU.

**3.4. Rights Reserved to City.** Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Lessee, without Lessee's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, install, replace and reconstruct any Department Facilities;

(e) The right to grant future easements, permits, licenses, and rights of way (each, an "Interest") over, across, under, in and upon the Premises as City shall determine to be in the public interest or for installing, operating, maintaining, repairing, and removing equipment (including, but not limited to, lines, conduits, cables, and pipes) for furnishing cellular telephone, radio, or other telecommunications services, provided that (i) any Interest shall be conditioned upon the grantee's assumption of liability to Lessee for damage to any property that Lessee may sustain hereunder as a result of the grantee's use of the Premises, and (ii) any Interest granted for private cellular telephone, radio, or other telecommunications services shall not materially interfere with Lessee's use of the Premises;

(f) Without limiting the generality of Section 3.2(e), the right to grant future easements, permits, licenses, and rights of way over, across, under, in and upon the Premises for installing, operating, maintaining, repairing, and removing (i) equipment for furnishing cellular

telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement, permit, license, or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to any property that Lessee may sustain hereunder as a result of the grantee's use of the Premises; and

(g) All rights of access provided for in **Article 20**.

**3.5. Subject to Public and Municipal Uses and Rules.** Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City, in its proprietary capacity as landlord under this Lease, shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

**3.6. As Is Condition of Premises and Access Area.**

(a) **Inspection of Premises.** Immediately prior to the Commencement Date, Lessee leased the Original Premises pursuant to the Existing Lease and used the Access Area pursuant to the Access Declaration and the Lessee Pier Permit. Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the Access Area, and the suitability of the same for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises and the Access Area are suitable for its operations and intended uses.

(b) **Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Lessee is hereby advised that neither the Premises nor the Access Area has been inspected by a CASp.

(c) **As Is; Disclaimer of Representations.** Lessee acknowledges and agrees that the Premises are being leased and accepted in its "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to the Access Declaration and any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and

permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(d) **State Grant Limitations.** Lessee acknowledges that the State of California granted the Premises to City pursuant to Chapter 88 of the Forty-Fifth Session, approved May 2, 1923, a copy of which is attached hereto as Exhibit E (the "State Grant"), and Lessee agrees to comply with the requirements and limitations of the State Grant.

(e) **Flood Risk.** Lessee acknowledges (a) the Premises and Access Area are located along the waterfront and protected by a structure that is in a marine environment and was originally built approximately 100 years ago ("Seawall"), (b) there is a risk that all or a portion of the Premises and Access Area will be inundated with water due to floods or sea level rise, (c) there is a risk that sea level rise will increase the cost of maintenance and repairs to the Premises, and (d) City does not guarantee the Seawall will adequately support or protect the Premises or Access Area or keep them above sea levels during the entire Term.

In addition, Lessee acknowledges that on September 21, 2007, the Federal Emergency Management Agency ("FEMA") issued a preliminary Flood Insurance Rate Map ("FIRM") tentatively identified the shoreline in and along the San Francisco Bay area as a special flood hazard area subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood" and consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). This area and these zones generally affect the Premises and Access Area. FEMA has not yet issued a final FIRM for the Francisco Bay area. City's Board of Supervisors has further adopted a floodplain management ordinance governing new construction and substantial improvements in flood-prone areas of San Francisco (as amended, the "Floodplain Ordinance"), including the Premises and Access Area. The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in such City-designated flood areas to minimize or eliminate flood hazard risks.

Finally, Lessee acknowledges that according to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about potential liquefaction areas may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.html>

Lessee assumes the risk of the Seawall failing, the Premises and Access Area being inundated by floods, and the Premises and Access Area being damaged by liquefaction and agrees City has no obligation under this Lease to protect the Premises or Access Area from flooding or to repair any damage to the Premises or Access Area caused by flooding or to maintain, repair, or replace the Seawall.

(g) **Stair Area.** City leases property that is adjacent to the Premises and commonly known as 502 and 504 Jefferson Street ("Adjacent Property") to the Dolphin Swimming and Boating Club ("Dolphin Club") under a lease dated July 1, 1979, as amended (the "Dolphin Club Lease"). Lessee installed stairs between the second floor of the Building and an area located on the Adjacent Property ("Stairs"), as further depicted on the attached Exhibit A-1 (the "Stair Access Area"), and Dolphin Club granted Lessee a license to maintain, repair and replace the Stairs in the Stair Access Area and to use the Stair Access Area for emergency egress from the Building (the "Permitted Stair Area Uses"). If City's existing lease with the Dolphin Club terminates or is amended prior to the Expiration Date, City will amend this Lease to grant Lessee a license to use the Stair Access Area for the Permitted Stair Area Uses during the remainder of the Term on the following terms and conditions:



(i) Lessee shall use, and shall cause its Agents, and Invitees to use, the Stair License Area for the Permitted Stair Area Uses in a reasonable manner that limits, to the extent commercially reasonable, any interference with the use of the Stair License Area or any adjacent areas by City or any of its licensees or lessees.

(ii) Lessee shall maintain the Stairs in a good operating condition at all times during the remainder of the Term and shall obtain the General Manager's prior written consent to replace or alter the Stairs during the times approved in advance and in writing by City, which timing may be conditioned on the consent to such times from any party that has City's permission to use the Stair License Area pursuant to a written agreement between such party and City.

(iii) All other requirements, obligations, indemnities, and waivers of Tenant in favor of City under this Lease shall be modified, as applicable, to apply to the portion of the Stairs located in the Stair License Area, with City having no obligation to maintain, repair or replace the Stairs or in providing any utilities or services for the Stair License Area.

(iv) Lessee shall accept the Stair License Area in its "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind by City, and subject to all applicable Laws.

#### 4. TERM; TERMINATION OF EXISTING LEASE

4.1. **Term of Lease; Commencement Date and Expiration Date.** The Premises are leased for a term (the "Term") commencing on \_\_\_\_\_, 2019 (the "Commencement Date"), and ending on \_\_\_\_\_, 2044, or any earlier date on which this Lease is terminated pursuant to its provisions (the "Expiration Date").

4.2. **Option to Extend.** City grants to Lessee a one-time option (the "Extension Option") to extend the Term for an additional twenty-four (24) years (the "Extension Term"), commencing upon the date immediately following the Expiration Date on the following terms and conditions. Lessee may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one (1) year prior to the Expiration Date. Any such exercise notice by Lessee shall be irrevocable by Lessee. If any event of default by Lessee is outstanding hereunder either at the time of Lessee's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Lessee to reject Lessee's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void Lessee's Extension Option if Lessee has assigned its interest hereunder or sublet any portion of the Premises, except as allowed under Section 16.1. If Lessee elects to exercise the Extension Option, then the lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

4.3. **Effective Date.** This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, (ii) legislation adopted by City's Board of Supervisors approving this Lease becomes effective, and (iii) the Parties hereto have duly executed and delivered this Lease.

4.4. **Termination of Existing Lease.** Notwithstanding the terms of the Existing Lease to the contrary, the term of the Existing Lease shall expire on the day immediately preceding the Commencement Date, provided, however, that the parties' indemnification obligations under the Existing Lease shall survive such early expiration with respect to all claims,

injuries, losses, damages, costs and expenses, including attorneys' fees, arising from or connected with circumstances, actions or omissions that occurred prior to midnight on the day immediately preceding the Commencement Date.

## 5. RENT

**5.1. Base Rent.** On the fifteenth (15<sup>th</sup>) day of January and July of each year, Lessee shall pay to City (i) ten percent (10%) of all Gross Receipts that are not derived from the Alcatraz Invitational and (ii) four percent (4%) of all Gross Receipts derived from the Alcatraz Invitational received by Lessee during the Payment Period immediately preceding the applicable payment date; provided, however, that if the Commencement Date is not on January 1 or July 1, then the first payment of the Base Rent shall be (i) ten percent (10%) of all Gross Receipts that are not derived from the Alcatraz Invitational and (ii) four percent (4%) of all Gross Receipts derived from the Alcatraz Invitational received by Lessee during the period (the "First Partial Payment Period") between the Commencement Date and the first to occur of December 31 or June 30 after the Commencement Date. On or before the fifteenth (15<sup>th</sup>) day immediately following the Expiration Date, Lessee shall pay to City (i) ten percent (10%) of all Gross Receipts that are not derived from the Alcatraz Invitational and (ii) four percent (4%) of all Gross Receipts derived from the Alcatraz Invitational received by Lessee during the period (the "Final Partial Payment Period") between the Expiration Date and the immediately preceding January 1 or July 1, whichever is the closest to the Expiration Date. Such payments shall be made without prior demand and without any deduction, setoff or counterclaim whatsoever.

**5.2.** [Intentionally deleted]

**5.3. Payment.** Rent shall be paid in lawful money of the United States and, if mailed, must be postmarked by the due date, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may require Lessee to make all future payments in cash or by cashier's check. City reserves the right to direct Lessee, upon 30 days' written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer.

**5.4. Gross Receipts Statements; Determination of Base Rent Payable.** On or before the fifteenth (15<sup>th</sup>) day of each January and July of the Term and of the calendar month immediately following the Expiration Date, Lessee shall deliver to City a statement (a "Gross Receipts Statement") certified as correct by an officer of Lessee and in form satisfactory to City, showing a true and factual accounting of all taxes paid, the Gross Receipts and expenditures resulting from, and the calculated Rent for, as applicable, (i) the First Partial Payment Period, (ii) the Payment Period immediately preceding the date of the Gross Receipts Statement, or (iii) the Final Partial Payment Period. Each Gross Receipts Statement shall indicate and distinguish funds received from private events, vending machines, sales of clothing, equipment, or other items, daily use fees from non-members, application fees, membership fees, gifts, bequests, and any other source of funds during the applicable period, and indicate and distinguish expenditures expended for improvements, repairs, maintenance, salaries, supplies, utilities, taxes, insurance, and any other source of expenditures during the applicable period. If the Expiration Date is on a date other than June 30 or December 31 through no fault of Lessee, payment of Base Rent for the Final Partial Payment Period shall be determined and reported by Lessee to City within fifteen (15) days after such Expiration Date, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable on the Expiration Date.

5.5. [Intentionally deleted]

**5.6. Reporting; Books and Records; Audits**

(a) **Books and Records.** Lessee agrees to keep accurate books and records in accordance with reasonable accounting systems and procedures that permit City to accurately compute the Gross Receipts, disbursements, and all other expenditures and expenses for the operation of activities at the Premises. Lessee shall make such records, and a reasonable accounting report or record, available for City's review on request. For purposes herein "books and records" shall include, but not be limited to, summaries from online tracking services for membership and event registration, treasurer reports, profit and loss reports by income and expense categories, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds.

(b) **Gross Receipts Statements; Income and Operations Reports.**

(i) On or before the ninetieth (90<sup>th</sup>) day immediately following (i) the second anniversary of the Commencement Date and every other anniversary of the Commencement Date thereafter during the Term (e.g., if the Commencement Date is on March 1, 2017, then March 1 of 2019, 2021, 2023, etc.), and (ii) the Expiration Date, Lessee shall deliver to City a statement (the "Biennial Audited Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and in form satisfactory to City. Each Biennial Audited Gross Receipts Statement shall set forth the Gross Receipts, as shown on Lessee's books and broken down by category, for the two (2) Lease Year period immediately preceding such Biennial Audited Gross Receipts Statement; provided, however, that the Biennial Audited Gross Receipts Statement to be provided on or before the ninetieth (90<sup>th</sup>) day immediately following the Expiration Date shall be for the period between the immediately preceding Biennial Audited Gross Receipts Statement and the Expiration Date.

(ii) On or before the ninetieth (90<sup>th</sup>) day immediately following the first anniversary of the Commencement Date and every other anniversary of the Commencement Date thereafter during the Term (e.g., if the Commencement Date is on May 1, 2019, then May 1 of 2020, 2022, 2024, etc.), Lessee shall deliver to City a statement (the "Biennial Certified Gross Receipts Statement"), certified as correct by an officer or owner of Lessee and in form satisfactory to City. Each Biennial Certified Gross Receipts Statement shall set forth the Gross Receipts and expenditures, as shown on Lessee's books and broken down by category, for the Lease Year immediately preceding the date of such Biennial Certified Gross Receipts Statement.

(iii) On or before the ninetieth (90<sup>th</sup>) day immediately following the (i) close of each fiscal year during the Term and (ii) the Expiration Date, Lessee shall deliver to City the following, certified as correct by an officer or owner of Lessee and in form satisfactory to City: (i) an itemized income and expenditure statement for such fiscal year or applicable period, (ii) a statement that the Premises has only been used for the Permitted Uses and Lessee has complied with all public access requirements of this Lease for such fiscal year or other applicable period.

(c) **Audit.** Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to accurately determine the Gross Receipts. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions

have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by ten percent (10%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts or overstates its expenditures with knowledge of such understatement or overstatement or by reason of gross negligence, as demonstrated by the City, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

**5.7. Late Charge.** If Lessee fails to pay any Rent and/or fails to submit a Gross Receipts Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance, absent a written waiver of such charge by the City. If the Rent or Gross Receipts Statement is mailed, the postmark shall evidence date of payment or submission. The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

**5.8. Default Interest.** If any Rent is not paid on the due date, such unpaid amount shall bear interest prorated from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

**5.9. Net Lease.** This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

## 6. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements, or levied or assessed against Lessee's license to use the Access Area. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Lessee report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Lessee agrees to provide such information as may be requested by City to enable City to comply with this requirement.

6.2. **Other Expenses.** Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3. **Evidence of Payment.** Lessee shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

## 7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. **Lessee's Permitted Use.** Lessee shall continuously use the Premises for the Primary Purpose and the Incidental Uses on a non-profit basis as defined by and pursuant to prevailing Internal Revenue Service codes and regulations (collectively the "Permitted Uses"), and for no other use or purpose. Lessee shall cause all activities at the Premises to be performed in a first-class manner, and the Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses and conditions and manner of conducting and exercises the Permitted Uses set forth in a management plan, which Lessee shall provide to the Department, in form and in content approved in writing by the General Manager, prior to the Commencement Date (the "Management Plan"). For purposes of this Lease, Lessee's current By-Laws, attached as **Exhibit G** shall constitute the Management Plan unless replaced pursuant to this Section. In the event of a conflict between the provisions of the Management Plan and the provisions of this Lease, the provisions of this Lease shall control.

If Lessee desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Lessee conducts a Permitted Use from the manner described in the Management Plan, Lessee shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion. Any modifications to the Management Plan approved by the General Manager shall be in writing and Lessee shall make a copy of such modification available to any person who requests such materials within a reasonable time of receiving a request therefor. Lessee acknowledges that certain changes to the Management Plan may also require prior approval of the Commission, including, but not limited to, any increase in membership or daily use fees.

7.2. **Appropriate Operations, Goods, and Services.** The Management Plan shall include Lessee's proposed manner to manage and operate the Premises and further the Permitted Uses, which shall be consistent with the Permitted Uses and the other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the Premises are not in keeping with the approved Management Plan, Lessee shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency cannot be corrected within the 30-day period, Lessee shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Lessee's proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Lessee's plan for cure by such date, the Lessee shall be in default of this Lease.

7.3. **Public Access.** Lessee shall actively operate the Premises and use its best efforts to further the Primary Purpose, which shall include making the Premises and the facilities and equipment owned by Lessee at the Premises available for use by members of the public and club members pursuant to the conditions specified in Resolution No. 16169a, with the hours for public access currently on Tuesdays, Thursdays, and Saturdays between the hours of 9:00 am and 6:00 pm from November 1 to April 30 ("Winter Season") and the hours of 8:00 am and 5:00 pm from May 1 to October 31 ("Summer Season"). Such public access schedule has been approved by the Commission and may not be altered in any manner without prior written approval from the Commission; provided, however, that for so long as the Dolphin Club leases the Adjacent Property from City, the Lessee and the Dolphin Club may switch days for public access without Commission approval so long as Lessee ensures such public access exists Monday through Saturday between 9:00 am and 6:00 pm during the Winter Season and the hours of 8:00 am and 5:00 pm during the Summer Season. Lessee shall reasonably and promptly respond to general public inquiries regarding permitted non-member use of the Premises, the process for becoming a

member, and membership fees, and shall reasonably review and process membership applications. Membership requirements, which shall comply with Resolution 16169a, shall be as set forth in the Management Plan. Lessee shall cause its members to be courteous to non-members using the Premises through a daily use fee, and shall cause any of its employees at the Premises to be neatly dressed and courteous at all times.

**7.4. Private Events.** Lessee may temporarily allow a third party to hold a private event at the Premises as long as such private event (i) does not occur during the public access hours specified in **Section 7.3** (unless Lessee obtains the General Manager' prior-written consent to such private event during the public access hours), (ii) is for rates and charges that are competitively priced with similar businesses in San Francisco, and (iii) complies with all applicable Laws. If any such private event will adversely impact the areas surrounding the Premises under the jurisdiction of the Commission, then Lessee shall obtain a prior use permit from the Department in accordance with the Rules and Regulations. Lessee agrees to cause its private event subpermittee to comply with all requirements of this Lease applicable to such private event at the Premises.

**7.5. Rates and Charges.** The rates and charges for membership application or initiation fees, membership dues, and daily access fees for public use of the Premises for the Primary Purpose shall be as described in the attached **Exhibit H** (the "Approved Rates and Charges") and shall comply with the requirements of Resolution No. 16169a. The Department reserves the right for its General Manager to review and approve the increases in fees for private events, which approval shall not be unreasonably withheld. Special Assessments, or any increase in the membership application or initiation fees, annual dues for members, or in public daily use fees from the levels specified in **Exhibit H**, must have the prior written approval of the General Manager and the Commission, which each may withhold in its sole discretion. Any Lessee request to raise such rates or charges or charge such Special Assessments shall be in writing and shall not be effective until approved by the Department or Commission, as applicable, in writing.

**7.6. Use of Gross Receipts.** Lessee shall use all Gross Receipts only for Rent and the furtherance of the Permitted Uses, including Lessee's maintenance, repair and replacement obligations, and any Improvements and Alterations Lessee is permitted to make under this Lease.

**7.7. Branded Products.**

(a) The Lessee may, at Lessee's expense, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to the South End Rowing Club or similar/related logo, artwork and/or words (collectively, "SERC Logo"); provided, however, that Lessee shall obtain the Department's prior consent to any SERC Logo that includes Department's name, logos or trademarks (collectively, a "Combined Logo"). Lessee shall not use any Combined Logo until it has been approved in writing by the Department. A Combined Logo shall be works for hire under Title 17 of the United States Code, and all copyrights in such Combined Logo are the City's property. If the Department or Lessee's use of the Combined Logo creates trademark, service mark or trade dress rights in connection with the Combined Logo, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Combined Logo created by Lessee or its subcontractors under this Lease are not works for hire under federal law, the Lessee hereby assigns all copyrights to such Combined Logo to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment.

(b) The Department shall have the right to pre-approve or disapprove all products that are to receive a Combined Logo.

**7.8. Covenants Regarding Use.** As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder. City understands that the Premises is open to Lessee's members 24 hours a day and open water swimming and rowing are inherently dangerous activities.

(b) **Covenant Against Waste, Loitering, and Trespass.** Lessee shall not cause or permit any waste, damage or injury to the Premises, and shall not permit any undue loitering or objectionable conduct in or about the Premises. Lessee shall use reasonable diligence to protect the Premises from trespass and improper use.

(c) **Covenant to Protect Premises, Access Area, and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance, and shall not place any loads on the floor, walls or ceiling that endanger the Building or the Launching Dock, or materially obstructs sidewalks, passageways, or stairs in front of, within, or adjacent to the Premises. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises, the Access Area, or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) **Covenant Against Dumping; Waste Disposal.** Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) **Covenant to Protect Trees or Other Native Vegetation.** Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.



(f) **No Tree Planting.** Lessee shall not plant any trees or any other vegetation on the Premises without the prior written approval of the General Manager.

(g) **Covenant Against Hunting.** Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(h) **Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Lessee shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the term of this Lease, (ii) describes the steps Lessee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. Lessee shall comply, and shall require all of Lessee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Lessee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Lessee to keep certain records and to report to City all pesticide use at the Premises by Lessee's staff or contractors. If Lessee or Lessee's contractor will apply pesticides to outdoor areas at the Premises, Lessee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website.

(i) **Weed Control.** Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use chemical herbicides only if such use complies with the requirements of Section 7.6(viii).

(j) **Covenant Against Burning.** Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(k) **Sewerage System.** Lessee shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the

Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewage system.

(l) **Soil Erosion.** Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager. Notwithstanding the foregoing, the natural erosion of soil on around the Premises due to proximity to San Francisco Bay shall not be considered as caused by Lessee.

(m) **Operating Covenants and Port MOU.** Lessee shall use the Premises continuously for the Permitted Uses and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner. Lessee shall comply with the conditions of use with respect to the Port Dock and Access Area under the Port MOU.

(n) **Americans with Disabilities Act.** Lessee acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 11**, Lessee warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

(o) **No Piling, Breakwater or Interfering Structures.** As prohibited by the State Grant, Lessee shall not erect any piling, breakwater or other structure that interferes with the operation of any ferry or ferryboat operating from any slip, wharf or pier situated easterly of the Premises.

(p) **No Parking.** Lessee shall not park, nor allow any party to park, any vehicles on the Premises, except to the extent reasonably required for the temporary loading and unloading of materials for Lessee's permitted operations at the Premises. Lessee acknowledges this Lease does not give permission for Lessee, or any of its Agents or Invitees, to park vehicles on the City property adjacent to the Premises, and Lessee shall notify all of its Agents and Invitees that parking is not permitted on such adjacent City property pursuant to this Lease.

(q) **Prevailing Wages for Theatrical Workers, Trade Shows and Special Event Work, and Off-Street Parking Lot, Garage or Storage Automobile Facility.** Lessee shall pay, and shall require its sublessees, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3) a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9). If Lessee, or its sublessees, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable

services and may interview any individual who provides, or has provided, such services. Lessee shall provide to City (and to require any sublessee, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions

## 8. ALTERATIONS AND IMPROVEMENTS

**8.1. Construction of Alterations and Improvements.** All Improvements and Alterations shall be done at Lessee's sole expense (i) by duly licensed and bonded contractors or mechanics, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances) and the applicable requirements of this Article, and (v) with the insurance coverage required under **Article 19**. Lessee shall not make any improvements or alterations to the Access Area. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access without the prior written consent of the General Manager. Prior to the commencement of any work on the Premises to construct any Improvements or make any Alterations, Lessee, at its sole expense, shall procure all required permits and approvals. City and its Agents shall have the right to inspect the course of construction of any Improvements or Alterations at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. If the cost of any proposed Improvements or Alterations exceeds Five Thousand Dollars (\$5,000), Lessee shall reimburse City for the cost of its reasonable staff in reviewing the submitted project plans and drawings. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

In addition to the requirements of the foregoing paragraph, Lessee shall not construct, install or otherwise place, make or permit any Material Alterations in, to or about the Premises without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in his or her sole and absolute discretion. Lessee shall further (a) obtain the General Manager's prior written approval to the designs, plans and specifications of each Material Alteration and strictly comply with such approved designs, plans and specifications, (b) obtain the General Manager's prior written approval to the contractors and mechanics performing

each Material Alteration, and (c) comply with all other conditions that the General Manager or the Commission reasonably impose on such Material Alteration, including, without limitation, provision of such completion security as is acceptable to City. Lessee shall reimburse City for its actual staff costs in reviewing the designs, plans and specifications for a proposed Material Alteration within thirty (30) days of receiving City's invoice for such reimbursement. Prior to the commencement of any work on the Premises to construct any Material Alteration, Lessee, at its sole expense, shall deliver copies of all permits and approvals for such Material Alterations to City. No material change from the plans and specifications for any Material Alteration approved by City may be made without City's prior written consent.

