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FIRST AMENDMENT
TO GOLDEN GATE YACHT CLUB LEASE

THIS FIRST AMENDMENT TO GOLDEN GATE YACHT CLUB LEASE (this "First Amendment") dated as of February 1, 1999, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Recreation and Park Commission ("City") and GOLDEN GATE YACHT CLUB, a California corporation ("Tenant").

THIS FIRST AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant entered into a lease dated July 25, 1991 (the "Lease"), under which the City leased to Tenant, and Tenant leased from the City, certain land and water area in the Marina Yacht Harbor, as more particularly described as the "Demised Premises" in Section 1 of the Lease, for the purposes of operating and maintaining a first rate and complete non-profit recreational boating and racing oriented yacht club. The Board of Supervisors of the City approved the Lease under Ordinance No. 125-92, adopted April 27, 1992. Unless otherwise referred to in this First Amendment, capitalized terms shall have the meanings ascribed to them in the Lease.

B. On or about the date of the Lease, Tenant mortgaged its leasehold interest under the Lease to the Small Business Administration ("SBA") as security for the repayment of a construction loan from the SBA, the proceeds of which Tenant used to finance improvements to the Demised Premises.

C. On April 10, 1997, the City gave a notice of default to Tenant regarding certain alleged breaches by the Tenant of its obligation to pay percentage rent, install and maintain bookkeeping and accounting methods, maintain adequate books and records and provide auditors reports to the City pursuant to the Lease. Tenant disputed such allegations.

D. The parties now wish to resolve their dispute and enter into this Agreement to amend the Lease for the purpose of (i) providing for the payment of past due rent, (ii) reducing the percentage rate applicable to percentage rent, (iii) providing for an appraisal mechanism to adjust percentage rent in the future, and (iv) reducing the term of the Lease, all on the terms and conditions more particularly set forth below.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. Payment of Past Due Percentage Rent.

1.1 Reduction in Percentage Rental Rate Through 10th Anniversary of the Lease Term. For the period beginning on March 1, 1993 and ending on January 15, 1999 the percentage rent specified in Section 6(I) of the Lease shall be reduced from ten percent (10%) to seven and one-half percent (7.5%) of all Gross Receipts. From and after January 15, 1999, until the termination of the Lease, the percentage rent specified in Section 6(I) of the Lease shall be ten percent (10%).

1.2 Payment of Past Due Rent. As of January 15, 1999, the date on which the first installment of past due rent is due, past due rent is One Hundred Twenty-Two Thousand Three Hundred Eighty-Eight Dollars (\$122,388