**8.2. Ownership of Improvements.** All Improvements at the Premises as of the Commencement Date is the property of City. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee after the Commencement Date (collectively, "Additional Structures") shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination of this Lease, Lessee shall, upon City's request, remove all non-affixed Additional Structures from the Premises in accordance with the provisions of Section 22.1, unless City, at its sole option and without limiting any of the provisions of Section 8.1, specifies at the time of installation that such non-affixed Additional Structures remain on the Premises following the expiration or termination of this Lease. Any Additional Structures affixed to the Premises and any non-affixed Additional Structures that City allows Lessee to leave on the Property pursuant to this Section shall automatically become City's property as of the Expiration Date or any earlier termination of this Lease.

**8.3. Lessee's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of Section 22.1. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

**8.4. [Intentionally deleted]**

**8.5. Prevailing Wages.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Lessee require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Lessee agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Lessee shall include, and shall require its sublessees and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor

configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

(f) **Restrooms.** Lessee shall be responsible for the regular cleaning on the restrooms located on the Premises. The restrooms shall be kept clean, neat, orderly and functioning properly at all times. Lessee, at its own expense, shall provide all necessary items for the restrooms including, but limited to, toilet tissue, paper towels, seat covers and hand soap. Lessee shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the restrooms in the condition as described above. Restrooms shall be thoroughly cleaned on a regular basis.

**9.2. No City Maintenance or Repair Obligations.** City shall have no obligation to maintain, repair or keep in good condition the Premises, the Access Area, or any other City property adjoining the Premises, nor shall City have any obligation to provide including gardening and landscaping services. Lessee acknowledges that it shall have the sole obligation to maintain, repair and replace if necessary all structural elements of the Improvements, including but not limited to the Building and the Launching Dock, including the structural integrity of the Building roof. City shall have no obligation to maintain, repair or replace any of the Premises or the Access Area.

**9.3. No Right to Repair and Deduct.** Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises, the Access Area, or any other adjoining property (including, without limitation, roads, utilities and other infrastructure serving the Premises or the Access Area) or any part thereof in good order, condition or repair, or to abate or reduce any of Lessee's obligations hereunder on account of the Premises, the Access Area, or any other property adjoining the Premises (including, without limitation, roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

## **10. UTILITIES**

**10.1. Utilities and Services.** Lessee shall pay for all water, gas and electricity to the Premises it requires for the Permitted Uses, including all costs to bring such utilities to the locations where needed or desired, and shall only receive electric service for the Premises from the SFPUC if the SFPUC determines that such services is feasible. If Lessee desires any upgrades to water, gas or electricity services in connection with any of the Permitted Purposes, such upgrades shall be subject to City's prior written consent, and shall be made at Lessee's sole cost and expense. Lessee shall pay for sewer charges, charges for garbage and recycling disposal and all telephone, facsimile, and internet connection charges for the Premises, including the cost of bringing any such services to locations in the Premises.

**10.2. Interruption of Services.** City shall have no obligation under this Lease for providing any utilities and services for the Premises. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil

Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

**10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions.** In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Lessee to any damages, relieve Lessee of the obligation to pay the full Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Lessee. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Lessee.

**10.4. Antennae.** No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Lessee agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee. This paragraph shall not apply to the installation of webcams or similar equipment that (i) inside the Building and (ii) do not interfere with City's emergency and non-emergency communications or transmission facilities.

## **11. LIENS**

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises against any and all Losses arising out of any such contest.

## **12. COMPLIANCE WITH LAWS**

**12.1. Compliance with Laws.** Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen,

or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Lessee's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call the City's Office of Labor Standards Enforcement at 415-554-6573.

**8.6. Local Hire Requirements.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Lessee agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement or any Alteration, Lessee shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Lessee shall include, and shall require its sublessees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Lessee shall cooperate, and require its sublessees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Lessee's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**8.7. [Intentionally deleted]**

**8.8. Arts Commission Approval.** With respect to any Alterations or Improvements which would be visible from the exterior of the Building, Lessee shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103.

**8.9. Improvements or Alterations that Disturb or Remove Lead Based Paint.** Lessee, on behalf of itself and its Agents or Invitees, shall comply with all requirements of all applicable Laws, including but not limited to the San Francisco Building Code, Section 3407, the requirements of any board of fire underwriters or other similar body, administrative laws, rules, regulations, orders and other governmental requirements, and any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations), when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Lessee and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Lessee and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100

degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

## 9. REPAIRS AND MAINTENANCE

### 9.1. Lessee Responsible for Maintenance and Repair.

(a) **No City Obligations.** City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises, the Access Area, or any adjoining property (including, without limitation, roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) **Condition of Improvements; Repair of Damage.** Lessee shall maintain, at its sole expense, the Premises and any existing and permitted Improvements at the Premises, including but not limited to the roof, foundation, walls, plumbing and electrical system, conduits, and fixtures, sewer lines, water lines, telephone lines, communication lines and cables, power lines, and all underground systems, fencing, and other Building appurtenances used solely by Lessee, at all times in clean, safe, attractive and sanitary condition and in good order and repair, with windows cleaned, inside and out, to City's reasonable satisfaction. If any portion of the Premises, any of City's property located on or about the Premises, or the Access Area is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall promptly, at its sole cost, repair any and all such damage and restore the damaged Premises, City property, or Access Area to its previous condition.

(c) **Personal Property; Removal of Trash.** Lessee shall keep, at its sole expense, all furniture, other personal property, fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times, and shall furnish all furniture, other personal property, fixtures and equipment reasonably necessary for the Primary Purpose. Lessee shall, on a regular basis, remove all waste, trash, rubbish, papers, cartons and refuse from the Premises and pick up trash and debris in the immediate vicinity of the Premises, including the adjacent beach, and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility. Lessee shall provide a dumpster and shall keep it in clean and orderly condition.

(d) **Fire Suppression.** Lessee shall subject the fire extinguishers in the Premises inspection in accordance with the manufacturer's recommendations found on the label or in the user manual, shall ensure that access to extinguishers is not obstructed, and shall provide a minimum of routine annual professional maintenance of the fire extinguishers. Lessee shall also subject any other fire suppression systems to maintenance as required by manufacture's recommendation or the San Francisco Fire Department.

(e) **Food Preparation, Service and Seating Areas.** Lessee shall keep the food preparation, service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean and orderly condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be



ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws, and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Lessee's obligation under this Section shall include, without limitation, the responsibility of Lessee to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term of this Lease, the relative benefit of the repairs to Lessee or City, the degree to which the curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Lessee's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

#### **12.2. Regulatory Approvals**

**(a) Responsible Party.** Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall indemnify City, the other Indemnified Parties, and the Access Area Tenants against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval. The Access Area Tenants shall be third party beneficiaries of Lessee's obligations under this Section with respect to the Access Area Tenants.

**(b) City Acting as Owner of Real Property.** Lessee further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and Access Area and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises or Access Area. By entering into this Lease, City is in no way modifying or limiting Lessee's obligation to cause the Premises or any permitted Improvements to be used and occupied and to use the Access Area in accordance with all applicable Laws, as provided further above.

**12.3. Compliance with City's Risk Management Requirements.** Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take all reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the

requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

**12.4. Reports.** Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws; provided, however, that City shall not request such report or documentation more than \_\_\_\_\_ unless it learns of any situation that reasonably requires it to receive an additional report or documentation. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements, Lessee shall promptly deliver a copy of such report or document to City.

### **13. FINANCING; ENCUMBRANCES; SUBORDINATION**

**13.1. Encumbrance of City's Fee Interest.** The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Lessee to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Access Area provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease with respect to the Access Area, (ii) the right for Lessee to use the Access Area pursuant to this Lease shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Lessee.** Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises, the Access Area, or any adjoining property, or City's interest under this Lease, or any portion thereof.

**13.2. Leasehold Encumbrances.** Without limiting Article 16, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

### **14. DAMAGE OR DESTRUCTION**

**14.1. Damage or Destruction to the Improvements.** If the Premises or the Improvements are damaged by fire or other casualty, within ninety (90) days after the date of such fire or other casualty, Lessee shall notify City in writing (a "Repair Determination") if any of the following conditions (the "Repair Conditions") are met: (i) such damage can be repaired within one hundred eighty (180) days of the date of such fire or other casualty, (ii) Lessee elects to repair such damage at its sole cost, and (iii) Lessee has funds available to fully pay for such repairs. If each of the Repair Conditions are met, this Lease shall remain in full force and effect and Lessee shall diligently pursue such repairs in the manner required for Alterations under Article 8. If any of the Repair Conditions is not met, either City or Lessee shall have the right to terminate this Lease by delivering written notice to the other party within thirty (30) days

following City's receipt of the Repair Determination and this Lease shall terminate as of the date specified in such notice. If Lessee does not timely deliver a Repair Determination to City, City shall have the right to terminate this Lease by delivering written notice to the Lessee of such termination within one hundred twenty (120) days following the date of such fire or other casualty and this Lease shall terminate as of the date specified in such notice.

**14.2. Lessee's Obligations.** If this Lease is terminated as provided in **Section 14.1**, then at City's written request Lessee shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1**.

**14.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions of this Lease.

## **15. EMINENT DOMAIN**

**15.1. General.** If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions of this Lease govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

**15.2. Total Taking; Automatic Termination.** If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

### **15.3. Partial Taking; Election to Terminate.**

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) Lessee reasonably determines the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Lessee, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Lessee elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if (A) the Primary Purpose can still be furthered with the remaining Premises and (B) Lessee agrees to, and does, pay full Rent without abatement and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

**15.4. Rent; Award.** Upon termination of this Lease pursuant to an election under **Section 15.3**, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 15.5** for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

**15.5. Partial Taking; Continuation of Lease.** If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3**, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

**15.6. Temporary Takings.** Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Lessee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **16. ASSIGNMENT AND SUBLETTING**

**16.1. Restriction on Assignment and Subletting.** Except for private events otherwise permitted under this Lease, Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the General Manager's prior written consent in each instance, which the General Manager may withhold in its sole and absolute discretion and/or take to the Commission for approval. Any Assignment or Sublease without the prior written approval of the General Manager shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

Notwithstanding anything to the contrary in the foregoing paragraph, Lessee shall be permitted to invite members of the public onto the Premises for the Permitted Uses pursuant to the then-current daily use fee and hold private events on the Premises pursuant to the requirements of **Section 7.4**. Subject to the foregoing exceptions, any Assignment or Sublease

without the General Manager's prior consent shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to terminate this Lease in the event any such breach is not cured within the cure periods provided in Section 17.1.

**16.2. Sublease or Assignment Fees.** Lessee further agrees and understands that the intent and purpose of this Lease is to allow for the Permitted Uses and not for the purpose of creating an investment in property. Therefore, while Lessee may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Lessee, all rental income or other consideration received by Lessee for an Assignment or Sublease which is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Lessee by City, and not attributable to the provision of other services or amenities to such party (including without limitation, food and beverage charges, room use fees and other ancillary charges customary to the operation of a rowing club), shall be paid directly to City with no profit, direct or indirect, to Lessee attributable to the value of the leasehold estate created by this Lease.

**16.3. Notice of Proposed Transfer.** If Lessee desires to enter into an Assignment or a Sublease (a "Proposed Transfer"), then it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions under which Lessee is willing to enter into such Proposed Transfer, including a copy of the proposed Assignment or Sublease agreement. Lessee shall provide the Department with financial statements for the proposed transferee and such additional information regarding the proposed transfer as the Department may reasonably request.

**16.4. City's Response.** Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "Response Period"), City may, by written notice to Lessee, elect to deny the Proposed Transfer, and City may, but shall not be required to, state in such notice its reasons for denial. Lessee shall have the right to submit a revised proposal for Proposed Transfer on terms more acceptable to City. Lessee shall provide City with such information regarding the proposed transferee and the revised Proposed Transfer as City may reasonably request.

Notwithstanding the foregoing paragraph, if any Event of Default or Unmatured Event of Default by Lessee is outstanding hereunder at the time of Lessee's delivery of a Notice of Proposed Transfer, then City may elect by notice to Lessee to refuse to consent to Lessee's Proposed Transfer and pursue any of its rights or remedies hereunder or at Law or in equity.

**16.5. Effect of Transfer.** No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

**16.6. Indemnity for Relocation Benefits.** Without limiting Section 16.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City, the other Indemnified Parties, and the Access Area Tenants for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee with respect to the Premises or Access Area. The Access Area Tenants shall be third party beneficiaries of Lessee's obligations under this Section with respect to the Access Area Tenants.

## 17. DEFAULT; REMEDIES

17.1. **Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums within fifteen (15) business days when due;

(b) **Resolution No. 16169a; Covenants, Conditions and Representations.** Any failure to perform or comply with the requirements of Resolution No. 16169a or any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of ten (10) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 10-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days for causes other than destruction or a temporary Taking of the Premises, if Lessee does not resume operations within twenty (20) days of receiving written notice of such vacation or abandonment from City; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. **Remedies.** Upon the occurrence of an Event of Default by Lessee, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Lessee's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Lessee's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes of this Lease, none of the following shall constitute a

termination of Lessee's right of possession; acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Rent due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Rent owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Rent for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Lessee upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

**17.3. City's Right to Cure Lessee's Defaults.** If Lessee defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with two (2) weeks prior written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as an Additional Charge, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's Event of Default shall not constitute a waiver of Lessee's Event of Default or any rights or remedies of City on account of such Event of Default.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

**18.1. Waiver of Claims.** Lessee covenants and agrees that City shall not be responsible for or be liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, the Access Area, or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers

contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Lessee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Lessee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

**18.2. Lessee's Indemnity.** Lessee, on behalf of itself and its successors and assigns, shall indemnify City, the other Indemnified Parties, and the Access Area Tenants from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises, the Access Area, or any other City property; (b) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises, any Improvements or the Access Area; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises or repair any damage to the Access Area caused by the acts or omissions of Lessee, its Agents or Invitees; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, or of any trespassers, in, on or about the Premises, any Improvements, or the Access Area; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties or the Access Area Tenants, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties or the Access Area Tenants. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City, the other Indemnified Parties, and the Access Area Tenants from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be



groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease. The Access Area Tenants shall be third party beneficiaries of Lessee's obligations under this Section with respect to the Access Area Tenants.

## 19. INSURANCE

### 19.1. Lessee's Insurance.

(a) Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, liquor liability, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence. Periodic Lessee events, including but not limited to, its Christmas Party, St. Patrick's Day Party, Alcatraz Invitational, are deemed not to involve the sale of food or alcoholic beverages for purposes of triggering the requirements of this Section.

(ii) Workers' compensation in statutory amounts with employer's liability of One Million Dollars (\$1,000,000) each accident, injury or illness.

(iii) Sexual molestation and abuse coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy. This requirement shall not apply to the South End so long as it continues its policy of not permitting minors (under the age of 18 years old) as members and that children of members be accompanied by their parents or guardians.

(iv) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Lessee uses automobiles in connection with its use of the Premises.

(v) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Lessee is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(vi) The insurance required under Section 9 of the Port MOU.

(vii) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require; provided, however, City shall not require any changes the insurance coverage required under this Lease more than once in any five (5) year period.

(b) During any period of construction of Lessee's construction of Improvements or Alterations subject to Section 8, Lessee shall also comply with the following requirements at no cost to the City:

(i) Lessee shall require its contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death); and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers' compensation in statutory amounts with employer's liability of One Million Dollars (\$1,000,000) per accident, injury, or illness; and (d) owners and contractors protective liability with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death). Lessee shall cause its Agents (other than Lessee's contractor) to carry such insurance as shall be reasonably approved by City taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Lessee shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the Improvements, against "all risk" and "special form" hazards.

(iii) Lessee shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Lessee for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Lessee therefor.

(iv) If hiring any licensed professionals for such Improvements or Alterations, such licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than One Million Dollars (\$1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.

(v) Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general annual aggregate.

**19.2. General Requirements.** All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees and the Access Area Tenants as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

**19.3. Proof of Insurance.** Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages and waivers of subrogation required hereunder and specifically and clearly referencing the Premises, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor. Lessee shall cause a copy of each certificate and renewal certificate required hereunder to be delivered to both the physical address and the email address for delivery of insurance certificates specified in the Basic Lease Information.

**19.4. Review of Insurance Requirements.** Lessee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Lessee with respect to risks comparable to those associated with the Premises, then, at City's option, Lessee shall increase at its sole cost the amounts or coverages carried by Lessee to conform to such general commercial practice.

**19.5. No Limitation on Indemnities.** Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under Sections 18.2 and 23.2, or any of Lessee's other obligations or liabilities under this Lease.

**19.6. Lapse of Insurance.** Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Lessee.

**19.7. Lessee's Personal Property and Alterations and Improvements.** Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property, Alterations, and Improvements made by or on behalf of Lessee.

**19.8. City's Self Insurance.** Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

**19.9. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, Lessee hereby waives any right of recovery against City (which includes the Department and Port, and against any other party maintaining a policy of insurance covering the Premises, Access Area, or other City property and their contents, or any portion thereof, for any loss or damage sustained by Lessee with respect to the Premises, the Access Area, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City. Lessee shall require its insurers to issue appropriate waiver of subrogation rights endorsements to all policies Lessee is required to carry under this Lease; provided, the failure to obtain any such endorsements shall not affect the above waiver.

**19.10. Third Party Beneficiaries.** The Access Area Tenants shall be third party beneficiaries of Lessee's obligations under this Section with respect to the Access Area Tenants.

## **20. ACCESS BY CITY**

### **20.1. Access to Premises by City.**

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3**;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove

Lessee's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) **No Abatement.** Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) **Minimize Disruption.** City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

**20.2. Department Facilities and Utility Installations.** Without limiting Section 20.1, City shall have the right at all times, to enter or have its Agents enter upon the Premises upon forty-eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such activities.

**20.3. Rights of Public.** Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder and the requirements of Resolution No. 16169a, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

**20.4. Non-Exclusive Use of Access Area.** Lessee acknowledges its access rights with respect to the Access Area are non-exclusive.

## **21. ESTOPPEL CERTIFICATES**

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions of this Lease may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

## 22. SURRENDER

**22.1. Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination of this Lease, or later upon City's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all unaffixed Improvements and Alterations from the Premises requested by City to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date or earlier termination of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

**22.2. Automatic Reversion.** Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**.

## 23. HAZARDOUS MATERIALS

**23.1. No Hazardous Materials.** Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause any Hazardous Material to be brought on the Access Area. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises; provided, however, that Lessee shall have the right to store up to seven 5-gallon gallons of gasoline or diesel fuel at the Premises to be used by Lessee's inflatable boats as long as such gasoline or diesel fuel is kept in containers that are watertight and retain all liquids. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or the Access Area. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20**, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

**23.2. Lessee's Environmental Indemnity.** If Lessee breaches any of its obligations contained in Section 23.1, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises, the Access Area, or any other City property, without limiting Lessee's general Indemnity contained in Section 18.2, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, the Access Area Tenants, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises, the Access Area, or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises, the Access Area, or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, the Access Area, or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises, Access Area, or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. The Access Area Tenants shall be third party beneficiaries of Lessee's obligations under this Section with respect to the Access Area.

24. [Intentionally deleted]

#### 25. HOLDING OVER

**25.1. City Consent.** Any holding over after the Expiration Date with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Rent equal to fifteen percent (15%) of the Gross Receipts for such month, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and as otherwise set forth in this Section). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the Expiration Date without the City's consent shall be at a monthly rental rate equal to twenty percent (20%) of the Gross Receipts for such month.

**25.2 Holdover Gross Receipts Statements and Reports.** During any holdover period after the Expiration Date, Lessee shall provide the following to City:

(a) On or before the fifteenth (15<sup>th</sup>) day following each monthly anniversary of the Expiration Date, Lessee shall deliver to City a statement (a "Holdover Monthly Statement") certified as correct by an officer or owner of Lessee and in form satisfactory to City, showing a true and factual accounting of all taxes paid, the Gross Receipts and expenditures resulting from, and the calculated Rent for, the preceding month. Each Holdover Monthly Statement shall indicate and distinguish funds received from private events, vending machines, sales of clothing, equipment, or other items, daily use fees from non-members, application fees, membership fees, gifts, bequests, and any other source of funds during the applicable period, and indicate and distinguish expenditures expended for improvements, repairs, maintenance, salaries, supplies, utilities, taxes, insurance, and any other source of expenditures during the applicable period.

(b) On or before the thirtieth (30<sup>th</sup>) day following the end of any holdover period, or if the period of holding over continues for twelve (12) or more months, then on or before the thirtieth (30<sup>th</sup>) day following any twelve (12) consecutive months of any holdover period, Lessee shall deliver to City a statement (the "Holdover Audited Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and in form satisfactory to City, showing a true and factual accounting of the Gross Receipts and expenditures, as shown on Lessee's books and broken down by category, resulting from, as applicable, the (i) holdover period immediately preceding such Holdover Audited Statement if the holdover period is less than twelve (12) months, (ii) applicable twelve (12) month period immediately preceding the date of such Holdover Audited Statement, or (iii) period between the last day covered by the penultimate Holdover Audited Statement and the expiration of the holdover period.

(c) On or before the ninetieth (90<sup>th</sup>) day following (i) the close of each fiscal year during any holdover period and (ii) the expiration of any holdover period, Lessee shall deliver to City the following, certified as correct by an officer or owner of Lessee and in form satisfactory to City: (i) an itemized income and expenditure statement for such fiscal year or applicable period, with (1) supporting tables that include Gross Receipts and expenditures by category, distributed expenses and undistributed expenses, and (2) a cash flow table that itemizes expenditures on capital improvements and personal property and indicates which of the improvements and acquisitions represent replacements, and (ii) a statement that the Premises has only been used for the Permitted Uses and Lessee has complied with all public access requirements of this Lease for such applicable period.

## 26. GENERAL PROVISIONS

**26.1. Notices.** Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 26.1 and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by electronic mail to the electronic mail address for either party provided from time to time; however, neither party may give official or binding notice by electronic mail. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a copy of the notice by electronic mail.

**26.2. No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition



or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

**26.3. Amendments.** Neither this Lease nor any of its term or provisions may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Lessee to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

**26.4. Authority.** If Lessee signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Lessee does hereby covenant and warrant that Lessee is a duly authorized and existing entity, that Lessee has and is qualified to do business in California, that Lessee has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Lessee are authorized to do so. Upon City's request, Lessee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

**26.5. Joint and Several Obligations.** The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

**26.6. Interpretation of Lease.** The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

**26.7. Successors and Assigns.** Subject to the provisions of Article 16 relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

**26.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

**26.9. Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

**26.10. Governing Law.** This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

**26.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

**26.12. Attorneys' Fees.** In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

**26.13. Time of Essence.** Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

**26.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

**26.15. Survival of Indemnities.** Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease.

**26.16. Relationship of Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

**26.17. Transfer by City.** If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

**26.18. Recording.** Lessee agrees that it shall not record this Lease in the Official Records of San Francisco County.

**26.19. Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

**26.20. Intellectual Property; Music Broadcasting Rights.** Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).

**26.21. Supervision of Minors.** Lessee shall comply and shall require its sublessees, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Lessee, or any sublessee, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, Lessee shall not hire, and shall prevent any sublessee, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if

Lessee or any sublessee, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Lessee and any sublessee, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. In the event of a conflict between this Section and Section 26.45, "Criminal History in Hiring and Employment Decisions," of this Lease, this Section shall control.

**26.22. Employee Signature Authorization Ordinance.** City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Lessee or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Lessee hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Lessee's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Lessee recognizes that, if the Ordinance applies to Lessee's operations on the Premises, Lessee must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

**26.23. Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Lessee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) **Subleases and Other Subcontracts.** Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sublessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Lessee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Lessee hereby represents that prior to execution of this Lease, (i) Lessee executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Lessee shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Lessee and/or deducted from any payments due Lessee.

**26.24. No Relocation Assistance; Waiver of Claims.** Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

**26.25. MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Lessee confirms that Lessee has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**26.26. Conflicts of Interest.** Through its execution of this Lease, Lessee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.

**26.27. Tropical Hardwood and Virgin Redwood Ban.** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Lessee shall not provide or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of any alterations or improvements in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Lessee shall be liable for liquidated damages for each

violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**26.28. Tobacco Product Advertising and Sale Prohibition.** Lessee acknowledges and agrees that no advertising or sale of cigarettes (including electronic cigarettes, as defined in the San Francisco Health Code) or tobacco products is allowed under this Lease. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

**26.29. Prohibition of Alcoholic Beverage Advertising.** Lessee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises, except for those portions of the Premises used for the operation of a restaurant or other facility where the sale, production or consumption of alcohol is permitted. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

**26.30. First Source Hiring Ordinance.** Lessee represents and warrants it has no employees and relies on volunteers only. If Lessee elects to hire any employees for the Premises, it shall first notify City and enter into any first source hiring agreement required under San Francisco Administrative Code, Chapter 83 for such hiring. Any default by Lessee under such a first source hiring agreement shall be a default under this Lease.

**26.31. Sunshine Ordinance.** Lessee acknowledges that in accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection by City immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. City will make information provided by Lessee or other which is covered by this Section available to the public upon request.

**26.32. Counterparts.** This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**26.33. [Intentionally deleted]**

**26.34. No Light, Air or View Easement.** Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

**26.35. City's Inability to Perform.** If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference

with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

**26.36. Notification of Limitations on Contributions.** Through its execution of this Lease, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, and Lessee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of each person, entity or committee described above.

**26.37. Public Transit Information.** If Lessee hires any employees, Lessee shall provide such employees with written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Lessee's sole expense.

**26.38. Drug-Free Workplace.** Lessee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Lessee agrees that any violation of this prohibition by Lessee, its Agents or assigns shall be deemed a material breach of this Lease.

**26.39. Preservative-Treated Wood Containing Arsenic.** Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Lessee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Lessee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**26.40. Resource Efficiency.** Lessee acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Lessee hereby agrees that it shall comply with all applicable provisions of such code sections.

**26.41. Food Service Waste Reduction Requirements.** Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, without limiting City's other rights and remedies, Lessee agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

**26.42. No Smoking in City Parks.** Lessee agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

**26.43. Prohibition of the Sale of Lottery Tickets.** The selling of any lottery tickets on the Premises is expressly prohibited.

**26.44. San Francisco Bottled Water Ordinance.** All initially-capitalized, undefined terms used in this Section shall have the meanings given to them in San Francisco Environment Code Chapter 24 ("Chapter 24"). Lessee agrees (i) to comply with all applicable provisions of Chapter 24 prohibiting the sale or distribution of drinking water in a sealed Rigid Plastic Bottle having a capacity of twenty-one (21) fluid ounces or less at any gathering held on the Premises where more than 100 people with attend or participate, and (ii) to comply fully with and be bound by all of the provisions of Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as though fully set forth.

**26.45. Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, and subject to the provisions of **Section 26.23**, Lessee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Lessee who would be or are performing work at the Premises.

(b) Lessee shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all sublessees to comply with such provisions, subject to the provisions of **Section 26.23** of this Lease. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Lessee and sublessees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2)



participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Lessee and sublessees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in the foregoing subsection (c). Lessee and sublessees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Lessee and sublessees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Lessee or sublessee at the Premises, that the Lessee or sublessee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Lessee and sublessees shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Lessee and sublessees understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Lessee has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**26.46. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall remove all graffiti from the Property within forty-eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without

the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

**26.47. Vending Machines; Nutritional Standards.** Lessee may have vending machines on the Premises that comply with applicable Laws and dispense beverages and food or serve as amusement devices (including, but not limited to, pin-ball machines, game tables, playing machines, and any other types of devices operated for a fee furnished or installed for the entertainment of guests, visitors, and members), subject to the requirements of this Section are met and Department's right to revoke such permission in writing, which may be done at the Department's sole discretion. As of the date of this Lease, Lessee has no vending machines on the Premises. Lessee shall provide the General Manager with written notice if it installs any vending machines at the Premises.

All vending machines on the Premises must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Lessee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant (as defined in San Francisco Health Code Section 451(s)) located on the Premises is encouraged to ensure that at least 25% of Meals (as defined in San Francisco Administrative Code Section 4.9-1(c)) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

**26.48. All-Gender Toilet Facilities.** If applicable, Lessee shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this Section. If Lessee has any question about applicability or compliance, Lessee should contact the General Manager for guidance.

**26.49. Requiring Health Benefits for Covered Employees.** Unless exempt, Lessee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Lessee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Lessee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Lessee is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with the foregoing subsection (a).

(c) Lessee's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Lessee if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Lessee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Lessee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Lessee shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Lessee shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Lessee shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Lessee based on the Subcontractor's failure to comply, provided that City has first provided Lessee with notice and an opportunity to obtain a cure of the violation.

(e) Lessee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Lessee's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Lessee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Lessee shall keep itself informed of the current requirements of the HCAO.

(h) Lessee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Lessee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Lessee to ascertain its compliance with HCAO. Lessee agrees to cooperate with City when it conducts such audits.

(k) If Lessee is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) [ Fifty Thousand Dollars (\$50,000) for nonprofits], but Lessee later enters into an agreement or agreements that cause Lessee's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Lessee and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**26.50. Cooperative Drafting.** This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

**27. QUALITY OF SERVICES AND PRODUCTS OFFERED.**

Lessee hereby agrees that any food and refreshments offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Lessee shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

**28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.**

Lessee hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

**29. SIGNS AND ADVERTISING.**

As of the Commencement Date, Lessee has a 2'4"x2' sign outside its Jefferson Street entry to the Premises, which states the name of Lessee, the hours the Premises is available for public use on payment of a daily use fee, and all other sign information specified in Resolution No. 16169a (the "Club Sign"). Lessee shall keep the Club Sign in good condition and repair at all times, and not allow any landscaping or trees to obscure visibility of the Club Sign. Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any other signs without obtaining City's written consent in advance. Lessee represents and certifies the Jefferson Street entry is the only entrance to the Premises, and acknowledges all entries to the Premises must have the sign information specified in Resolution No. 16169a.

**30. COMPLIANCE WITH CITY BUSINESS AND TAX AND REGULATIONS CODE.**

Lessee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If any payment City is required to make to Lessee under this Lease is withheld under that authority, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Lessee, without interest, late fees, penalties, or other charges, once Lessee returns to compliance with its San Francisco Business and Tax Regulations Code obligations.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED AND CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION OR ORDINANCE, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[No further text this page.]

City and Lessee have executed this Lease as of the date first written above.

**LESSEE:** **SOUTH END ROWING CLUB,**  
a California non-profit corporation

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY:** **CITY AND COUNTY OF SAN FRANCISCO,** a  
municipal corporation

By: \_\_\_\_\_  
Philip Ginsburg, General Manager  
Recreation and Park Department

Date: \_\_\_\_\_

**APPROVED BY:**  
**RECREATION AND PARK COMMISSION**  
**PURSUANT TO RESOLUTION NO. \_\_\_\_\_**  
**DATED: \_\_\_\_\_**

\_\_\_\_\_  
Margaret McArthur, Commission Liaison

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

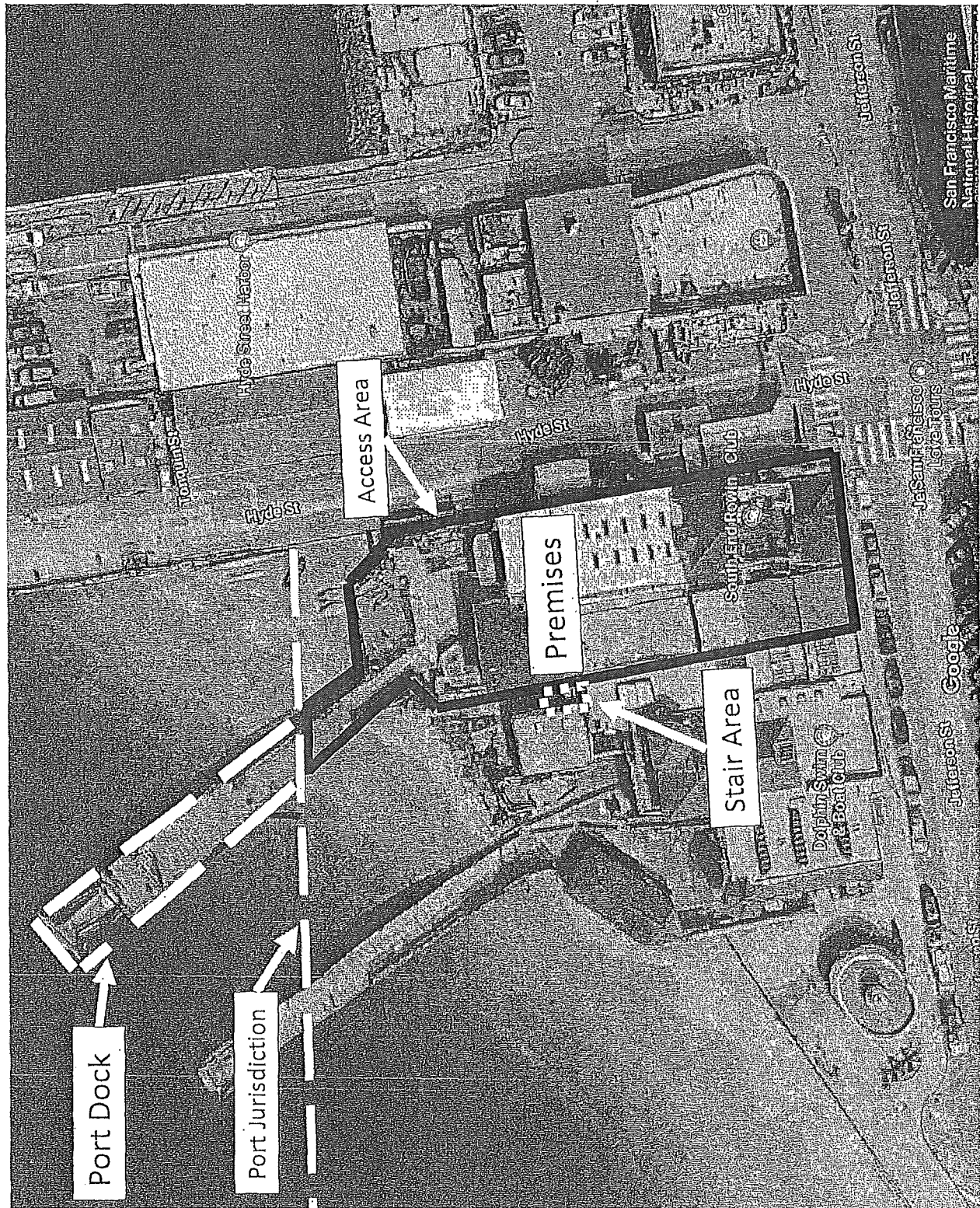
By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

**EXHIBIT A-1**

**DEPICTION OF PREMISES AND BOAT DOCK**

[Attached]

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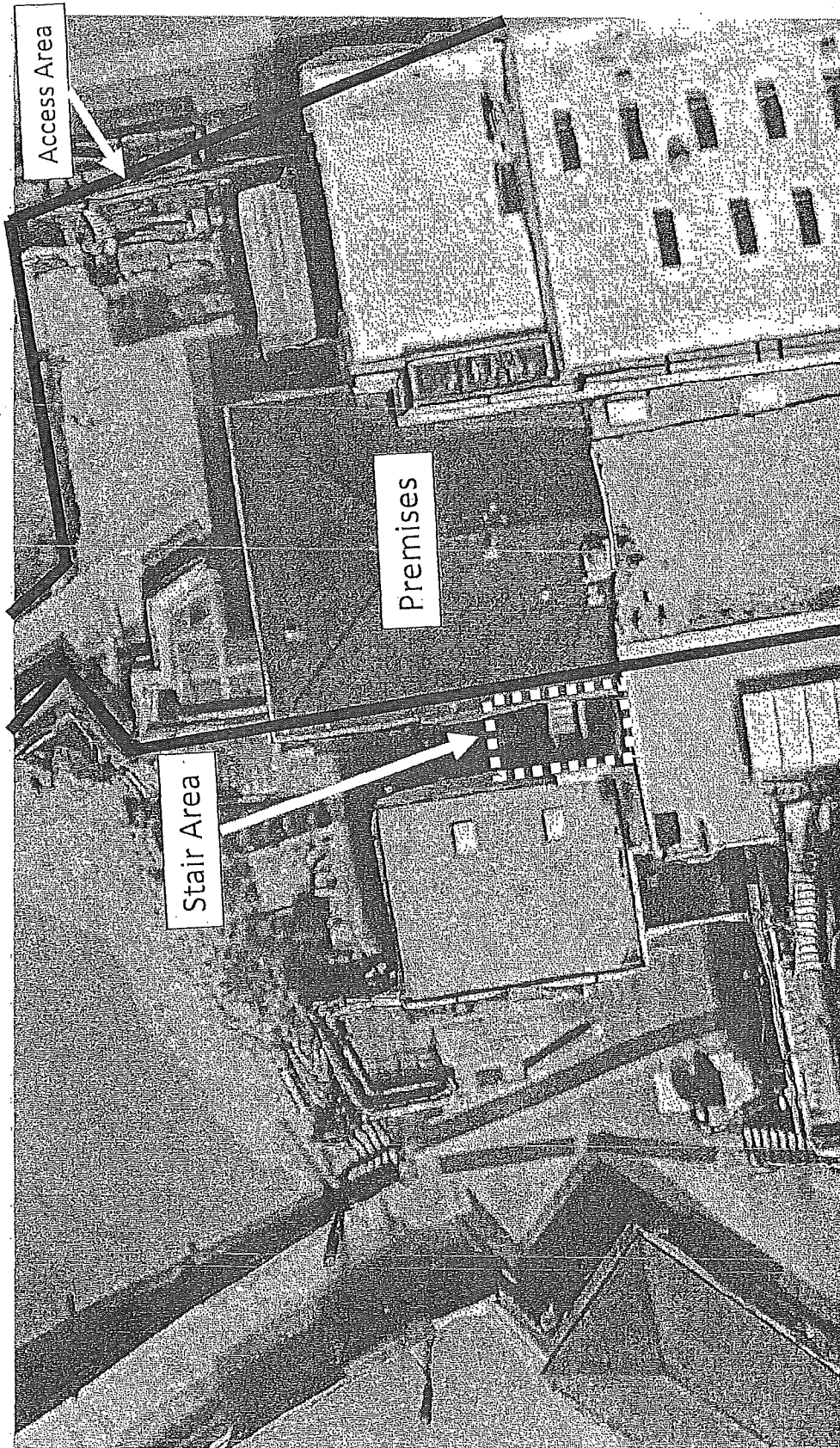




**EXHIBIT A-2**

**DEPICTION OF STAIR AREA**

[Attached]



**EXHIBIT A-3**

**DESCRIPTION OF BOATHOUSE IMPROVEMENTS**

A 4,000 SF addition that includes:

1. New boathouse
2. New women's locker room
3. New workout room

**EXHIBIT B**

**DEPARTMENT RULES AND REGULATIONS**

Please see following link for San Francisco Recreation and Park Department Park Code

[http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca)

EXHIBIT C

PORT MOU



CITY AND COUNTY OF SAN FRANCISCO  
LONDON N. BREED, MAYOR

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MEMORANDUM OF UNDERSTANDING

MOU M-13773

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO  
OPERATING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION

AND

THE SAN FRANCISCO RECREATION AND PARK COMMISSION

ELAINE FORBES  
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
GAIL GILMAN, COMMISSIONER  
VICTOR MAKRAS, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER

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EXHIBITS AND SCHEDULES

EXHIBIT A MAP OF PREMISES

SCHEDULE 1 FEMA NOTICE

SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated September 20, 2018, for reference purposes only, by and between the Recreation and Park Department ("RPD"), a department of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City.

### RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter Section 4.114, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. RPD, which has the jurisdiction over certain real property in Aquatic Park commonly known as 500 Jefferson Street, leases the building (the "Clubhouse") and the associated launching dock within its jurisdiction at such property to the South End Rowing Club ("SERC") to provide access to the waters of San Francisco Bay to their club members and to the public, as a public benefit, during certain hours.

C. The Clubhouse launching dock extends into Port's jurisdictional area and the Clubhouse needs secondary access between its rear fence service entrance and Jefferson Street over a portion of the Hyde Street Pier, which is also under Port's jurisdiction, to satisfy the San Francisco Building Code.

D. SERC keeps the Clubhouse and associated dock open to and visited by the general public for access to the bay for a reasonable daily use fee and SERC also hosts the Alcatraz Invitational, both of which provide a valuable public benefit.

E. Port is willing to allow RPD to sublease that portion of the launching dock and the underlying land and water that is within Port jurisdiction to SERC for similar uses, and to give RPD a license, and allow RPD to grant an access license to each Clubhouse tenant and licensee, over a portion of the Hyde Street on the terms and conditions described in this MOU.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

### AGREEMENT

#### 1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by this reference.

#### 2. PREMISES.

The "Premises" consists approximately of 2,061 square feet of launching dock space; 3,248 square feet of beach area and the surrounding 8,380 square feet of submerged lands within Port's jurisdiction near the intersection of Hyde Street and Jefferson Street as more particularly described on Exhibit A attached hereto.

RPD acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and



possession. RPD acknowledges that it has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. RPD acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for RPD's intended use. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for RPD's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed subtenant.

### 3. PIER ACCESS AREA.

The "Pier Access Area" consists of the portion of the Hyde Street Pier between the Clubhouse rear fence service entrance and Jefferson Street, as further depicted on the attached Exhibit A which area is within Port's jurisdiction. RPD acknowledges and agrees that it is familiar with the Pier Access Area, accepts the Pier Access Area in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and possession and the Permit to Use Property between Port and the National Park Service ("NPS") fully executed on March 26, 1997.

RPD acknowledges and agrees that it has investigated and inspected the condition of the Pier Access Area and its suitability for secondary access between the Clubhouse and Jefferson Street. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Pier Access Area, the present or future suitability of the Pier Access Area for secondary access, accessibility of the Pier Access Area or any other matter whatsoever relating to the Pier Access Area, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed Clubhouse tenant or licensee that receives a license to use the Pier Access Area for secondary access.

### 4. EFFECTIVE DATE

The "Effective Date" of this MOU shall be the later date to occur of the full execution of (i) this MOU and (ii) a lease between RPD and SERC that grants SERC a sublease for the Premises and an access license for the Pier Access Area.

### 5. TERM

The "Term" of this MOU shall begin on the Effective Date and continue for twenty-five (25) years unless terminated as provided herein; provided, however, that if SERC exercises its extension option under its sublease for the Premises with RPD, the Term shall be extended through the forty-ninth (49<sup>th</sup>) anniversary of the Effective Date, provided that RPD submits a written notice to Port of SERC's execution of the extension option. Following the expiration of the Term, this MOU shall continue on a month-to-month basis at which point either party may terminate the MOU with 30-days' prior written notice. If the SERC sublease for the Premises is terminated, RPD shall have the right to terminate this MOU with respect to the Premises by delivering written notice of such termination to Port.

Notwithstanding the foregoing paragraph, secondary access over the Pier Access Area between the Clubhouse and Jefferson Street is required under the San Francisco Building Code. Such access shall not be terminated without the prior written consent of City's Department of Building Inspection and Fire Marshal.

## 6. NO USE FEE

Use of the Premises by RPD will enliven the waterfront by attracting people to the waterfront and raising awareness of the waterfront and its benefits and amenities at no cost to Port. Given the existing RPD lease with SERC, there is no other practical user of the Premises. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, RPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the RPD lease with SERC. In addition, secondary access between the Clubhouse rear fence service entrance and Jefferson Street over the Pier Access Area is required under the San Francisco Building Code, will be non-exclusive and subject to the terms of this MOU, and is not subject to a use fee.

## 7. PERMITTED USE

RPD shall have the right to sublease the Premises to SERC for the provision of public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose (collectively, the "Permitted Use"). RPD shall further have the right to use, and grant Clubhouse tenants and licensees a license over, the Pier Access Area for secondary pedestrian and vehicular access purposes only between the Clubhouse and Jefferson Street on the terms specified in this MOU while such party has the right to use the Clubhouse (the "Access Use").

## 8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW

RPD shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 6 of this MOU. RPD shall not use or permit its Clubhouse tenants or licensees to use the Pier Access Area for purposes other than the purpose set forth in Paragraph 7 of this MOU. RPD agrees not to make any material improvements or alterations to the Premises or the Pier Access Area without the prior written consent of Port (which consent shall not be unreasonably withheld) as well as obtaining any necessary Port regulatory permits. Repairs, replacement of existing portions of the Premises or Pier Access Area with similar materials or improvements that do not change the functionality or dimensions of the Premises or Pier Access Area will not require Port consent.

RPD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises, the Pier Access Area, or any part thereof. RPD, at RPD's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, which shall impose any duty upon Port or RPD necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to RPD's use of the Premises. RPD shall comply, and cause Clubhouse tenants and licensees to comply, with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, in using the Pier Access Area for access purposes.

## 9. MAINTENANCE; SURRENDER OF PREMISES

The parties acknowledge that the Port does not and is not required to provide maintenance, repairs or security for the Premises. RPD will be strictly responsible for the security, maintenance and repair of the Premises, including without limitation any improvements that RPD might choose to make to the Premises and for any repairs to the Premises that might be necessitated by RPD's or SERC's use of the Premises, other than normal wear and tear or conditions not caused by RPD or SERC. At the expiration or any termination of this MOU, RPD shall surrender the Premises in at least as good condition as when received (subject to any

change in conditions not caused by RPD or SERC), clean and free of any items stored on the Premises by RPD and shall repair any damage to the Premises occasioned by RPD's use.

The parties acknowledge that neither RPD nor the Port is required to provide maintenance, repairs or security for the Pier Access Area under this MOU; provided, however, that RPD will be strictly responsible for repairing or causing a Clubhouse tenant or licensee to repair any damage to the Pier Access Area caused by the acts of RPD or a Clubhouse tenant or licensee. At the expiration or any termination of this MOU, RPD shall surrender the Pier Access Area in at least as good condition as when received (subject to any change in conditions not caused by RPD or a Clubhouse tenant or licensee) and shall repair any damage to the Pier Access Area occasioned by the use of RPD or a Clubhouse tenant or licensee.

(From the Port-SERC lease section 11.3 Acts of God) Nothing contained herein shall require either RPD or the Port to repair or replace the Premises as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect any obligation to make repairs to the Premises in the event of any damage or destruction of the Premises.

## 10. INSURANCE

(a) RPD shall require each Clubhouse tenant and licensee and any agent, contractor or subcontractor they hire in connection with their respective use of the Premises or the Pier Access Area (each, an "Operator") to secure, the insurance coverage specified below as applicable.

(i) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any activity on or alteration or improvement to the Premises or Pier Access Area with risk of explosion, collapse, or underground hazards.

(ii) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection the Permitted Use, the Access Use, or with activities on the Premises or Pier Access Area. This provision shall not apply to an Operator so long as it does not own any automobiles and has no employee using an automobile for such Operator's business.

(iii) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event an Operator is self-insured for the insurance required pursuant to this Section 10(a)(iii), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iv) Personal Property Insurance. An Operator, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements and

alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by the Operator for the replacement of its personal property.

(v) Watercraft Liability Insurance. If an Operator owns or operates watercraft in connection with the Premises, it shall, at its sole cost and expense, procure and maintain protection and indemnity insurance or other form of watercraft liability insurance acceptable to Port, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft; but this insurance shall be required only if the Operator owns or operates any watercraft under the provisions of the relevant RPD contract or sublease; provided, however, that, in the event the Operator receives any goods at the Premises from any watercraft, then the Operator shall require that the user of such watercraft maintain the insurance set forth in this Subsection. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vi) Vessel Pollution Liability Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vii) Hull and Machinery Protection and Indemnity Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Hull and Machinery Protection and Indemnity Insurance in a form and with limited acceptable to Port.

(viii) Special Events/Participants. If an Operator holds special events at the Premises, such Operator, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(ix) Other Coverage. Such other insurance or different coverage amounts as is required by applicable law or as is generally required by commercial owners of facilities similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

(b) Claims-Made Policies. If any of the insurance required in this Section is provided under a claims-made form of policy, the insured entity shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of the relevant RPD contract or sublease, to the effect that should occurrences during the Term give rise to claims made after termination of the relevant RPD contract or sublease, such claims shall be covered by such claims-made policies.

(c) Annual Aggregate Limits. If any of the insurance required in this Section is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

(d) *Payment of Premiums.* The insured entity shall pay the premiums for maintaining all required insurance.

(e) *Waiver of Subrogation Rights.* RPD is responsible for performing its obligations under this MOU, but is not required to carry any third party insurance for the Premises. Before entering into any sublease of the Premises or license of the Pier Access Area with any party, RPD shall require such party to (i) waive any right of recovery against City, including but not limited to the Port and RPD, for any loss or damage sustained by such party with respect to the Premises, the Pier Access Area, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of the City, to the extent such loss or damage is covered by insurance which such party is required to purchase under such sublease or license or is actually covered by insurance obtained by such party, and (ii) to agree to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises and the Pier Access Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

(f) *General Insurance Matters.*

(i) All liability insurance policies required to be maintained by hereunder shall contain a cross-liability clause, shall name as additional insureds the "CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this MOU, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. In addition, all liability insurance policies required to be maintained by an Operator with respect to the Pier Access Area shall name Port's then-existing Hyde Street Pier tenant or licensee as an additional insured.

(ii) All insurance policies required to be maintained by any entity as required herein shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. RPD's compliance with this Section shall in no way relieve or decrease RPD's liability under this MOU.

(iii) All insurance policies required to be maintained by any entity hereunder shall provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to RPD and Port. Such notice shall be given in accordance with the notice provisions of Section 15.

(iv) RPD shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the commencement date of any contractor sublease, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. RPD shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

## 11. CLAIMS AND DAMAGES

Because Port will not be receiving any fees for the use of the Premises or access over the Pier Access Area and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or on connection with RPD's use of the Premises or the Pier Access Area. Therefore, RPD agrees to be responsible or cause its tenants, subtenants, or licensees to be responsible for all costs

associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by RPD, its agents, contractors, tenants, subtenants, licensees, or invitees, (ii) as a result of the handling of Hazardous Materials on or about the Pier Access Area by RPD, its agents, contractors, tenants, or licensees, and (iii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises from any cause or, as to the Pier Access Area, which arise as a result of RPD's acts or omissions, for the Pier Access Area which arise as a result the acts omissions by RPD or its tenants, subtenants, or licensees. In addition, each access license granted by RPD to a Clubhouse tenant and licensee shall require such Clubhouse tenant and licensee to indemnify the then-existing Port Hyde Street Pier tenant or licensee for all losses and claims arising from the active negligence or willful misconduct by such Clubhouse tenant or licensee on the Pier Access Area. The foregoing obligation of RPD shall survive the expiration or termination of this MOU.

(From the Port-SERC lease section 18.1 Damage and Destruction) If the Premises are damaged by fire or other casualty, then RPD shall require the tenant to repair the same provided that funds for such repairs are available for such purpose and provided that such repairs can be made within 210 days after the date of such damage.

## **12. PRESENCE OF HAZARDOUS MATERIALS**

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, RPD is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises and the Pier Access Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports listed in *Schedule 2* are present on the property, copies of which have been delivered to or made available to RPD. By execution of this MOU, RPD acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. RPD must disclose the information contained in this Section 11 to any subtenant, licensee, transferee, or assignee of RPD's interest in this MOU. RPD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

## **13. DEFAULT BY RPD**

The occurrence of any one or more of the following events shall constitute a default by RPD:

(a) Failure to use the Premises solely for the Permitted Use or the Pier Access Area solely for the Access Use, as determined by Port in its sole and absolute discretion if such failure continues for a period of thirty (30) days following written notice from Port; or

(b) Failure to perform any other provision of this MOU if the failure to perform is not cured within ninety (90) days after Port has given written notice to RPD. If the default cannot reasonably be cured within 90 days, RPD shall not be in default of this MOU if RPD commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default.

## **14. PORT'S REMEDIES**

Upon the occurrence of default by RPD with respect to the Premises, Port may at its option, without further notice or demand of any kind to RPD or to any other person, terminate RPD's right to possession of the Premises. As long as secondary access over the Pier Access Area is required under the San Francisco Building Code, Port shall not terminate the right for RPD or any Clubhouse tenant or licensee to use the Pier Access Area for the Access Use due to a

default, but shall have the right to be reimbursed for any costs incurred by Port as a result of any default by RPD or any Clubhouse tenant or licensee in such party's use of the Pier Access Area. If the San Francisco Building Code is amended so that secondary access over the Pier Access Area is no longer needed for the Clubhouse, the Port shall have the right to terminate RPD's right to use, and to grant the Clubhouse tenants and licensees the right to use, the Pier Access Area for the Access Use if there is an occurrence of default by RPD with respect to the Pier Access Area.

#### 15. ENTRY BY PORT

The Port may enter the Premises at any reasonable time, for the purpose of inspection, inventory or repairs, and when otherwise reasonably necessary for the protection of the Port's interests. Port shall not be liable in any manner, and RPD hereby waives, and shall cause SERC to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of Port's entry onto the Premises or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

The Port, its authorized representatives, tenants, and licensees may enter the Pier Access Area at any time, and RPD hereby waives, and shall cause each Clubhouse tenant and licensee to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of entry onto the Pier Access Area or performance of any necessary or required work on the Pier Access Area by Port, its authorized representatives, its tenants, or licensees, or on account of bringing necessary materials, supplies and equipment into or through the Pier Access Area during the course thereof, except damage resulting solely from the willful misconduct of Port, its authorized representatives, tenants, or licensees.

#### 16. NOTICE

Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as either the Port or RPD may designate by notice as its new address:

Address for Port: Deputy Director, Real Estate  
Port of San Francisco  
Pier One  
San Francisco, CA 94111

Telephone No: (415) 274-0501  
Fax No: (415) 274-0578

Address for RPD: Dana Ketcham  
Director of Property  
San Francisco Recreation and Park Department  
McLaren Lodge  
San Francisco, CA 94117

Telephone No: (415) 831-6868  
Fax No: (415) 831-2099

Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is mailed, if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email, facsimile or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor RPD may give official or binding notice by email, telephone or facsimile.

#### **17. MINERAL RESERVATION**

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises or the Pier Access Area. In accordance with the provisions of said Statutes, Port and RPD shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from such areas.

In no event shall Port be liable to RPD for any claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of RPD, or otherwise relieve RPD from any of its obligations under this MOU.

#### **18. UTILITIES**

RPD or its subtenants shall be responsible for the actual costs for electrical and water service to the Premises and waive any claims against the Port for such service. RPD or its Clubhouse tenants or licensees shall be responsible for the actual costs for electrical and water service to the Pier Access Area and waive any claims against the Port for such service.

#### **19. ASSIGNMENT AND SUBLEASING**

Port hereby consents to the anticipated sublease between RPD and SERC for the Premises subject to all of the terms and conditions of this MOU, including without limitation the disclosures, insurance provisions and waiver of claims. If RPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld. Port hereby consents to all licenses for secondary access granted by RPD to Clubhouse tenants and licensees subject to all of the terms and conditions of this MOU, provided RPD shall notify Port in writing notice of each license it grants to any Clubhouse tenant or licensee.

#### **20. ENTIRE AGREEMENT**

This MOU (including attached exhibits, if any) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK]



IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date written below.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO RECREATION AND PARK DEPARTMENT

By: \_\_\_\_\_  
ELAINE FORBES  
Executive Director  
Port of San Francisco

By: \_\_\_\_\_  
PHIL GINSBURG  
General Manager  
San Francisco Recreation and Park Department

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

REVIEWED:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

Recreation and Park Commission Resolution No.  
Port Commission Resolution No.

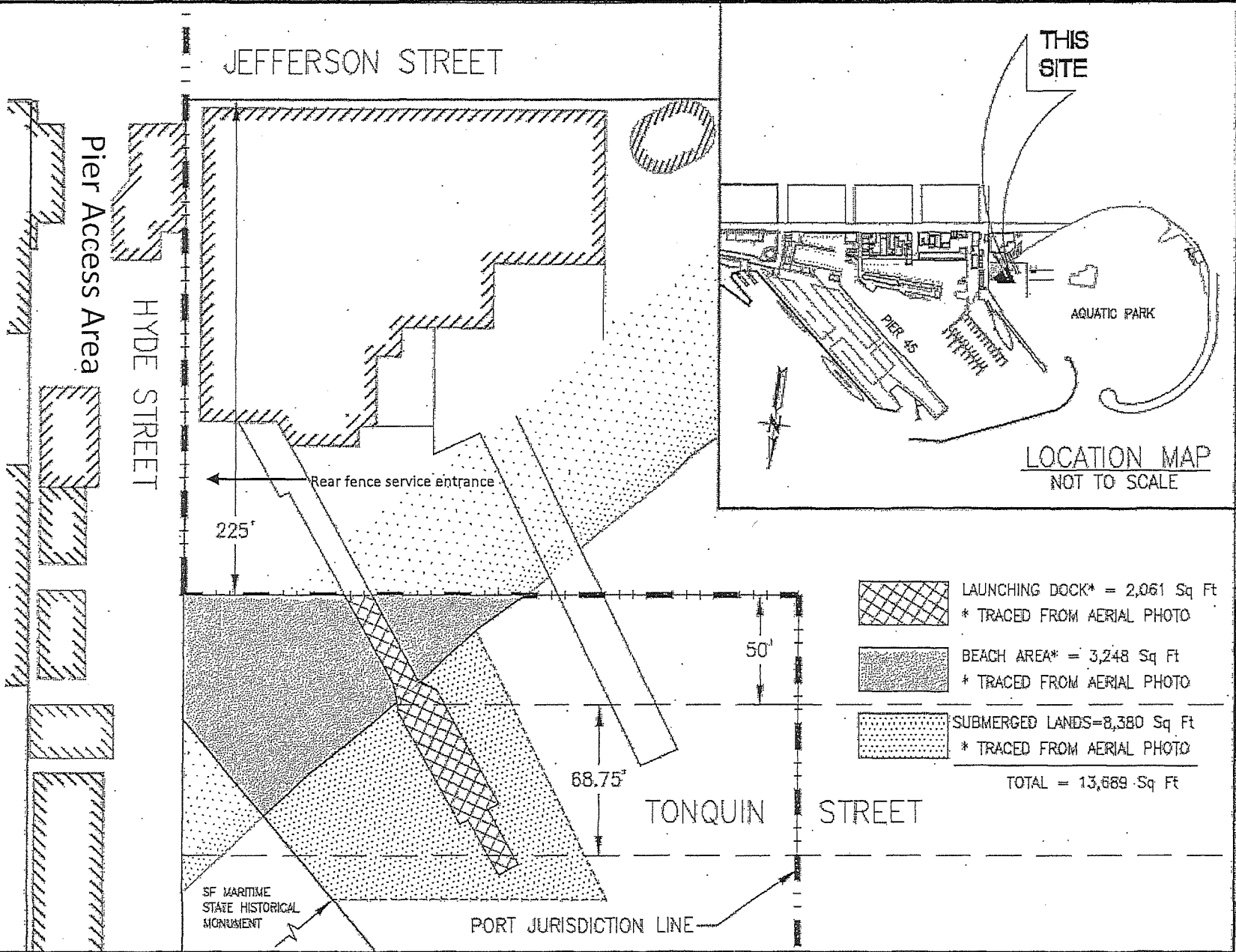
MOU Prepared By: Vicky Lee, Leasing Manager \_\_\_\_\_ (initial)




INITIALS: PORT \_\_\_\_\_

TENANT: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBIT A



-  LAUNCHING DOCK\* = 2,061 Sq Ft  
\* TRACED FROM AERIAL PHOTO
  -  BEACH AREA\* = 3,248 Sq Ft  
\* TRACED FROM AERIAL PHOTO
  -  SUBMERGED LANDS=8,380 Sq Ft  
\* TRACED FROM AERIAL PHOTO
- TOTAL = 13,689 Sq Ft

M.O.W. NO.

M-13773

SAN FRANCISCO PORT COMMISSION  
 PORT OF SAN FRANCISCO  
 DEPARTMENT OF ENGINEERING

TENANT  
**SFCC RECREATION &  
 PARK DEPARTMENT**

DRAWN BY: AMN, ECG	DATE: JAN 26, 2018
CHECKED BY: V. LEE	SCALE: 1" = 30'
PLACE CODE NO.	SHEET NO. 1
4000-00	OF 1 SHEETS

**EXHIBIT D**

**RESOLUTION NO. 16169a**

Recreation and Park Commission Minutes - July 18, 1991

\* \* \* \* \*

Note for the Record: The following amendments were made to Resolution No. 11189, adopted March 16, 1978.

RESOLUTION #16169a

RESOLUTION GOVERNING THE USE OF RECREATION AND PARK DEPARTMENT PROPERTIES BY PRIVATE ORGANIZATIONS.

WHEREAS, The policy of the Recreation and Park Commission is mandated by Section 3.552 of the San Francisco City Charter to promote and foster a program providing for organized public recreation of the highest standard; and

WHEREAS, The purpose of this resolution is to establish general policies for use of park property by non-profit organizations. Specific exceptions, modifications or additions to the requirements of this resolution that pertain to any particular non-profit organization or circumstance will be approved by the Commission in a separate resolution pertaining to that non-profit organization or circumstance;

WHEREAS, Park property dedicated to public use is for the benefit and enjoyment of all members of the public; and

WHEREAS, Park property is not lawfully used by private organizations or individuals to the exclusion of the general public for extended periods of time; and

WHEREAS, Private organizations can promote public recreational use of park property by organizing and directing recreational activities on park property;

NOW THEREFORE BE IT RESOLVED, That notwithstanding any provision in any existing lease or other agreement between the Recreation and Park Commission or Recreation and Park Department and a private organization concerning the use of park property, every lease to a private organization of park property dedicated to public use and every agreement whereby a private organization is allowed use such park property for an extended period of time is subject to the following conditions:

When the property leased or used by the private organization is open and available to members of the organization, it shall also be open and available to member's of the general public on the same terms as it is open and available to members of the organization. Thus, no member of the public shall be excluded from the property so long as such person uses the property for the recreational purpose for which the lease or agreement was entered into and so long as such person obeys all reasonable rules and regulations of the organization pertaining to proper use of the facilities.

If the property leased or used by the private organization is not open on a daily basis, or if the hours during which the property is open cannot accommodate the demands of all members of the public seeking to make use of the property, then the organization shall establish a procedure whereby non-members may reserve use of the property upon request. If a private organization has control of property which is used primarily for storage and opened only occasionally to its members, the organization shall establish a procedure whereby non-members are allowed use of the storage space and access to it for the same purposes and on the same terms as are

9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO. 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

Since making the property leased or used available to persons who are not members of the organization may involve additional expense, the organization may charge such persons a fee for use of facilities on the property, so long as such fee is reasonably related to the additional costs involved and are not so high as to make use of the facilities prohibitive.

Notice shall be posted conspicuously at all entrances, advising members of the public that the property is a public park facility operated on behalf of the Recreation and Park Commission by the organization, that the property is open to the general public on the same terms and conditions as it is available to members of the organization, of the hours during which the property is open or otherwise available, and of the procedures and fees for use, and that membership in the administering organization is open and available to all interested persons.

The charter or by-laws of the organization shall provide the following:

1. The purpose of the organization, so long as it occupies public park property, shall be to operate and maintain said property on behalf of the Recreation and Park Commission, in accordance with such policies, rules, regulations and purposes as said Commission may decree from time to time.

2. Applicants for membership to the organization shall not be discriminated against on the basis of race, color, religion, age, ancestry, ethnicity, national origin, sex, political affiliation, sexual orientation, physical handicap, marital status, medical condition (cancer related), conditions diagnosed as Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Conditions (ARC), or any other grounds prohibited by law. Each membership applicant shall be given a copy of these by-laws at the time he or she receives the application form.

3. Each application form for membership to the organization shall have printed upon it in a conspicuous place, the following statement:

This is a public park facility operated and maintained on behalf of the City and County of San Francisco for the benefit of the public desiring to use these public recreation facilities by (name of organization), a non-profit organization. It is unlawful for any such organization to discriminate in its membership application or acceptance procedures on the basis of race, color, religion, age, ancestry, ethnicity, national origin, sex, political affiliation, sexual orientation, physical handicap, marital status, medical condition (cancer related), conditions diagnosed as Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Conditions (ARC), or any other grounds prohibited by law. Any complaint concerning allegations of discrimination shall be reported to the Recreation and Park Department of the City and County of San Francisco, McLaren Lodge, Golden Gate Park.

9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

4. An applicant for membership shall be rejected only for good cause and shall be notified in writing by an appropriate officer or committee of the reason for the rejection of the application and all money submitted with the application shall be returned to the applicant. An applicant shall be deemed accepted to membership in the organization unless, within 45 days from the date of application, the applicant is notified in writing of the rejection and the reason therefor. An applicant otherwise eligible but for lack of space shall be placed on a waiting list on a first come first serve basis.

5. Good cause for rejection of applicants for membership must be defined and must be based on a record of past acts or conduct demonstrating that the admission of the applicant would substantially impair the public recreational purpose of the property, the health, safety, or welfare of its intended users, or the preservation or maintenance of the property.

6. An applicant, having been rejected, shall be eligible to re-apply for membership within a specified period of time, not to exceed three (3) months, after rejection for membership.

7. No member may be expelled unless the organization provides a hearing in order to determine that good cause for expulsion exists. "Good cause" shall be defined according to the requirements set out in (5) above. The member shall be given at least thirty (30) days notice in writing of the purpose of the hearing, and the charges against such member, and the names of the parties making such charges. At such hearing, said member shall be given an opportunity to be advised of the charges, and an opportunity to meet them and to present a defense. A finding of good cause for expulsion shall be made and communicated, in writing, to such member. A finding of good cause for expulsion shall be subject to review, at the member's election, by the Recreation and Park Department of the City and County of San Francisco.

The only initiation fee charged new members shall be in the form of a membership application fee and such fee shall be reasonably related to the costs incurred in processing applications and performing any routine tasks necessary to make the facilities available to the new member. Annual dues shall be limited to the amount necessary to meet the current operating expenses and to maintain and preserve the property in accordance with all regulations, rules and policies of the Commission. Any other funds required by the organization shall be raised by special assessment, approved at a meeting of the membership of the organization, by a majority of the members present and notice of said meeting and its purpose, at which the special assessment is to be put to a vote, shall be given to each member at least two weeks prior to the date of the meeting. All fees, dues, assessments and membership application rates charged to members and daily use rates charged to non-members shall be subject to the approval of the Commission.

Refusal to enforce any policy or procedure required by the Commission concerning fees, dues, assessments, membership application rates, daily use rates or public access to property shall constitute grounds for immediate termination of the lease or agreement whereby the organization is using the property.

Recreation and Park Commission Minutes - July 18, 1991

9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO. 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

This resolution shall apply to clubs or private organizations using or having access to park property on a daily basis for a period exceeding 23 days within a calendar year. It does not apply to:

1. Clubs or private organizations which lease or use park property for special events which do not exceed 29 days within a calendar year.
2. Leases with professional athletic organizations.
3. Any lease of Candlestick Park, Kezar Stadium, Kezar Pavilion, or Balboa Park Stadium.
4. The operation of a concession. (A concession shall be defined as an agreement whereby an individual, partnership or corporation is granted permission by the Recreation and Park Commission to provide goods or services on park property to the public at a price which enables such individuals, partnership or corporation to make a profit.)

**EXHIBIT E**  
**STATE GRANT**



SEC. 2. The "water commission act," approved June 16, 1913, as amended, is hereby amended by adding thereto a new section to be numbered one *d* and to read as follows:

Sec. 1*d*. As prerequisite to the issuance by the state water commission of a permit to appropriate water the following facts must exist: there must be a person, firm, association, or corporation as party applicant; the application must contain the matter and information prescribed by this act and be in the form required by the state water commission; the application must be accompanied by such maps, drawings, and other data as may be required by the state water commission; the intended use must be beneficial; there must be unappropriated water available to supply the applicant; and all fees due must be paid; but this enumeration of prerequisites shall not be interpreted to exclude other matters, if any, made by this act prerequisite to the issuance of a permit.

Prerequisites  
to issuance  
of permits.

#### CHAPTER 88.

*An act conveying certain lands situated in the city and county of San Francisco, to the said city and county of San Francisco, to be used as an aquatic park.*

[Approved May 2, 1923.]

*The people of the State of California do enact as follows:*

SECTION 1. There is hereby granted and conveyed to the city and county of San Francisco all the right, title and interest of the State of California held by said state by virtue of its sovereignty, in and to all the lands situated in the said city and county of San Francisco and particularly described as follows:

Lands  
granted  
to San  
Francisco.

Beginning at the point of intersection of the center line of Polk street with the center line of Tonquin street; running thence easterly along said center line of Tonquin street to the westerly line of Larkin street; thence at a right angle southerly along said westerly line of Larkin street to the northerly line of Jefferson street; thence easterly along said northerly line of Jefferson street to the westerly line of Hyde street; thence northerly along said westerly line of Hyde street, a distance of two hundred twenty-five (225) feet; thence at a right angle westerly a distance of two hundred seventy-five (275) feet; thence at a right angle northerly a distance of two hundred forty-five (245) feet more or less to the southerly line of The Embarcadero; thence northwesterly along said southerly line of The Embarcadero to its intersection with the center line of Polk street; thence southerly along the center line of Polk street to the point of beginning. Said lands are hereby conveyed to said city and county of San Francisco, for the purpose of being used in conjunction with other property now owned by the said city and county of San Francisco as an aquatic park.

For aquatic  
park.

Use of  
land  
restricted.

SEC. 2. The said city and county shall have and there is hereby granted to it the right to make upon said premises all improvements, betterments and structures of every kind and character, proper, needful and useful for the development and maintenance of said park, so far as the same may be consistent with this act; *provided, however*, that the grantee under this act shall at no time erect any piling, breakwater or other structure which shall in any way interfere with the operation of any ferry or ferryboat operating from any slip, wharf or pier situated easterly of the land described herein.

Land not  
to be  
alienated.

SEC. 3. No grant, conveyance or transfer of any character shall ever be made by the city and county of San Francisco, of the land herein granted or any part thereof, but the said city and county shall continue to hold said lands and the whole thereof, unless the same revert to the State of California.

#### CHAPTER 89.

*An act to amend section nineteen x ten of an act entitled "An act to be known as the juvenile court law, and concerning persons under the age of twenty-one years; and in certain cases providing for their care, custody and maintenance; providing for the probationary treatment of such persons, and for the commitment of such persons to the Whittier State School and the Preston School of Industry, the California School for Girls, and other institutions; establishing probation officers and a probation committee to deal with such persons and fixing the salary thereof; providing for the establishment of detention homes for such persons; fixing the method of procedure and treatment or commitment where crimes have been committed by such persons; providing for the punishment of those guilty of offenses with reference to such persons, and defining such crimes; and repealing the juvenile court law approved March 8, 1909, as amended by an act approved April 5, 1911, and as amended by an act approved June 16, 1913, and all amendments thereof and all acts or parts of acts inconsistent herewith," approved June 5, 1915, as amended, said section relating to the salaries of probation officers.*

[Approved May 2, 1923.]

*The people of the State of California do enact as follows:*

Stats. 1921,  
p. 1446,  
amended.

SECTION 1. Section nineteen x ten of an act entitled, "An act to be known as the juvenile court law, and concerning persons under the age of twenty-one years; and in certain cases providing for their care, custody and maintenance; providing for the probationary treatment of such persons, and for the commitment of such persons to the Whittier State School and the Preston School of Industry, the California School for Girls, and other institutions; establishing probation officers and a probation committee to deal with such persons and fixing the

**EXHIBIT F**  
**MANAGEMENT PLAN - BY-LAWS**

**SOUTH END ROWING CLUB  
BY-LAWS**

**ARTICLE I - GENERAL DESCRIPTION**

**Section 1 - NAME.** This club shall be incorporated as "The South End Rowing Club" (herein referred to as "the Club").

**Section 2 - PURPOSE.** The purpose of the Club shall be the advancement and enjoyment of rowing, swimming, and other aquatic sports in Aquatic Park and San Francisco Bay, and of handball and running. So long as the Club occupies public park property, its further purpose shall be to operate and maintain such property on behalf of the governmental agency to which the property has been entrusted, in accordance with the agency's policies, regulations, and purposes.

**Section 3 - LOCATION.** The principal office of the Club shall be at 500 Jefferson Street, San Francisco, California.

**Section 4 - TITLE AND MANAGEMENT OF PROPERTY.** The legal title and ownership of all property, effects, and assets of the Club shall be vested in the corporation, which shall be managed by a Board of Directors (herein referred to as "the Board"), for the benefit and enjoyment of the members, subject to the terms and provisions of these by-laws.

## ARTICLE II - MEMBERSHIP

**Section 1 - CAPACITY.** The membership of the Club shall be limited to the capacity of the Club's facilities.

**Section 2 - ELIGIBILITY.** Any person over the age of 18 years who is interested in the activities of the Club shall be eligible for membership. Applicants for membership shall not be discriminated against on the basis of race, color, religion, ancestry, national origin, sex, political affiliation, sexual orientation, disability, or any other grounds prohibited by law. A member of the Club may hold memberships in other athletic clubs at the same time.

**Section 3 - RIGHTS AND PRIVILEGES.** Except as defined elsewhere in these bylaws, the rights and privileges of membership include the right to use the Club's property as per each individual sport's policy and rules, to participate in Club events, to attend and vote at membership meetings, to vote in elections, to run for and be appointed to positions on the Board, and to be informed of the Club's by-laws, rules, and policies. No club member, commissioner or officer may use the Club property, directly or indirectly, for personal gain.

**Section 4 - OBLIGATIONS.** Except as defined elsewhere in these by-laws, the obligations of membership include the obligation to follow the Club's by-laws and the rules and policies set by the Board, and to pay in a timely fashion all dues, fees, fines, and assessments.

**Section 5 - GOOD STANDING AND DELINQUENCY.** A member in good standing is one who is not delinquent. A member is delinquent if he or she fails to pay dues, fees, fines, or assessments by the due date, as set by the Board. Members are entitled to 30 days notice of due dates. A delinquent member is not entitled to use the Club's property or to participate in Club events. A delinquent member may return to good standing by paying the overdue amount, plus any late fee.

**Section 6 - CLASSES OF MEMBERSHIP.** The classes of membership are: Active, Life, Out-of-town, and Honorary, as follows:

- a. Active members are those who have been admitted under the provisions of these by-laws, and who are not in one of the other classes. Active members are entitled to all the rights and privileges of membership, and are chargeable with all the obligations of membership, as set forth in these bylaws.
- b. Life members are those who have been continuous Active members for at least 25 years, and who have reached the age of 65 years, and who have petitioned the Board in writing for a change in membership class, and who are in good standing at the time of such petition. Life members are entitled to all the rights and privileges of membership, and are chargeable with all the obligations of membership, as set forth in these by-laws, except that they are exempt from payment of annual dues. Life members are not exempt from payment of locker or other fees, fines, or assessments.
- c. Out-of-town members are those who have been continuous Active members for at least one year, and who reside outside the nine Bay Area counties (the Counties of San Francisco, Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, and San Mateo), and who have petitioned the Board in writing for a change in membership class, and who are in good standing at the time of such petition. Out-of-town members are entitled to all the rights and privileges of membership, and are chargeable with all the obligations of membership, as set forth in these by-laws, except that they are not entitled to rent a locker or to hold a position on the Board.
- d. Honorary members are those who have rendered distinguished service to the Club or who otherwise merit special recognition, and who have been admitted as honorary members by a vote of three quarters of the officers present at any Board meeting. The honorary membership may be on an annual basis or a lifetime basis as determined by the board. Honorary members are entitled to use the Club's property, and to rent a locker upon payment of the locker fees, but they are not entitled to hold a position on the Board, and they are exempt from payment of annual dues and assessments. Honorary members may change to the Active class without payment of the initiation fee, upon written request to the Membership Commissioner.

**Section 7 - APPLICATION PROCEDURE.** Application for membership in the Club shall be made by submitting to the Membership Commissioner, or Club bookkeeper, an application form together with payment of the initiation fee and dues for the remainder of the year. In the event a new member joins in December, dues shall be paid through the end of the following year. The Membership Commissioner shall announce new members at the next Board meeting. Neither a personal interview or appearance nor a sponsoring member shall be a requirement for application for membership. An applicant who would otherwise be admitted but for lack of capacity in the Club shall be placed on a waiting list, and shall be admitted in the order of application. An admitted applicant's membership shall begin on the date when a deferred applicant is admitted from the waiting list. Good cause for rejection is defined as follows: a record of past acts or conduct demonstrating that the admission of the applicant would substantially impair the purposes of the Club, the preservation or maintenance of the property, or the health, safety, or welfare of its intended users. The Membership

Commissioner shall notify each rejected applicant in writing of the reason for rejection, and shall return all money submitted with the application. A rejected applicant shall be eligible to reapply for membership six months after rejection. An applicant who would otherwise be admitted but for lack of capacity in the Club shall be placed on a waiting list, and shall be admitted in the order of application. An admitted applicant's membership shall begin on the date when a deferred applicant is admitted from the waiting list.

**Section 8 - TERMINATION OF MEMBERSHIP.** A person's membership in the Club may terminate in the ways defined below. Termination does not relieve a member of the obligation to pay any amounts due at the time of termination, or to return any Club property in his or her possession, including keys, or access cards. Persons whose membership has terminated and who wish to rejoin may be readmitted by following the standard application procedure, but only if they have paid all such amounts and returned all such property. The three kinds of terminations are:

- a. Resignation/Non Payment of Dues - A member may resign at any time by writing to the Membership Commissioner and returning any Club property, including keys. A member who has been delinquent for 60 days is presumed to have resigned from the Club. The Board may set a reduced initiation fee for members who resigned in good standing and wish to rejoin.
- b. Dropping out - If a member has been delinquent for 60 days, he or she is presumed to have dropped out of the Club, and membership is terminated automatically.
- c. Expulsion - A member shall be expelled only for good cause, as determined by a vote of two-thirds of the officers present at a Board meeting. Good cause for expulsion is defined as follows: a record of acts or conduct which would substantially impair the purposes of the Club, the preservation or maintenance of the property, or the health, safety, or welfare of its intended users. A member is entitled to 30 days notice in writing of expulsion proceedings against his or her, including the nature of the charges and the names of the parties making such charges, and to a reasonable opportunity to present a defense at a Board meeting. An expelled member may request a review by any governmental agency with authority over the Club. Expelled members may not apply to rejoin the Club for one year after their expulsion.

### ARTICLE III - BOARD OF DIRECTORS

**Section 1 - BOARD OF DIRECTORS.** The property and activities of the Club shall be managed by the Board of Directors. The Board shall consist of eighteen officers: President; Vice-President; Secretary; Treasurer; Boathouse Captain; Commissioners of Rowing, Swimming, Handball, Running, Gymnasium, Building, Entertainment, and Membership; four Directors-at-large; and Past President.

**Section 2 - SELECTION OF OFFICERS.** The President, Vice-President, Secretary, and the four Directors-at-large ("elected officers") are elected by vote of the members as specified in these by-laws. The Treasurer, Boathouse Captain, and the eight Commissioners ("appointed officers") are appointed by the elected officers as specified in these by-laws. The Past President is ex officio, the member who most recently held the office of President, not including the current President. Once selected, all officers have an equal vote in Board meetings.

**Section 3 - ELECTED OFFICERS.** To be eligible to run for elected office, a member must be in good standing, and must be either a Life member or an Active member who has been a member for at least one year. Each candidate must submit a statement of candidacy to the Election Committee before its announced deadline. No member may be a candidate for more than one office in the same election.

**Section 4 - APPOINTED OFFICERS.** To be considered for appointed office, a member must be in good standing, and must be either a Life member or an Active member of any duration. The appointed officers are chosen by majority vote of the seven newly elected officers as soon as practical after an election. The Swim Commissioner, Rowing Commissioner, Handball Commissioner, Running Commissioner, Building Commissioner, and Boathouse Captain shall be first nominated by a majority vote of their respective sports community in attendance at the meeting in which such Commissioners is nominated.

**Section 5 - POWERS AND DUTIES OF THE ELECTED BOARD.** The powers and duties of the Board include the following, as limited elsewhere in these by-laws:

- a. To implement, interpret, and propose changes to the by-laws;
- b. To adopt, enforce, interpret, amend, and repeal the rules and policies of the Club;
- c. To impose and enforce fines and penalties against members for violation of the by-laws, rules, or policies;
- d. To propose amounts of annual dues and special assessments for ratification by the membership, and to set fees and fines;
- e. To authorize expenditures on behalf of the Club;
- f. To incur indebtedness binding on the Club;
- g. To select and remove employees of the Club, and to set their compensation;
- h. To select and retain banks, bookkeepers, accountants, collectors, lawyers, and other services;
- i. To join and send delegates to organizations and associations whose purposes do not conflict with these by-laws;
- j. To appoint special committees or individuals for specific purposes;
- k. To remove and replace officers of the Board, and to select a president pro tempore to preside in the absence of both the President and Vice-president;
- l. To keep records of the proceedings of the Club;
- m. To make in writing at each general membership meeting, and at each special membership meeting called for that purpose, a report showing in detail the financial and physical condition of the Club;
- n. To admit, reject, and expel members;
- o. To preserve the Club for future members.

#### POWERS AND DUTIES OF THE APPOINTED BOARD

- p. To implement, interpret, and propose changes to the by-laws;
- q. To adopt, enforce, interpret, amend, and repeal the rules and policies of the Club;
- r. To impose and enforce fines and penalties against members for violation of the by-laws, rules, or policies;
- s. To propose amounts of annual dues and special assessments for ratification by the membership, and to set fees and fines;
- t. To join and send delegates to organizations and associations whose purposes do not conflict with these by-laws;
- u. To keep records of the proceedings of the Club;
- v. To make in writing at each general membership meeting, and at each special membership meeting called for that purpose, a report showing in detail the financial and physical condition of the Club;
- w. To admit, reject, and expel members;
- x. To preserve the Club for future members.

ADDITIONAL POWERS AND DUTIES FO THE ELECTED OFFICERS:

- a. To incur indebtedness or enter into contracts on behalf of the Club;
- b. To hire and remove employees of the Club, and to set their compensation;
- c. To select and retain banks, bookkeepers, accountants, collectors, lawyers, and other services;

**Section 6 - POWERS AND DUTIES OF INDIVIDUAL OFFICERS.** Each officer has the duty to uphold the by-laws, rules, and policies of the Club, and to submit to the Board on request all money and records of his or her office. The additional powers and duties of the officers include the following:

- a. President - to preside at all Board meetings and membership meetings; to call special Board meetings and membership meetings; to appoint such committees as may be needed; to attend meetings of any committee as desired; to execute with the Secretary all documents in the name of the Club; to sign all checks with the Treasurer; to have general supervision over all the affairs of the Club;
- b. Vice-President - to serve in the place of the President in the event of the President's absence or incapacity; to serve on any committees and perform any duties as requested by the President, with the approval of the Board;
- c. Secretary - to have custody of all books, papers, and records of the Club pertaining to this office; to serve notice of Board meetings, membership meetings, and, when requested, committee meetings; to record and distribute the minutes of all such meetings; and to execute with the President all documents in the name of the Club;
- d. Treasurer - to supervise the financial affairs of the Club; to have custody of all of the funds of the Club; to deposit all funds in the name of the Club in the bank or banks designated by the Board; to sign all checks with the President; to make a monthly report to the Board and an annual report to the members of the budget and financial status of the Club; to submit to the Board on request all money and records of the office; to supervise an annual inventory of the Club;
- e. Boathouse Captain - to supervise the purchase, construction, storage, upkeep, and repair of all boats and boating equipment related to the rowing program, and supplies; to cooperate with the Rowing Commissioner in performing his or her duties;
- f. Rowing Commissioner - to supervise and regulate in a safe manner all matters pertaining to recreational rowing and rowing events and regattas; to cooperate with the Boathouse Captain in performing his or her duties;
- g. Swimming Commissioner - to supervise and regulate in a safe manner all matters pertaining to swimming and swim events; to supervise the purchase, storage, upkeep, and repair of safety equipment related to swimming including inflatable swim support boats, kayaks and other similar craft;
- h. Handball Commissioner - to supervise and regulate in a safe manner all matters pertaining to handball and handball events and tournaments; to supervise the upkeep and repair of the handball courts and equipment;
- i. Running Commissioner - to supervise and regulate in a safe manner all matters pertaining to running and running events;
- j. Gymnasium Commissioner - to supervise and regulate in a safe manner all matters pertaining to the gymnasium; to supervise the purchase, upkeep, and repair of the gymnasium and gym equipment;
- k. Entertainment Commissioner - to supervise and regulate in a safe manner all matters of social activity and entertainment, manage the clubs rental and social activities calendar and bring to the board any conflicts; to supervise the purchase, storage, upkeep, and repair of related equipment, including the cook shack and the bar;
- l. Building Commissioner - to supervise construction, upkeep, and repair of the clubhouse and its facilities; to keep the Board informed of the status of such construction and repair; to propose long-range plans and priorities for building projects;
- m. Membership Commissioner - to make a monthly report to the Board and an annual report to the members describing the number and classes of members; to welcome new members, provide orientation and connect members with the sports that are interest; to publish all upcoming due dates and the consequences of missing them, to publish other such information as may be appropriate.



- n. Directors-at-large - to advise and assist the other officers in their respective duties; to serve on any committees and perform any duties as requested by the President, with the approval of the Board;
- o. Past President – to advise and assist other officers in their respective duties; to serve on any committees and perform any duties as requested by the President, with the approval of the Board.

Each officer must coordinate his or her activities with the other officers and provide assistance as needed. The Board will mediate in the event of conflicts between the powers and duties of the officers. Each commissioner, plus the Boathouse Captain, may appoint, with the approval of the Board, an assistant commissioner, a committee, or both to assist him or her with the duties of the office. In the absence of a commissioner, the assistant commissioner may give reports at a Board meeting but may not vote.

**Section 7 - TERMS OF OFFICE.** Elected Officers take office on January 1 of the year following their election. Appointed Officers take office on the day of their appointment, or on January 1, whichever is later. Each term of office is two years for Elected Officers and one year for Appointed Officers. The terms of all Elected Officers end on December 31 of the year following the one in which he or she took office. The terms of all Appointed Officers end on December 31 of the year in which he or she was appointed. Elected Officers and Appointed Officers may serve for up to two consecutive terms (i.e., four years for Elected Officers and two years for Appointed Officers) in their respective positions and must wait a period of one term before becoming eligible to serve in that capacity again. Nothing herein prevents a member who is “termed out” from serving in a different Board capacity, subject to their election or appointment, as the case may be. In the event that a position in which a member has “termed out” goes unfilled, the board will vote to extend the term of the current appointed or elected officer for another term. “Two-year term limits for Appointed Officers take effect on January 1, 2017 and apply prospectively; however the initial term limit for Building Commissioner, Boathouse Captain, and Treasurer shall be for up to three years.”

**Section 8 - ELECTION COMMITTEE.** The Board shall appoint an Election Committee to supervise the election in accordance with these by-laws. The Election Committee shall be responsible for sending the required mailings, reviewing the statements of candidacy, counting the ballots, interpreting the rules, and settling disputes. The Election Committee shall consist of at least three members in good standing who are not candidates in the election. The Election Committee may appoint other officers or members to assist in these duties.

**Section 9 - ELECTION PROCEDURES.** The Election Committee shall observe the following schedule:

- a. Send an announcement of the election, including a call for candidates, to each member no later than October 15;
- b. Set a deadline for receipt of all statements of candidacy no later than November 15;
- c. Send a ballot with the statements of candidacy to each member within one week after the statement deadline;
- d. Set a deadline for receipt of all ballots no later than December 15;
- e. Count the ballots and announce the results within one week after the balloting deadline.

Balloting and communication shall be done by mail, email, or any combination in such a way that the ballots are both secret and verifiable. Only members in good standing may vote.

**Section 10 - RUN-OFF ELECTIONS SPECIAL SITUATIONS.** Candidates for President, Vice-President, and Secretary must receive at least one-third of the votes cast to be elected. If no candidate receives one-third, there shall be a run-off election between the two candidates who received the most votes. The run-off election shall be conducted in the same manner as the original election. There shall be no minimum plurality and no run-off elections for the offices of Director-at-large. If there is an exact tie for any elected office, it shall be settled by a vote of those officers elected without ties in the original election. If there is still a tie, it shall be decided by the Past President at the time of the original election. If there is no more than one candidate for each elected office, the Election Committee may declare all the candidates to be elected without mailing the ballots. If there is no candidate for a particular elected office, the other newly elected officers shall fill that office by a majority vote among themselves.

**Section 11 - REMOVAL AND REPLACEMENT OF OFFICERS.** The Board may remove an officer from the Board only for good cause, as determined by a vote of two-thirds of the officers present at a Board meeting. Good cause for removal is defined as follows: an abuse of the powers or neglect of the duties of the office, or repeated absences from regular Board meetings. The officer to be removed shall be notified of the meeting at which the vote is to take place, so that he or she may present a defense. When an officer has been removed or his or her membership has terminated, the Board may select a replacement by a majority vote of the officers present at a Board meeting. Both the removal and replacement of officers must be ratified by a majority vote of members at the next membership meeting, but the new officer shall begin his or her term on the date of the Board meeting.

**Section 12 - COMPENSATION.** All officers of the Club shall serve without salary or compensation.

#### ARTICLE IV - FINANCES

**Section 1 - GENERAL FUND.** A General Fund shall be kept to meet current operating and maintenance expenses. Except as provided in Section 3 below, all amounts from annual dues shall be deposited in this fund. Withdrawals from the General Fund must be approved by a majority vote of the officers present at a Board meeting, and checks must be signed jointly by the President and the Treasurer.

**Section 2 - SPECIAL FUND:** A Special Fund shall be kept to meet expenses beyond current operating and maintenance expenses, including improvement or additions to Club structures and equipment. All amounts from locker rental fees, initiation fees, other fees and fines, and special assessments, shall be deposited in this fund. Withdrawals from the Special Fund when its balance is less than \$25,000.00 shall be made only for emergencies and must be approved by a vote of four-fifths of the officers present at a Board meeting; otherwise, withdrawals must be approved by a vote of two-thirds of the officers present at a Board meeting. Special Fund checks must be signed jointly by the President, Treasurer and any two other officers.

**Section 3 - ANNUAL DUES.** The amount of the annual dues shall be proposed from time to time by vote of a majority of officers present at a Board meeting. New annual dues must be ratified by a majority vote of members present at the next membership meeting, and they shall not be put into effect until they have been ratified. Annual dues shall generally be limited to the amount necessary to meet the Club's current operating expenses and to maintain and preserve the property and equipment in an efficient manner in accordance with these by-laws. However, if prudent operation and maintenance provide a surplus, or if the members vote a dues increase to fund improvements, the Board may, by majority vote, transfer moneys from the General Fund to the Special Fund to finance improvements or additions to Club structures and equipment.

**Section 4 - FEES AND FINES -** The Board shall set the amounts of all fees and fines, including initiation fees, locker fees, fees for renting the facilities, and fines for damaging Club property or violating Club rules or policies. The Board may set a lower initiation fee for past members who are rejoining the Club. Amounts of fees and fines do not require ratification by the members.

**Section 5 - SPECIAL ASSESSMENTS.** The Board may assess all members an amount needed to meet a financial emergency or to provide funding support for a capital improvement to the Club. Such special assessment must be approved by two-thirds of the officers present at a Board meeting. The assessment must then be ratified by two-thirds of members present at the next membership meeting, and it shall not be put into effect until it has been ratified. Members shall be given the option of resigning from the Club before being obligated to pay a special assessment.

**Section 6 - AUTHORIZATION OF EXPENSES.** Neither any member of the Club nor any officer of the Board is permitted to obligate the Club to pay for any expense or to incur any financial obligation on behalf of the Club without the express approval and authorization of the Board. The Board may allocate budget amounts in advance to certain officers to be used to operate certain programs; expenses paid out of such budgets must have specific approval by the Board, but the Board may revoke the authority to spend such budgets at any time.

## ARTICLE V - CONTROL OF CLUB AFFAIRS

**Section 1 - RULES AND POLICIES.** The Board shall maintain a set of written rules and policies for the management of the Club and the conduct of its affairs in accordance with these by-laws and all relevant leases, laws, and governmental regulations. Except as provided in these by-laws, a majority vote at a Board meeting is required to adopt, interpret, amend, or repeal such rules or policies.

**Section 2 - MEMBERSHIP MEETINGS.** Regular meetings of the Club membership shall be held at least once a year. Special membership meetings may be called for a specific purpose by the Board. Membership meetings are held to ratify certain actions of the Board, as specified in these by-laws. All members must be notified at least two weeks in advance of the time and location and purpose of any membership meeting. Twenty-five members constitute a quorum at any membership meeting.

**Section 3 - BOARD MEETINGS.** Regular meetings of the Board shall be held at least once a month according to a schedule distributed to all members. Special meetings of the Board may be called by the president or by any four officers. All officers must be notified at least two weeks in advance of a special Board meeting, unless the special Board meeting is announced at a regular Board meeting. Nine officers constitute a quorum at any Board meeting. The Board may vote on the parliamentary procedures to be used at Board meetings. The Board may vote to close all or part of a Board meeting to non-officers. Board agendas shall be posted on the Club's website at least 48 hours before a scheduled meeting and minutes shall be posted on the Club's website following their approval at the next Board meeting. Up to three regular Board meetings per year may be cancelled upon 48 hours, with notice posted on the Club's website. **Section 4 - AMENDMENTS TO BY-LAWS.** Amendments to the by-laws must be proposed by the Board, and then ratified by a majority vote of the members present at any regular membership meeting, or at any special membership meeting called for that purpose. A description of the proposed amendments must be given to all members at least two weeks in advance of the meeting.

**Section 5 - NEWSLETTER.** The Board shall publish and send to all members a regular newsletter. Timely publication in the newsletter shall be considered adequate notice of Board and membership meetings, elections, changes in rules and policies, due dates, delinquencies, and other information of concern to members.

**EXHIBIT G**

**APPROVED RATES AND CHARGES**

<b>Day-Use Fee</b>	<b>Initiation Fee</b>	<b>Key Charge</b>	<b>Annual Membership Fee</b>
<b>\$10</b>	<b>\$100</b>	<b>\$5</b>	<b>\$405</b>

SEC. 2. The "water commission act," approved June 16, 1913, as amended, is hereby amended by adding thereto a new section to be numbered one *d* and to read as follows:

Sec. 1*d*. As prerequisite to the issuance by the state water commission of a permit to appropriate water the following facts must exist: there must be a person, firm, association, or corporation as party applicant; the application must contain the matter and information prescribed by this act and be in the form required by the state water commission; the application must be accompanied by such maps, drawings, and other data as may be required by the state water commission; the intended use must be beneficial; there must be unappropriated water available to supply the applicant; and all fees due must be paid; but this enumeration of prerequisites shall not be interpreted to exclude other matters, if any, made by this act prerequisite to the issuance of a permit.

Prerequisites  
to issuance  
of permits.

#### CHAPTER 88.

*An act conveying certain lands situated in the city and county of San Francisco, to the said city and county of San Francisco, to be used as an aquatic park.*

[Approved May 2, 1923.]

*The people of the State of California do enact as follows:*

SECTION 1. There is hereby granted and conveyed to the city and county of San Francisco all the right, title and interest of the State of California held by said state by virtue of its sovereignty, in and to all the lands situated in the said city and county of San Francisco and particularly described as follows:

Lands  
granted  
to San  
Francisco.

Beginning at the point of intersection of the center line of Polk street with the center line of Tonquin street; running thence easterly along said center line of Tonquin street to the westerly line of Larkin street; thence at a right angle southerly along said westerly line of Larkin street to the northerly line of Jefferson street; thence easterly along said northerly line of Jefferson street to the westerly line of Hyde street; thence northerly along said westerly line of Hyde street, a distance of two hundred twenty-five (225) feet; thence at a right angle westerly a distance of two hundred seventy-five (275) feet; thence at a right angle northerly a distance of two hundred forty-five (245) feet more or less to the southerly line of The Embarcadero; thence northwesterly along said southerly line of The Embarcadero to its intersection with the center line of Polk street; thence southerly along the center line of Polk street to the point of beginning. Said lands are hereby conveyed to said city and county of San Francisco, for the purpose of being used in conjunction with other property now owned by the said city and county of San Francisco as an aquatic park.

For aquatic  
park.

Use of  
land  
restricted.

SEC. 2. The said city and county shall have and there is hereby granted to it the right to make upon said premises all improvements, betterments and structures of every kind and character, proper, needful and useful for the development and maintenance of said park, so far as the same may be consistent with this act; *provided, however*, that the grantee under this act shall at no time erect any piling, breakwater or other structure which shall in any way interfere with the operation of any ferry or ferryboat operating from any slip, wharf or pier situated easterly of the land described herein.

Land not  
to be  
alienated.

SEC. 3. No grant, conveyance or transfer of any character shall ever be made by the city and county of San Francisco, of the land herein granted or any part thereof, but the said city and county shall continue to hold said lands and the whole thereof, unless the same revert to the State of California.

#### CHAPTER 89.

*An act to amend section nineteen x ten of an act entitled "An act to be known as the juvenile court law, and concerning persons under the age of twenty-one years; and in certain cases providing for their care, custody and maintenance; providing for the probationary treatment of such persons, and for the commitment of such persons to the Whittier State School and the Preston School of Industry, the California School for Girls, and other institutions; establishing probation officers and a probation committee to deal with such persons and fixing the salary thereof; providing for the establishment of detention homes for such persons; fixing the method of procedure and treatment or commitment where crimes have been committed by such persons; providing for the punishment of those guilty of offenses with reference to such persons, and defining such crimes; and repealing the juvenile court law approved March 8, 1909, as amended by an act approved April 5, 1911, and as amended by an act approved June 16, 1913, and all amendments thereof and all acts or parts of acts inconsistent herewith," approved June 5, 1915, as amended, said section relating to the salaries of probation officers.*

[Approved May 2, 1923.]

*The people of the State of California do enact as follows:*

Stats. 1921,  
p. 1441,  
amended.

SECTION 1. Section nineteen x ten of an act entitled, "An act to be known as the juvenile court law, and concerning persons under the age of twenty-one years; and in certain cases providing for their care, custody and maintenance; providing for the probationary treatment of such persons, and for the commitment of such persons to the Whittier State School and the Preston School of Industry, the California School for Girls, and other institutions; establishing probation officers and a probation committee to deal with such persons and fixing the

LEASE AGREEMENT FOR  
SOUTH END ROWING CLUB

AT

AQUATIC PARK

CITY AND COUNTY OF SAN FRANCISCO  
RECREATION AND PARK COMMISSION  
McLAREN LODGE, GOLDEN GATE PARK  
SAN FRANCISCO, CALIFORNIA

Commissioner Eugene L. Friend, President  
Monsignor Peter G. Armstrong, Vice President

Commissioner Keith Eickman  
Commissioner Luisa Ezquerro  
Commissioner Tommy Harris  
Commissioner Frances McAteer  
Commissioner Amy Meyer

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LEASE

THIS AGREEMENT, dated for convenience this 1st day of July, 1979, by and between the RECREATION AND PARK COMMISSION, for and on behalf of the City and County of San Francisco, State of California, hereinafter referred to as "Lessor" and the South End Rowing Club, a California Non-Profit Corporation, hereinafter referred to as "Lessee".

WITNESSETH

That for and in consideration of the covenants, terms and conditions hereinafter contained on the part of the Lessee to be paid, kept and performed, Lessor does hereby lease to Lessee and Lessee does hereby lease, hire and take from Lessor the improved real property commonly known as 500 Jefferson Street at the Foot of Hyde Street as indicated on the attached map (hereinafter referred to as the "demised premises") situated at Aquatic Park in the City and County of San Francisco, State of California, subject to the following agreements, terms and conditions, to which the parties hereto agree.

1. EXTENT OF LEASEHOLD

The Lessor does hereby grant to Lessee the exclusive right to establish and operate a rowing and athletic club on the demised premises being under the jurisdiction of the Lessor. It is hereby understood and agreed that the exclusive right to establish and operate said club as hereinabove stated shall not embrace any other areas located adjacent to the demised premises nor to Aquatic Park or any part thereof, except the improved real property as indicated on the attached map.

2. USE OF PREMISES

Lessee agrees that the demised premises shall be operated on a non-profit basis as defined by and pursuant to prevailing Internal Revenue Service codes and regulations and shall be used only for the purpose of providing facilities for aquatic activities and for promoting and serving the public interest in the advancement of rowing, running, swimming, and other sports all to be available to and for the benefit of the general public and to be for a public purpose. Lessee may sub-rent the demised premises for a fee upon conditions stated in Paragraph 8 of this lease and as required by the General Manager, Recreation and Park Department, (hereafter referred to as "Manager"), regarding the time and duration of such sub-rentals and the types of events for which such sub-rentals may be entered into, said conditions to be kept on file with the Secretary, Recreation and Park Commission, and subject to change only upon 30 days prior written notice to Lessee from General Manager, Recreation and Park Department. No other use shall be made of the demised premises without the written consent of Lessor.

3. CODE COMPLIANCE

As a material consideration, Lessee agrees, at its sole cost and expense, to maintain the demised premises in compliance with all applicable health and safety, fire and building code requirements of the State of California and City and County of San Francisco, to the extent the same are not waived or excused by grand fatherring or other operation of law or equity, in order to make said demised premises suitable for the purposes set forth in Section 2, hereinbefore stated.

4. PROHIBITED USES

Lessee shall not do or permit anything to be done in or about the demised premises, or bring or keep anything therein which will in any way conflict with any law, ordinance, rule or regulation which may now or hereafter be enacted or promulgated by any public authority, or create a nuisance, or commit or suffer to be committed any waste upon the demised premises or use, or allow the demised premises to be used, for any improper, immoral or unlawful or objectionable purpose, or place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk or passageways, stairways, in front of, within, or adjacent to the demised premises, or do or permit to be done anything in any way tending to injure the reputation or appearance of the building.

5. PUBLIC ACCESS

Lessee acknowledges the provisions of Commission Resolution 11189 a copy of which is attached hereto and by reference made a part of this lease. Lessee further agrees that Lessee shall obtain the prior written approval of the Lessor for its method of operation in connection with the manner by which members of Lessee and non-members gain access to the demised premises and are permitted the use of facilities, equipment and areas on or about the demised premises, including any conditions imposed on members of Lessee or non-members before such persons are entitled to use the facilities, equipment and areas on or about the demised premises. The method of operation described herein and proposed by Lessee shall be filed with the Lessor and said method of operation shall not be altered by Lessee without the written approval of Lessor first had and obtained.

6. VENDING MACHINES

Subject to the written approval of the General Manager, Recreation and Park Department, and subject to the written revocation thereafter, Lessee may install and operate coin-operated machines within the demised premises, which dispense cigarettes, candy, hot and cold beverages, amusement devices (including, but not limited to, pin-ball machines, game tables and playing machines) and any and all other types of coin-operated devices furnished or installed for the entertainment of guests and visitors.

7. TERM

The term of this lease shall be for a period of Twenty Five (25) years commencing on the first day of July, 1979 or retroactive thereto if approved by the Board of Supervisors and the Mayor of the

City and County of San Francisco after July 1, 1979. Subject to the approval by the Recreation and Park Commission, this lease may be extended for one (1) additional Twenty Five (25) year period provided, however, that Lessee shall request such extensions not less than ninety (90) days prior to the expiration date of the initial Twenty Five (25) year period. Failure of Lessee to request said extensions or failure of the Recreation and Park Commission to approve said request for extension more than thirty (30) days prior to said expiration date of the first Twenty Five (25) year period of this lease shall cause this lease to operate on a month to month basis or terminate without extension, whichever the Commission shall choose.

8. RENTAL

Lessee shall pay as rent to Lessor a semi-annual payment equal to ten (10) percent (10%) of all gross revenues, dues, initiation fees, sub-rentals, dividends, trust income or any other income received during the term of this lease. Said rental shall not include as income gifts or bequests made in the name of the Lessee but shall include any dividends, interest or other income subsequently received from said gifts or bequests, provided that dividends, interest or other income committed by resolution to capital improvements prior to January, 1980, shall be specifically exempt from rent.

Any assessments made by Lessee, general, special or otherwise, shall only be allowed with the prior written permission of the Manager and the Commission and only for the purpose(s) set forth in said grant of permission. Said consent shall not be unreasonably withheld by Lessor.

Said rental shall be paid to Lessor on or before the fifteenth (15th) day of July and January of each year and shall cover the six (6) months ending each June 30 and December 31 respectively.

Said payments shall be made to the Business Manager, Recreation and Park Commission, McLaren Lodge, Fell & Stanyan Streets, San Francisco, California 94117.

9. GROSS REVENUE DEFINED

The term "Gross Revenue" as herein used is defined to mean the total gross revenue derived from any income derived from the use and occupation of the demised premises as described in Paragraph 8 (above).

10. RATES AND CHARGES

Lessee hereby agrees that the rates and charges for all services, including, but not limited to sub-rental fees, membership application fees, initiation fees, membership dues, daily access fees, sub-rentals, coin-operated amusement devices, and the sale of vended cigarettes, candy, hot and cold beverages shall not exceed the rates and charges approved by the Lessor. Should conditions warrant and justification be made to the satisfaction of the Lessor said rates and charges may be adjusted, provided, however that said adjustments shall be first requested by Lessee in writing and said adjustment or

adjustments shall not become effective until approved in writing by said Lessor. The rates or charges for any new service to be offered to the general public or any new item or items to be offered for sale shall not be offered to the general public without the written approval of said Lessor first had and obtained. Lessor agrees not to unreasonably withhold its consent to requested charges and adjustments.

11. ACCOUNTING AND RECORDS

Lessee shall install and maintain such bookkeeping and accounting records, and methods of collection of monies, as shall permit Lessor to compute accurately the gross revenue, disbursements and all other expenditures and expenses for the operation of activities herein and any and all such records shall be made reasonably available to Lessor in San Francisco upon request. Lessee shall provide Lessor any reasonable accounting report or record on request by Lessor. The books of account shall indicate and distinguish funds received from sub-rentals and coin-operated machines from funds received from other sources such as gifts, bequests, memberships, or daily access fees from non-members. Lessee agrees to furnish detailed financial statements for operations hereunder and said statements shall be delivered to Lessor on or before the fifteenth (15th) day of each and every July and January for operations of the preceding six (6) months.

12. AUDIT OF BOOKS

The books of accounts and records of Lessee covering the operations of Lessee under this lease shall, at the cost and expense of Lessee, be audited annually by a certified public accountant firm (approved by Lessor). A certified copy of the report of such audit for the fiscal year shall be furnished to the Commission within 90 days of the end of said fiscal year of Lessee.

13. DAYS AND HOURS OF OPERATION

Lessee shall actively operate the demised premises for the purpose described herein and use its best efforts to further the operations thereof. The days and hours of operation of Lessee shall be subject to mutual arrangement between Lessee and the General Manager, Recreation and Park Department, and shall be embodied in written form and kept on file with the Secretary, Recreation and Park Commission.

14. PREMISES TO BE KEPT CLEAN

Lessee agrees to keep the demised premises and all fixtures and equipment clean, neat, safe, sanitary and in good order at all times. Lessee agrees to remove all waste, trash, rubbish, papers, cartons, and refuse from said demised premises all other areas used solely for and by said Lessee in containers provided for that purpose by Lessee. Lessee hereby agrees to clean, inside and out, all windows in the demised premises at the cost and expense of Lessee. Janitorial and window washing services required within the demised premises shall be supplied and paid for by Lessee.

15. EMPLOYEES OF LESSEE

Lessee shall at all times employ only those persons of good moral character and each person so employed by Lessee shall be neatly dressed and courteous at all times.

16. RATES OF PAY FOR LESSEE'S EMPLOYEES

Lessee hereby agrees to pay all employees of Lessee the rate of pay and benefits and to observe other working conditions generally paid and allowed persons engaged in substantially the same activity in private employment in the City and County of San Francisco. Nothing herein shall be construed to prohibit Lessee from collectively bargaining with union representatives of employees in order to establish rates of pay, benefits and working conditions.

17. UTILITIES

Lessee hereby understands and agrees to pay all costs of utility services including, but not limited to water, gas, electricity, telephone service and any and all other services necessary and required for the occupancy and use of the demised premises under the terms of this lease, including the costs of bringing the utilities to the locations where needed or required.

18. LESSEE TO PAY FOR SERVICES AND DAMAGES

Lessee hereby agrees to pay promptly all persons, firms and corporations, including the Lessor, all amounts due under the terms of this lease and all amounts due for telephone service, gas, electricity, water and other services, wages, equipment, materials, supplies, merchandise and commodities furnished to said Lessee or used in connection with the construction, installation, operation and maintenance of the demised premises and all damages to persons or property due to any negligence, wantonness, malice or other act or omission of the Lessee or of any person in the employ or acting in the interest of or under the direction of the Lessee.

19. LESSEE TO MAINTAIN EQUIPMENT AND PREMISES

Lessee hereby agrees that Lessee will, at Lessee's own cost and expense, keep and maintain the equipment and demised premises, and any improvements made under the terms and conditions of this lease, including but not limited to plumbing fixtures, electrical conduits, electrical fixtures, glazing, water lines, sewer lines, telephone lines, power lines, and related underground systems, fencing and all other areas and appurtenances used solely for and by Lessee in good sanitary order, condition and repair, and (as required by law) and hereby waives all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code.

20. LESSEE TO PROVIDE FURNITURE AND FIXTURES

Lessee hereby agrees that Lessee will, at Lessee's own cost and expense, furnish and install any and all furniture, furnishings, equipment, utilities, as well as any and all other items and services necessary and required for the proper opera-

tion and maintenance of the demised premises.

21. USE OF LESSOR'S EQUIPMENT

Lessee shall have the right and privilege to use and operate any equipment of Lessor presently located in the demised premises and agrees to maintain and repair all said equipment and to return said equipment to Lessor upon expiration or sooner termination of this lease, reasonable wear and tear excepted.

22. CONDITION OF PREMISES

Lessor does not warrant the condition of the demised premises as of the day of occupancy and use under the terms of this lease, in regard to safety, repair, fitness for use or otherwise, and Lessee hereby accepts said demised premises in the condition in which the same may be on the day and at the time authorized herein and Lessor shall not be responsible for any loss, damage or injury thereby.

23. IMPROVEMENTS BECOME PROPERTY OF LESSOR

Any alterations, additions, improvements and repairs which may be affixed to the demised premises shall be the property of the Lessor, and shall remain upon and be surrendered with the demised premises upon expiration or sooner termination of this lease, except that Lessee shall retain ownership and shall have the right to remove all trade fixtures, furnitures, furnishing and personal property used by Lessee in the operation of the demised premises which were purchased by or added to the premises by Lessee. Lessee shall obtain the written approval of Lessor before making any alterations or improvements on the demised premises. Any alterations, improvements and repairs performed by Lessee shall meet all health and building codes and ordinances as well as applicable State and Federal Regulations. Lessor agrees not to unreasonably withhold its consent to such requested alterations, additions, improvements and repairs.

24. DESTRUCTION OF PREMISES

In the event of the destruction of the demised premises, or any part thereof, which prevents Lessee from operating according to the provisions of this agreement, the rights and privileges granted hereunder may be terminated by the Lessor and Lessor shall be under no legal obligation to Lessee by reason of said termination, and Lessee shall be relieved of all obligations to make payments as provided in Section 8 of this lease for the period following destruction of said premises.

25. WAIVER OF DAMAGE

Lessee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure or impairment of any services to or in the demised premises, and Lessee hereby expressly releases and discharges Lessor, its officers, agents and employees, from any and all demands, claims judgments, actions and causes of action arising from any of the causes aforesaid.

26. TAXES, ASSESSMENTS AND LIENS

Lessee shall pay promptly all fees and taxes, including but limited to, possessory interest taxes, excises, licenses,

permit fees, and charges lawfully assessed against Lessee of whatever nature applicable to the operations under the terms of this lease. Should Lessee desire to contest the legal validity thereof, the same may be paid under protest. Lessee agrees not to suffer any lien to be imposed upon the demised premises or facilities or upon any equipment or personal property located therein without promptly discharging same.

27. SIGNS AND ADVERTISING

Lessee agrees that it will not erect or maintain, nor permit to be erected or maintained, upon the demised premises or areas adjacent thereto, any signs without obtaining in advance the written consent and approval of the General Manager of the Recreation and Park Department.

28. LOITERING

Lessee hereby agrees that there shall be no undue loitering in or about the demised premises and no boisterous or objectional conduct. The privileges granted herein shall be conducted in a first-class manner and in the conduct thereof Lessee shall comply with all laws and ordinances applicable thereto and such rules and regulations as Lessor may from time to time reasonably prescribe.

29. TRESPASS

Lessee shall at all times exercise reasonable diligence and care to protect the demised premises from trespass and improper use.

30. COMPLIANCE WITH LAWS

Lessee agrees that the operations conducted hereunder will be operated in strict compliance with all laws of the United States, the State of California, applicable laws of the City and County of San Francisco, or any legal authority having jurisdiction over same, and all rules and regulations issued pursuant to the laws of the sovereignties or agencies hereinabove mentioned.

31. INSURANCE

The Lessee shall procure and maintain during the term of this contract the following insurance:

1. Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.
2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations Coverages. Liquor Liability coverage to be secured in the event Lessee is licensed to dispense alcoholic beverages.
3. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.



4. Property insured on buildings, fixtures, (and whatever other equipment, irrigation systems, etc.) insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in an amount equal to \$180,000.00 of the replacement value. Said value determined in 1979 and said value to be increased by an amount equal to or greater than the cost of living index or the consumer price index as determined by the United States Government annually.

Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:

1. Name as ADDITIONAL INSUREDS the City and County of San Francisco, its Officers, Agents and Employees.
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
3. That the proceeds of the above referenced Fire policy is dedicated to the reconstruction of clubhouse facilities on the subject site(s). Lessee agrees and covenants that upon the completion of said reconstruction, quit-claim deeds to said improvements will be executed by the Lessee in favor of the City and County of San Francisco and the Recreation and Park Commission on the condition Lessor will extend Lessee's term for the reconstructed clubhouses under similar terms and conditions for the balance of the term hereunder and will negotiate in good faith for another long-term leasehold.

ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

Thirty (30) days advance written notice to City of Cancellation, non-renewal or reduction in coverage, mailed to the following:

Business Manager  
Recreation and Park Commission  
McLaren Lodge, Fell and Stanyan Streets  
San Francisco, California 94117

All questions arising with respect to insurance policies should be directed to:

Risk Manager  
City and County of San Francisco  
150 Hayes Street, Sixth Floor  
San Francisco, CA 94102

Certificates of insurance evidencing all coverages above shall be furnished to the City before commencing any operations under this Contract.

Lessee agrees to indemnify and hold the City harmless from all claims that arise from Contractor's activities.

The terms of these Insurance requirements may be reviewed and revised every five (5) years by the Commission to bring required limits up to date.

32. UNEMPLOYMENT COMPENSATION

Lessee will, upon request, furnish Lessor adequate evidence of provision for Social Security and Unemployment Compensation to the extent that such are applicable to Lessee's operations upon the demised premises.

33. PERFORMANCE BOND WAIVED

Lessor agrees that as a condition to Lessee's continued status as a non-profit entity, Lessor waives any requirement to post a performance bond.

34. CONFLICT OF INTEREST

Lessee hereby states it is familiar with the provisions of Section 8.105 and Section 8.106 of the Charter of the City and County of San Francisco and certifies that Lessee knows of no facts which constitute a violation of said Sections. Lessee further certifies that Lessee has made a complete disclosure to the Lessor of all facts bearing upon any possible interests, direct or indirect, which Lessee believes any member of the Lessor, or any other officer or employee of the City and County of San Francisco presently has or will have in this lease or in the performance thereof or in any portion of the profits thereof. Willful failure to make such disclosure, if any, shall constitute ground for Lessor's termination and cancellation of this lease.

35. RIGHTS OF COMMISSION AND CITY

Commission and City reserve the right to construct and maintain on the demised premises or beneath the surface of the ground thereof flumes, conduits, pipes and any structures necessary or convenient in connection with its municipal water supply system, or other municipal purposes, but any such structures on the surface of the ground shall be only at reasonable places, and in the case of structures beneath the surface City or Commission shall replace the ground and restore the surface to as nearly as possible the same condition as it was in when first disturbed. Commission also reserves the right to grant rights of way during the term hereof to power or telephone companies or other public utilities to cross the demised premises with underground lines and conduits; provided, however, that such rights of way shall interfere as little as possible with Lessee's use of the demised premises. No claim shall be made by Lessee on account of its inability to use the demised premises during the period of construction, maintenance, repair or removal of any such structures unless the same shall interfere with such use for a longer period than fifteen (15) days at any one time.

36. REMEDIES ON DEFAULT BY LESSEE

This lease of the demised premises as herein described is granted upon the express condition that in the event the Lessor deems objectionable or improper any conduct on the part of Lessee, its employees or agents, which shall not have been remedied and corrected for a period of ten (10) days after written notice by Lessor to Lessee; or if default be made by Lessee in any of the covenants herein contained, other than for the payment of rental or percentage payments, and Lessee shall continue in such default for a period of ten (10) days after written notice in writing from Lessor of such default and specifying same; or if Lessee is

in default in payment of rental or percentage payments or should any attachment, garnishment or execution be levied against Lessee or Lessor's property and not removed within ten (10) days after notice from Lessor; or if Lessee shall cease its operations under this lease for causes other than destruction of the premises as herein provided and shall not have resumed said operations after twenty (20) days from date of written notice by Lessor to Lessee, said Lessor shall have full license and authority to re-enter and have full possession of said demised premises, either with or without legal process, on giving three (3) days' previous notice of intention to do so, and upon the expiration of said notice, Lessor, or its officers, agents or employees, shall be entitled to the immediate possession thereof; and Lessee consents that Lessor shall not be liable to prosecution or damage for so resuming possession of said demised premises.

The exercise of the remedies provided for in this section shall be cumulative and shall in no wise affect the remedies available to Lessor.

37. INSOLVENCY; RECEIVER

In the event that Lessee files a proceeding under federal laws for financial relief, or that bankruptcy or like proceedings shall be instituted by or against Lessee and Lessee is thereafter adjudicated a bankrupt, this lease shall terminate as of the time of institution of such proceedings, if the same be voluntary upon the part of the Lessee, or on the date of adjudication of bankruptcy, if such proceedings be involuntary. In any event, Lessee agrees that the interest of Lessee herein shall not pass as an asset for administrative or other judicial control of said proceedings.

38. CONDEMNATION

In the event of condemnation proceedings during the pendency of this lease, this lease shall terminate at the option of either party hereto and Lessee hereby waives and surrenders any rights to compensation from City or Commission in said proceedings founded upon the existence of this lease.

39. DELIVERY OF POSSESSIONS

Lessee agrees to yield and deliver to Lessor possession of the demised premises at the termination of this lease in good condition and in accordance with the express obligation hereunder, except for reasonable wear and tear or Act of God or the elements.

40. FORCE MAJEURE

Should any matter or condition beyond the control of either party hereto, such as war, public emergency or calamity, fire, earthquake, flood, Act of God, or any governmental restriction, prevent performance of this lease in accordance with the provisions hereof, this lease, together with the rights and privileges granted herein, shall be immediately terminated and Lessor shall be under no legal obligation to Lessee by reason of said termination.

41. LEASE NOT ASSIGNABLE

The rights and privileges granted herein shall not be assignable by Lessee, directly or indirectly, without the written consent of Lessor first had and obtained, nor shall the same be assignable by operation of law, sub-lease or otherwise and should Lessee make any attempt to assign the rights and privileges herein granted, Lessor may cancel all of said rights and privileges and all said rights and privileges of Lessee shall, at the option of Lessor, cease and terminate. Should Lessee make any assignment for the benefit of creditors, or be declared a bankrupt, either by voluntary or involuntary proceedings, no right or privilege granted herein shall pass to any assignee in Bankruptcy, or become a part of the estate of said bankrupt, and in the event of any assignment for the benefit of creditors or the bankruptcy of said Lessee, the Lessor may cancel all rights and privileges herein granted.

42. LESSOR'S RIGHTS CUMULATIVE

The rights of the Lessor hereunder shall be cumulative and not alternative and shall be in addition to any and all rights which Lessor may have as a matter of Law.

43. HOLDING OVER

Any holding over of the term created shall be a tenancy from month to month only, at a rental as set forth in Section 8 hereof, and otherwise be on the same terms and conditions herein specified.

44. AUTHORITY OF AGENTS OF LESSOR

No agent or representative of Lessor has any authority to vary the terms of this lease or to extend the rights and privileges as herein set forth, except such as may be endorsed hereon in writing, and then only after approval of Lessor.

45. NOTICES

All notices required to be given to Lessee hereunder or by law shall be deemed given to Lessee by depositing the same in the United States mail, postage prepaid, and addressed to

South End Rowing  
500 Jefferson Street  
San Francisco, CA 94109.

All notices required to be given Lessor hereunder or by law shall be deemed given to Lessor by depositing same in the United States mail, postage prepaid, and addressed to the Recreation and Park Commission, McLaren Lodge, Golden Gate Park, Fell and Stanyan Streets, San Francisco, California 94117.

46. NON-DISCRIMINATION CLAUSE

Provisions of 12B.1, 12B.2, 12B.r, 12C.1, 12C.2, and 12C.3 of the San Francisco Administrative Code are incorporated herein and by reference made a part of this lease as though fully set forth. A copy of these provisions are attached hereto.

47. TIME

Time is of the essence of this lease.

48. EACH PROVISION A MATERIAL CONDITION

It is expressly agreed that each term, condition and covenant herein to be performed or kept by Lessee is material and is a material consideration to Lessor for the award of this lease and Lessee agrees that the breach by Lessee of any one of the within terms, conditions or covenants shall be a material breach of the whole and entire lease and shall be grounds for the termination by Lessor, at its election, of the entire lease, except that there shall be no termination until Lessor has given the Lessee notice in writing of any alleged breach and Lessee shall have been given a reasonable opportunity to cure the alleged breach all as provided in Section 37 hereof.

49. STRICT PERFORMANCE

Failure of Lessor to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. The acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

50. WAIVER OF BREACH BY LESSOR

The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant or condition herein contained regardless of the Lessor's knowledge of such prior existing breach at the time of acceptance of such rent.

51. HEADINGS

The article and paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this lease.

52. APPLICATION OF PROVISIONS OF CHARTER

All terms of this lease shall be governed by and shall be subject to the fiscal and other provisions of the Charter of the City and County of San Francisco.

53. LEASE MADE IN CALIFORNIA

This lease shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

54. CONTRACTS AND COUNTERPARTS

This lease is executed in counterparts, each of which shall be deemed an original.

55. APPROVAL BY BOARD OF SUPERVISORS

This lease shall not be effective for any purpose whatsoever until approved by Ordinance of the Board of Supervisors of the City and County of San Francisco.

56. RENEGOTIATION CLAUSE

Lessor agrees that, in the event it is mutually determined in good faith by Lessee's Board of Directors and Lessor that continued occupancy of the demised premises under the terms and conditions imposed herein constitutes a threat to the continued existence or vitality of Lessee club, then Lessee may, upon ninety (90) days written notice vacate and surrender the demised premises without further liability hereunder. In the event Lessee and Lessor are unable to mutually agree then Lessor and Lessee agree to submit the dispute to binding arbitration pursuant to the rules of the American Arbitration Society.

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

CITY AND COUNTY OF SAN FRANCISCO  
RECREATION AND PARK COMMISSION

LESSOR:

BY \_\_\_\_\_  
Katherine Colzani, Secretary

BY John J. Spring  
John J. Spring, General Manager

APPROVED AS TO FORM:

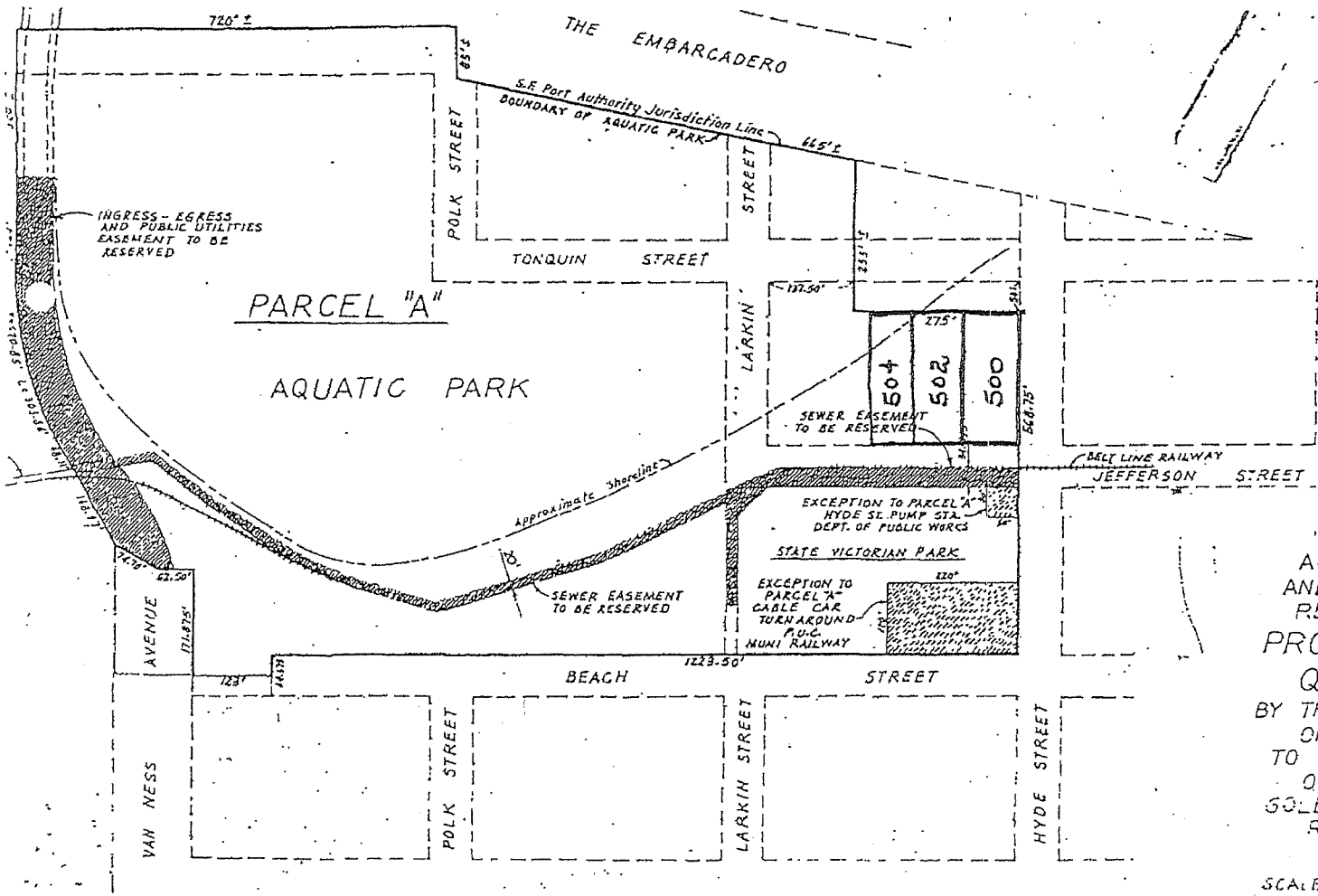
GEORGE AGNOST  
CITY ATTORNEY

\_\_\_\_\_  
Deputy City Attorney

LESSEE:

BY John Tarantino  
President

BY George Paine  
Secretary



1/76

AQUATIC PARK  
AND THE MUNICIPAL  
RECREATION PIER  
PROPERTY TO BE  
QUITCLAIMED  
BY THE CITY AND COUNT  
OF SAN FRANCISCO  
TO THE U.S. DEPT. OF  
THE INTERIOR  
GOLDEN GATE NATIONAL  
RECREATION AREA

SCALE: 1" = 100' APRIL 1911

1 APPROVING LEASE FOR ESTABLISHING AND OPERATING A ROWING AND ATHLETIC  
2 CLUB AT AQUATIC PARK IN SAN FRANCISCO.

3 Be it ordained by the People of the City and County of San Francisco:

4 Section 1. Findings.

5 The South End Rowing Club has operated since 1903, a club devoted  
6 to aquatic activities at Aquatic Park, and in and around San Francisco  
7 Bay, and at all times the South End Rowing Club has been a non-profit  
8 organization. The club has provided unique and individual leadership  
9 and guidance in the areas of boating, rowing, swimming and other sports  
10 to the People of San Francisco at Aquatic Park, on a non-profit basis.  
11 The club, with the exception of the Dolphin Swimming and Boating Club,  
12 is the only known organization in Northern California providing such a  
13 diverse program of sporting activities catering to cold water swimming  
14 rowing, boating, handball, running and weight lifting.

15 The Board of Supervisors finds that it is in the public interest  
16 to preserve the club as a historical living cultural asset of the San  
17 Francisco Bay Area; that the proper and only practical means of contin-  
18 ing such services and the traditions of San Francisco would be to retain  
19 the continuing operation of the South End Rowing Club at Aquatic Park;  
20 and that competitive bidding procedures for the leasing of such premises  
21 were impracticable.

22 Section 2. That certain lease between the Recreation and Park  
23 Commission for and on behalf of the City and County of San Francisco,  
24 and the South End Rowing Club for establishing and operating a rowing  
25 and athletic club at Aquatic Park in San Francisco, a copy of which  
26 lease is on file in the office of the Clerk of the Board of Supervisors  
27 and to which reference is hereby made, is hereby approved.

28 (SEE FILE FOR SIGNATURES)

BOARD OF SUPERVISORS

APPROVED AS TO FORM  
RICHIE AGHORT  
CITY ATTORNEY  
[Signature]

Passed for Second Reading  
Board of Supervisors, San Francisco

OCT 11 1979

Ayes: Supervisors Brill, Dolson, Gonzales, Horan-  
zy, Hutch, Kopp, Lan, Markham, Palosi, Roman,  
Sullivan

AbSENT: Supervisors \_\_\_\_\_

AbSENT: Supervisors \_\_\_\_\_

[Signature] Clerk

62-79-8

Read Second Time and Finally Passed  
Board of Supervisors, San Francisco

OCT 9 1979

Ayes: Supervisors Brill, Dolson, Gonzales, Horan-  
zy, Hutch, Kopp, Lan, Markham, Palosi, Roman,  
Sullivan

AbSENT: Supervisors \_\_\_\_\_

AbSENT: Supervisors DOLSON, MARKHAM

I hereby certify that the foregoing ordinance was  
readily passed by the Board of Supervisors of the  
City and County of San Francisco.

[Signature] Clerk

OCT 12 1979

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FIRST AMENDMENT TO THE  
DOLPHIN SWIMMING AND BOATING CLUB LEASE  
and the  
SOUTH END ROWING CLUB LEASE

THIS FIRST AMENDMENT, dated for convenience July 1, 1979, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the RECREATION AND PARK COMMISSION, hereinafter referred to as "Lessor" and the SOUTH END ROWING CLUB, a California Non-Profit Corporation, hereinafter referred to as "Lessee",

W I T N E S S E T H

WHEREAS, Lessee and Lessor entered into a lease dated for convenience July 1, 1979; and

WHEREAS, Lessee and Lessor are desirous to further clarify the rights and liabilities of each of them granted in said lease:

NOW, THEREFORE, the following paragraphs shall be added to the original agreement as follows:

A. TIMETABLE OF REPAIRS

The Club agrees that it will establish a full timetable to remedy health, safety, fire and building deficiencies existing in the demised premises at the execution of this lease and as required by the City and County of San Francisco. Such timetable will be to the satisfaction of the General Manager and the necessary repairs will be remedied in a timely and expeditious manner as necessary to satisfy the provisions of Paragraph 3 of the full agreement.

The Club further agrees that such timetable for repairs will include therein that health and safety code violations will be remedied first, that such work will commence no later than 30 days after approval of this lease and that all health and safety code work will be completed no later than six (6) months after the commencement of such repairs. All repairs will be up to all legal code requirements and any precautions necessary to protect the safety of the Club's members or the general public, including vacation of the premises if necessary, will be taken.

B. TERM

The term of the option to renew as described in Paragraph 7 of the full agreement shall be for an additional Twenty-Four (24) years only, thereby making the full possible term of this agreement not more than Forty-Nine years total.

C. RATES AND CHARGES

Lessee agrees that it will not raise, lower or otherwise change any rates and charges as described in Paragraph 10 of the full agreement without the prior written approval of the Lessor.

IN WITNESS WHEREOF, the Lessee and Lessor have executed these amendments in duplicate this July 1, 1979.

APPROVED AS TO FORM:

GEORGE AGNOST  
CITY ATTORNEY

By Paula Jesson  
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO  
RECREATION AND PARK COMMISSION  
LESSOR:

By Katherine Colzani  
Katherine Colzani, Secretary

By John J. Spring  
John J. Spring, General Manager

By John J. Spring  
President



CITY AND COUNTY OF SAN FRANCISCO  
LONDON N. BREED, MAYOR

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MEMORANDUM OF UNDERSTANDING

MOU M-13773

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO  
OPERATING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION

AND

THE SAN FRANCISCO RECREATION AND PARK COMMISSION

ELAINE FORBES  
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
GAIL GILMAN, COMMISSIONER  
VICTOR MAKRAS, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER

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EXHIBITS AND SCHEDULES

EXHIBIT A MAP OF PREMISES

SCHEDULE 1 FEMA NOTICE

SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated September 20, 2018, for reference purposes only, by and between the Recreation and Park Department ("RPD"), a department of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City.

### RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter Section 4.114, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. RPD, which has the jurisdiction over certain real property in Aquatic Park commonly known as 500 Jefferson Street, leases the building (the "Clubhouse") and the associated launching dock within its jurisdiction at such property to the South End Rowing Club ("SERC") to provide access to the waters of San Francisco Bay to their club members and to the public, as a public benefit, during certain hours.

C. The Clubhouse launching dock extends into Port's jurisdictional area and the Clubhouse needs secondary access between its rear fence service entrance and Jefferson Street over a portion of the Hyde Street Pier, which is also under Port's jurisdiction, to satisfy the San Francisco Building Code.

D. SERC keeps the Clubhouse and associated dock open to and visited by the general public for access to the bay for a reasonable daily use fee and SERC also hosts the Alcatraz Invitational, both of which provide a valuable public benefit.

E. Port is willing to allow RPD to sublease that portion of the launching dock and the underlying land and water that is within Port jurisdiction to SERC for similar uses, and to give RPD a license, and allow RPD to grant an access license to each Clubhouse tenant and licensee, over a portion of the Hyde Street on the terms and conditions described in this MOU.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

### AGREEMENT

#### 1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by this reference.

#### 2. PREMISES.

The "Premises" consists approximately of 2,061 square feet of launching dock space; 3,248 square feet of beach area and the surrounding 8,380 square feet of submerged lands within Port's jurisdiction near the intersection of Hyde Street and Jefferson Street as more particularly described on Exhibit A attached hereto.

RPD acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and

possession. RPD acknowledges that it has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. RPD acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for RPD's intended use. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for RPD's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed subtenant.

### 3. PIER ACCESS AREA.

The "Pier Access Area" consists of the portion of the Hyde Street Pier between the Clubhouse rear fence service entrance and Jefferson Street, as further depicted on the attached Exhibit A which area is within Port's jurisdiction. RPD acknowledges and agrees that it is familiar with the Pier Access Area, accepts the Pier Access Area in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and possession and the Permit to Use Property between Port and the National Park Service ("NPS") fully executed on March 26, 1997.

RPD acknowledges and agrees that it has investigated and inspected the condition of the Pier Access Area and its suitability for secondary access between the Clubhouse and Jefferson Street. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Pier Access Area, the present or future suitability of the Pier Access Area for secondary access, accessibility of the Pier Access Area or any other matter whatsoever relating to the Pier Access Area, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed Clubhouse tenant or licensee that receives a license to use the Pier Access Area for secondary access.

### 4. EFFECTIVE DATE

The "Effective Date" of this MOU shall be the later date to occur of the full execution of (i) this MOU and (ii) a lease between RPD and SERC that grants SERC a sublease for the Premises and an access license for the Pier Access Area.

### 5. TERM

The "Term" of this MOU shall begin on the Effective Date and continue for twenty-five (25) years unless terminated as provided herein; provided, however, that if SERC exercises its extension option under its sublease for the Premises with RPD, the Term shall be extended through the forty-ninth (49<sup>th</sup>) anniversary of the Effective Date, provided that RPD submits a written notice to Port of SERC's execution of the extension option. Following the expiration of the Term, this MOU shall continue on a month-to-month basis at which point either party may terminate the MOU with 30-days' prior written notice. If the SERC sublease for the Premises is terminated, RPD shall have the right to terminate this MOU with respect to the Premises by delivering written notice of such termination to Port.

Notwithstanding the foregoing paragraph, secondary access over the Pier Access Area between the Clubhouse and Jefferson Street is required under the San Francisco Building Code. Such access shall not be terminated without the prior written consent of City's Department of Building Inspection and Fire Marshal.

## **6. NO USE FEE**

Use of the Premises by RPD will enliven the waterfront by attracting people to the waterfront and raising awareness of the waterfront and its benefits and amenities at no cost to Port. Given the existing RPD lease with SERC, there is no other practical user of the Premises. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, RPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the RPD lease with SERC. In addition, secondary access between the Clubhouse rear fence service entrance and Jefferson Street over the Pier Access Area is required under the San Francisco Building Code, will be non-exclusive and subject to the terms of this MOU, and is not subject to a use fee.

## **7. PERMITTED USE**

RPD shall have the right to sublease the Premises to SERC for the provision of public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose (collectively, the "Permitted Use"). RPD shall further have the right to use, and grant Clubhouse tenants and licensees a license over, the Pier Access Area for secondary pedestrian and vehicular access purposes only between the Clubhouse and Jefferson Street on the terms specified in this MOU while such party has the right to use the Clubhouse (the "Access Use").

## **8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW**

RPD shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 6 of this MOU. RPD shall not use or permit its Clubhouse tenants or licensees to use the Pier Access Area for purposes other than the purpose set forth in Paragraph 7 of this MOU. RPD agrees not to make any material improvements or alterations to the Premises or the Pier Access Area without the prior written consent of Port (which consent shall not be unreasonably withheld) as well as obtaining any necessary Port regulatory permits. Repairs, replacement of existing portions of the Premises or Pier Access Area with similar materials or improvements that do not change the functionality or dimensions of the Premises or Pier Access Area will not require Port consent.

RPD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises, the Pier Access Area, or any part thereof. RPD, at RPD's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, which shall impose any duty upon Port or RPD necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to RPD's use of the Premises. RPD shall comply, and cause Clubhouse tenants and licensees to comply, with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, in using the Pier Access Area for access purposes.

## **9. MAINTENANCE; SURRENDER OF PREMISES**

The parties acknowledge that the Port does not and is not required to provide maintenance, repairs or security for the Premises. RPD will be strictly responsible for the security, maintenance and repair of the Premises, including without limitation any improvements that RPD might choose to make to the Premises and for any repairs to the Premises that might be necessitated by RPD's or SERC's use of the Premises, other than normal wear and tear or conditions not caused by RPD or SERC. At the expiration or any termination of this MOU, RPD shall surrender the Premises in at least as good condition as when received (subject to any

change in conditions not caused by RPD or SERC), clean and free of any items stored on the Premises by RPD and shall repair any damage to the Premises occasioned by RPD's use.

The parties acknowledge that neither RPD nor the Port is required to provide maintenance, repairs or security for the Pier Access Area under this MOU; provided, however, that RPD will be strictly responsible for repairing or causing a Clubhouse tenant or licensee to repair any damage to the Pier Access Area caused by the acts of RPD or a Clubhouse tenant or licensee. At the expiration or any termination of this MOU, RPD shall surrender the Pier Access Area in at least as good condition as when received (subject to any change in conditions not caused by RPD or a Clubhouse tenant or licensee) and shall repair any damage to the Pier Access Area occasioned by the use of RPD or a Clubhouse tenant or licensee.

(From the Port-SERC lease section 11.3 Acts of God) Nothing contained herein shall require either RPD or the Port to repair or replace the Premises as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect any obligation to make repairs to the Premises in the event of any damage or destruction of the Premises.

## 10. INSURANCE

(a) RPD shall require each Clubhouse tenant and licensee and any agent, contractor or subcontractor they hire in connection with their respective use of the Premises or the Pier Access Area (each, an "Operator") to secure, the insurance coverage specified below as applicable.

(i) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any activity on or alteration or improvement to the Premises or Pier Access Area with risk of explosion, collapse, or underground hazards.

(ii) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection the Permitted Use, the Access Use, or with activities on the Premises or Pier Access Area. This provision shall not apply to an Operator so long as it does not own any automobiles and has no employee using an automobile for such Operator's business.

(iii) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event an Operator is self-insured for the insurance required pursuant to this Section 10(a)(iii), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iv) Personal Property Insurance. An Operator, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements and

alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by the Operator for the replacement of its personal property.

(v) Watercraft Liability Insurance. If an Operator owns or operates watercraft in connection with the Premises, it shall, at its sole cost and expense, procure and maintain protection and indemnity insurance or other form of watercraft liability insurance acceptable to Port, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft; but this insurance shall be required only if the Operator owns or operates any watercraft under the provisions of the relevant RPD contract or sublease; provided, however, that, in the event the Operator receives any goods at the Premises from any watercraft, then the Operator shall require that the user of such watercraft maintain the insurance set forth in this Subsection. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vi) Vessel Pollution Liability Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vii) Hull and Machinery Protection and Indemnity Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Hull and Machinery Protection and Indemnity Insurance in a form and with limited acceptable to Port.

(viii) Special Events/Participants. If an Operator holds special events at the Premises, such Operator, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(ix) Other Coverage. Such other insurance or different coverage amounts as is required by applicable law or as is generally required by commercial owners of facilities similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

(b) *Claims-Made Policies.* If any of the insurance required in this Section is provided under a claims-made form of policy, the insured entity shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of the relevant RPD contract or sublease, to the effect that should occurrences during the Term give rise to claims made after termination of the relevant RPD contract or sublease, such claims shall be covered by such claims-made policies.

(c) *Annual Aggregate Limits.* If any of the insurance required in this Section is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.



(d) *Payment of Premiums.* The insured entity shall pay the premiums for maintaining all required insurance.

(e) *Waiver of Subrogation Rights.* RPD is responsible for performing its obligations under this MOU, but is not required to carry any third party insurance for the Premises. Before entering into any sublease of the Premises or license of the Pier Access Area with any party, RPD shall require such party to (i) waive any right of recovery against City, including but not limited to the Port and RPD, for any loss or damage sustained by such party with respect to the Premises, the Pier Access Area, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of the City, to the extent such loss or damage is covered by insurance which such party is required to purchase under such sublease or license or is actually covered by insurance obtained by such party, and (ii) to agree to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises and the Pier Access Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

(f) *General Insurance Matters.*

(i) All liability insurance policies required to be maintained by hereunder shall contain a cross-liability clause, shall name as additional insureds the "CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this MOU, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. In addition, all liability insurance policies required to be maintained by an Operator with respect to the Pier Access Area shall name Port's then-existing Hyde Street Pier tenant or licensee as an additional insured.

(ii) All insurance policies required to be maintained by any entity as required herein shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. RPD's compliance with this Section shall in no way relieve or decrease RPD's liability under this MOU.

(iii) All insurance policies required to be maintained by any entity hereunder shall provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to RPD and Port. Such notice shall be given in accordance with the notice provisions of Section 15.

(iv) RPD shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the commencement date of any contractor sublease, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. RPD shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

## 11. CLAIMS AND DAMAGES

Because Port will not be receiving any fees for the use of the Premises or access over the Pier Access Area and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or on connection with RPD's use of the Premises or the Pier Access Area. Therefore, RPD agrees to be responsible or cause its tenants, subtenants, or licensees to be responsible for all costs

associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by RPD, its agents, contractors, tenants, subtenants, licensees, or invitees, (ii) as a result of the handling of Hazardous Materials on or about the Pier Access Area by RPD, its agents, contractors, tenants, or licensees, and (iii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises from any cause or, as to the Pier Access Area, which arise as a result of RPD's acts or omissions, for the Pier Access Area which arise as a result the acts omissions by RPD or its tenants, subtenants, or licensees. In addition, each access license granted by RPD to a Clubhouse tenant and licensee shall require such Clubhouse tenant and licensee to indemnify the then-existing Port Hyde Street Pier tenant or licensee for all losses and claims arising from the active negligence or willful misconduct by such Clubhouse tenant or licensee on the Pier Access Area. The foregoing obligation of RPD shall survive the expiration or termination of this MOU.

(From the Port-SERC lease section 18.1 Damage and Destruction) If the Premises are damaged by fire or other casualty, then RPD shall require the tenant to repair the same provided that funds for such repairs are available for such purpose and provided that such repairs can be made within 210 days after the date of such damage.

## 12. PRESENCE OF HAZARDOUS MATERIALS

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, RPD is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises and the Pier Access Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports listed in *Schedule 2* are present on the property, copies of which have been delivered to or made available to RPD. By execution of this MOU, RPD acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. RPD must disclose the information contained in this Section 11 to any subtenant, licensee, transferee, or assignee of RPD's interest in this MOU. RPD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

## 13. DEFAULT BY RPD

The occurrence of any one or more of the following events shall constitute a default by RPD:

(a) Failure to use the Premises solely for the Permitted Use or the Pier Access Area solely for the Access Use, as determined by Port in its sole and absolute discretion if such failure continues for a period of thirty (30) days following written notice from Port; or

(b) Failure to perform any other provision of this MOU if the failure to perform is not cured within ninety (90) days after Port has given written notice to RPD. If the default cannot reasonably be cured within 90 days, RPD shall not be in default of this MOU if RPD commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default.

## 14. PORT'S REMEDIES

Upon the occurrence of default by RPD with respect to the Premises, Port may at its option, without further notice or demand of any kind to RPD or to any other person, terminate RPD's right to possession of the Premises. As long as secondary access over the Pier Access Area is required under the San Francisco Building Code, Port shall not terminate the right for RPD or any Clubhouse tenant or licensee to use the Pier Access Area for the Access Use due to a

default, but shall have the right to be reimbursed for any costs incurred by Port as a result of any default by RPD or any Clubhouse tenant or licensee in such party's use of the Pier Access Area. If the San Francisco Building Code is amended so that secondary access over the Pier Access Area is no longer needed for the Clubhouse, the Port shall have the right to terminate RPD's right to use, and to grant the Clubhouse tenants and licensees the right to use, the Pier Access Area for the Access Use if there is an occurrence of default by RPD with respect to the Pier Access Area.

#### 15. ENTRY BY PORT

The Port may enter the Premises at any reasonable time, for the purpose of inspection, inventory or repairs, and when otherwise reasonably necessary for the protection of the Port's interests. Port shall not be liable in any manner, and RPD hereby waives, and shall cause SERC to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of Port's entry onto the Premises or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

The Port, its authorized representatives, tenants, and licensees may enter the Pier Access Area at any time, and RPD hereby waives, and shall cause each Clubhouse tenant and licensee to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of entry onto the Pier Access Area or performance of any necessary or required work on the Pier Access Area by Port, its authorized representatives, its tenants, or licensees, or on account of bringing necessary materials, supplies and equipment into or through the Pier Access Area during the course thereof, except damage resulting solely from the willful misconduct of Port, its authorized representatives, tenants, or licensees.

#### 16. NOTICE

Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as either the Port or RPD may designate by notice as its new address:

Address for Port: Deputy Director, Real Estate  
Port of San Francisco  
Pier One  
San Francisco, CA 94111

Telephone No: (415) 274-0501  
Fax No: (415) 274-0578

Address for RPD: Dana Ketcham  
Director of Property  
San Francisco Recreation and Park Department  
McLaren Lodge  
San Francisco, CA 94117

Telephone No: (415) 831-6868  
Fax No: (415) 831-2099

Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is mailed, if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email, facsimile or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor RPD may give official or binding notice by email, telephone or facsimile.

#### **17. MINERAL RESERVATION**

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises or the Pier Access Area. In accordance with the provisions of said Statutes, Port and RPD shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from such areas.

In no event shall Port be liable to RPD for any claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of RPD, or otherwise relieve RPD from any of its obligations under this MOU.

#### **18. UTILITIES**

RPD or its subtenants shall be responsible for the actual costs for electrical and water service to the Premises and waive any claims against the Port for such service. RPD or its Clubhouse tenants or licensees shall be responsible for the actual costs for electrical and water service to the Pier Access Area and waive any claims against the Port for such service.

#### **19. ASSIGNMENT AND SUBLEASING**

Port hereby consents to the anticipated sublease between RPD and SERC for the Premises subject to all of the terms and conditions of this MOU, including without limitation the disclosures, insurance provisions and waiver of claims. If RPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld. Port hereby consents to all licenses for secondary access granted by RPD to Clubhouse tenants and licensees subject to all of the terms and conditions of this MOU, provided RPD shall notify Port in writing notice of each license it grants to any Clubhouse tenant or licensee.

#### **20. ENTIRE AGREEMENT**

This MOU (including attached exhibits, if any) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date written below.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO RECREATION AND PARK DEPARTMENT

By: \_\_\_\_\_  
ELAINE FORBES  
Executive Director  
Port of San Francisco

By: \_\_\_\_\_  
PHIL GINSBURG  
General Manager  
San Francisco Recreation and Park Department

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

REVIEWED:  
**DENNIS J. HERRERA, City Attorney**

By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

Recreation and Park Commission Resolution No.  
Port Commission Resolution No.

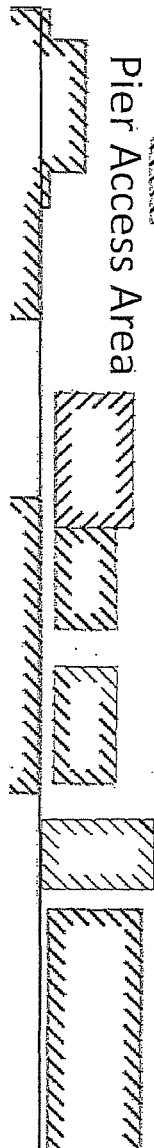
MOU Prepared By: Vicky Lee, Leasing Manager \_\_\_\_\_ (initial)

INITIALS: PORT \_\_\_\_\_

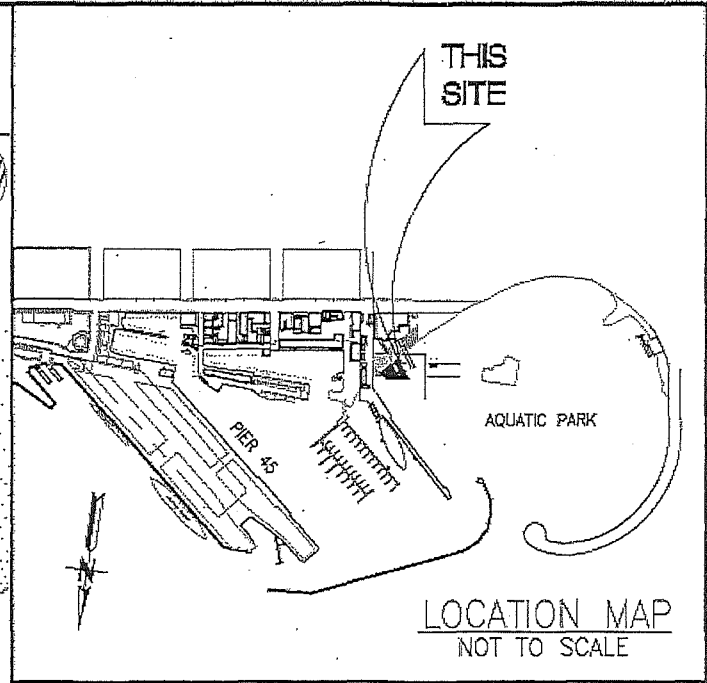
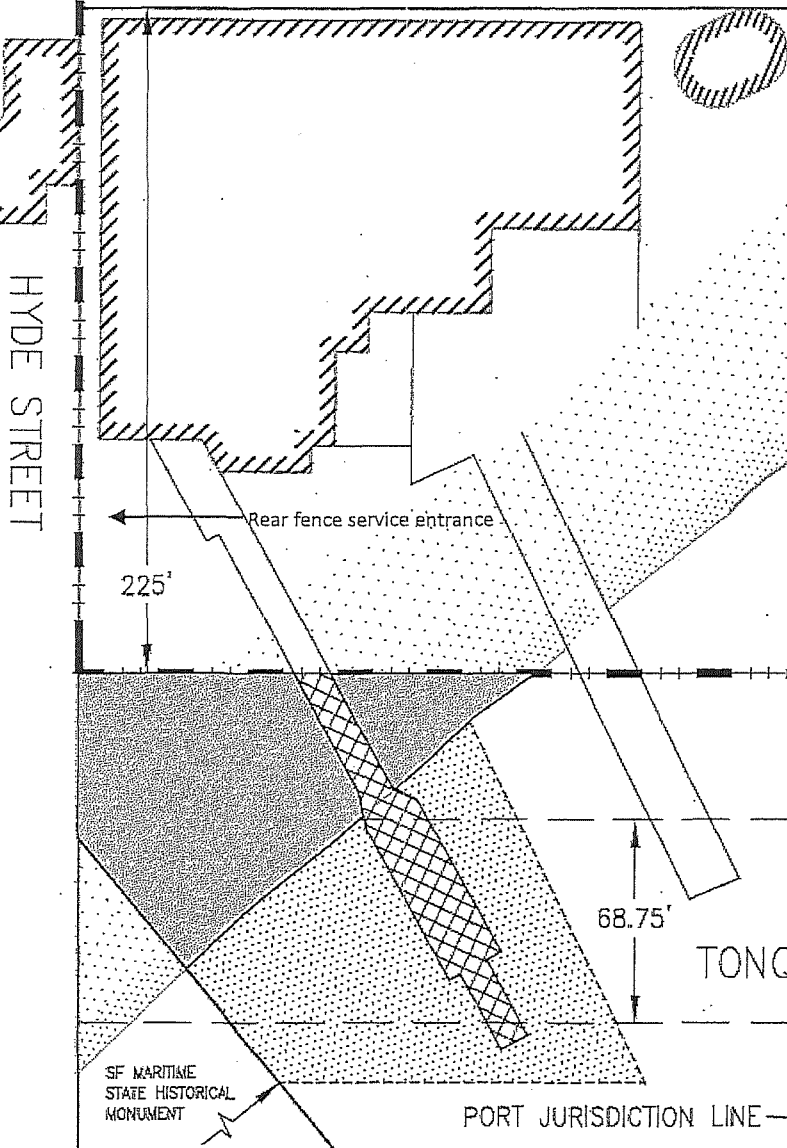
TENANT: \_\_\_\_\_


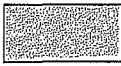

DATE: \_\_\_\_\_

EXHIBIT A



JEFFERSON STREET




-  LAUNCHING DOCK\* = 2,061 Sq Ft  
\* TRACED FROM AERIAL PHOTO
  -  BEACH AREA\* = 3,248 Sq Ft  
\* TRACED FROM AERIAL PHOTO
  -  SUBMERGED LANDS=8,380 Sq Ft  
\* TRACED FROM AERIAL PHOTO
- TOTAL = 13,689 Sq Ft

M.O.U. NO.

M-13773

SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING



TENANT

SFCC RECREATION &  
PARK DEPARTMENT

DRAWN BY: AMN, ECC

DATE: JAN 28, 2016

CHECKED BY: V. LEE

SCALE: 1" = 50'

PLACE CODE NO.

4000-00

SHEET NO. 1

OF 1 SHEETS

Recreation and Park Commission Minutes - July 18, 1991

\* \* \* \* \*

Note for the Record: The following amendments were made to Resolution No. 11189, adopted March 16, 1978.

RESOLUTION #16169a

RESOLUTION GOVERNING THE USE OF RECREATION AND PARK DEPARTMENT PROPERTIES BY PRIVATE ORGANIZATIONS.

WHEREAS, The policy of the Recreation and Park Commission is mandated by Section 3.552 of the San Francisco City Charter to promote and foster a program providing for organized public recreation of the highest standard; and

WHEREAS, The purpose of this resolution is to establish general policies for use of park property by non-profit organizations. Specific exceptions, modifications or additions to the requirements of this resolution that pertain to any particular non-profit organization or circumstance will be approved by the Commission in a separate resolution pertaining to that non-profit organization or circumstance;

WHEREAS, Park property dedicated to public use is for the benefit and enjoyment of all members of the public; and

WHEREAS, Park property is not lawfully used by private organizations or individuals to the exclusion of the general public for extended periods of time; and

WHEREAS, Private organizations can promote public recreational use of park property by organizing and directing recreational activities on park property;

NOW THEREFORE BE IT RESOLVED, That notwithstanding any provision in any existing lease or other agreement between the Recreation and Park Commission or Recreation and Park Department and a private organization concerning the use of park property, every lease to a private organization of park property dedicated to public use and every agreement whereby a private organization is allowed use such park property for an extended period of time is subject to the following conditions:

When the property leased or used by the private organization is open and available to members of the organization, it shall also be open and available to member's of the general public on the same terms as it is open and available to members of the organization. Thus, no member of the public shall be excluded from the property so long as such person uses the property for the recreational purpose for which the lease or agreement was entered into and so long as such person obeys all reasonable rules and regulations of the organization pertaining to proper use of the facilities.

If the property leased or used by the private organization is not open on a daily basis, or if the hours during which the property is open cannot accommodate the demands of all members of the public seeking to make use of the property, then the organization shall establish a procedure whereby non-members may reserve use of the property upon request. If a private organization has control of property which is used primarily for storage and opened only occasionally to its members, the organization shall establish a procedure whereby non-members are allowed use of the storage space and access to it for the same purposes and on the same terms as are

37130

9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO. 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

Since making the property leased or used available to persons who are not members of the organization may involve additional expense, the organization may charge such persons a fee for use of facilities on the property, so long as such fee is reasonably related to the additional costs involved and are not so high as to make use of the facilities prohibitive.

Notice shall be posted conspicuously at all entrances, advising members of the public that the property is a public park facility operated on behalf of the Recreation and Park Commission by the organization, that the property is open to the general public on the same terms and conditions as it is available to members of the organization, of the hours during which the property is open or otherwise available, and of the procedures and fees for use, and that membership in the administering organization is open and available to all interested persons.

The charter of by-laws of the organization shall provide the following:

1. The purpose of the organization, so long as it occupies public park property, shall be to operate and maintain said property on behalf of the Recreation and Park Commission, in accordance with such policies, rules, regulations and purposes as said Commission may decree from time to time.

2. Applicants for membership to the organization shall not be discriminated against on the basis of race, color, religion, age, ancestry, ethnicity, national origin, sex, political affiliation, sexual orientation, physical handicap, marital status, medical condition (cancer related), conditions diagnosed as Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Conditions (ARC), or any other grounds prohibited by law. Each membership applicant shall be given a copy of these by-laws at the time he or she receives the application form.

3. Each application form for membership to the organization shall have printed upon it in a conspicuous place, the following statement:

This is a public park facility operated and maintained on behalf of the City and County of San Francisco for the benefit of the public desiring to use these public recreation facilities by (name of organization), a non-profit organization. It is unlawful for any such organization to discriminate in its membership application or acceptance procedures on the basis of race, color, religion, age, ancestry, ethnicity, national origin, sex, political affiliation, sexual orientation, physical handicap, marital status, medical condition (cancer related), conditions diagnosed as Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Conditions (ARC), or any other grounds prohibited by law. Any complaint concerning allegations of discrimination shall be reported to the Recreation and Park Department of the City and County of San Francisco, McLaren Lodge, Golden Gate Park.



9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

4. An applicant for membership shall be rejected only for good cause and shall be notified in writing by an appropriate officer or committee of the reason for the rejection of the application and all money submitted with the application shall be returned to the applicant. An applicant shall be deemed accepted to membership in the organization unless, within 45 days from the date of application, the applicant is notified in writing of the rejection and the reason therefor. An applicant otherwise eligible but for lack of space shall be placed on a waiting list on a first come first serve basis.

5. Good cause for rejection of applicants for membership must be defined and must be based on a record of past acts or conduct demonstrating that the admission of the applicant would substantially impair the public recreational purpose of the property, the health, safety, or welfare of its intended-users, or the preservation or maintenance of the property.

6. An applicant, having been rejected, shall be eligible to re-apply for membership within a specified period of time, not to exceed three (3) months, after rejection for membership.

7. No member may be expelled unless the organization provides a hearing in order to determine that good cause for expulsion exists. "Good cause" shall be defined according to the requirements set out in (5) above. The member shall be given at least thirty (30) days notice in writing of the purpose of the hearing, and the charges against such member, and the names of the parties making such charges. At such hearing, said member shall be given an opportunity to be advised of the charges, and an opportunity to meet them and to present a defense. A finding of good cause for expulsion shall be made and communicated, in writing, to such member. A finding of good cause for expulsion shall be subject to review, at the member's election, by the Recreation and Park Department of the City and County of San Francisco.

The only initiation fee charged new members shall be in the form of a membership application fee and such fee shall be reasonably related to the costs incurred in processing applications and performing any routine tasks necessary to make the facilities available to the new member. Annual dues shall be limited to the amount necessary to meet the current operating expenses and to maintain and preserve the property in accordance with all regulations, rules and policies of the Commission. Any other funds required by the organization shall be raised by special assessment, approved at a meeting of the membership of the organization, by a majority of the members present and notice of said meeting and its purpose, at which the special assessment is to be put to a vote, shall be given to each member at least two weeks prior to the date of the meeting. All fees, dues, assessments and membership application rates charged to members and daily use rates charged to non-members shall be subject to the approval of the Commission.

Refusal to enforce any policy or procedure required by the Commission concerning fees, dues, assessments, membership application rates, daily use rates or public access to property shall constitute grounds for immediate termination of the lease or agreement whereby the organization is using the property.

Recreation and Park Commission Minutes - July 18, 1991

9. DOLPHIN CLUB/SOUTH END ROWING CLUB RES. NO. 11189  
REVIEW OF GROUP USAGE POLICY AND PROCEDURES (Continued) (Continued)

This resolution shall apply to clubs or private organizations using or having access to park property on a daily basis for a period exceeding 29 days within a calendar year. It does not apply to:

1. Clubs or private organizations which lease or use park property for special events which do not exceed 29 days within a calendar year.
2. Leases with professional athletic organizations.
3. Any lease of Candlestick Park, Kezar Stadium, Kezar Pavilion, or Balboa Park Stadium.
4. The operation of a concession. (A concession shall be defined as an agreement whereby an individual, partnership or corporation is granted permission by the Recreation and Park Commission to provide goods or services on park property to the public at a price which enables such individuals, partnership or corporation to make a profit.)

RECREATION AND PARK COMMISSION  
City and County of San Francisco  
Resolution No. 1809-008

SOUTH END ROWING CLUB LEASE APPROVAL

RESOLVED, that this Commission does recommend that the Board of Supervisors approve a lease agreement with the South End Rowing Club for an initial term of 25 years with a 24-year extension option, substantially in the same form as the draft agreement dated August 15, 2018.

Adopted by the following vote:

Ayes	5
Noes	0
Absent	2

I hereby certify that the foregoing resolution  
was adopted at the Recreation and Park  
Commission meeting held on September 20, 2018.

  
Margaret A. McArthur, Commission Liaison

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

May 6, 2019

File No. 190463

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On April 30, 2019, Supervisor Stefani introduced the following proposed legislation:

**File No. 190463**

**Ordinance approving a Lease between the City and County of San Francisco and the South End Rowing Club, a California non-profit corporation, for City property at 500 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from the Alcatraz Invitational and 4% of all gross receipts that are derived from the Alcatraz Invitational, for a term of 25 years to commence following Board approval, with an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this Lease; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

  
By: Linda Wong, Assistant Clerk  
Budget and Finance Sub-Committee

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

Attachment

c: Joy Navarrete, Environmental Planning  
Laura Lynch, Environmental Planning

joy.navarrete

Digitally signed by joy.navarrete  
DN: dc=org, dc=sfgov, dc=cityplanning,  
ou=CityPlanning, ou=Environmental  
Planning, cn=joy.navarrete,  
email=joy.navarrete@sfgov.org  
Date: 2019.05.29 14:19:54 -0700

# Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 2010 APR 30 PM 2:14  
 or meeting date  
 AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Stefani

Subject:

Lease of City Property - The South End Rowing Club - 500 Jefferson Street - Gross Receipts Rent

The text is listed:

Ordinance approving a lease between the City and County of San Francisco and The South End Rowing Club, a California non-profit corporation, for City property at 500 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from the Alcatraz Invitational and 4% of all gross receipts that are derived from the Alcatraz Invitational, a term of 25 years, an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this lease; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members; Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: South End Rowing Club	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Board of Directors: Simon Dominguez, President; Fran Hegeler, Vice President; Josh Sale, Secretary; Susan Blew, Treasurer; Alan Lapp, Director-at-Large; Carol Mayfield, Director-at-Large; Niland Mortimer, Director-at-Large; and Suzanna Greva, Director-at-Large.	
Contractor address: 500 Jefferson Street, San Francisco, CA 94109	
Date that contract was approved:	Amount of contracts: \$ 55,000 (estimated annual percentage rent)
Describe the nature of the contract that was approved: Rent payments for this lease are based on a percentage of gross receipts from membership fees, events, etc.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: ( 415 ) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed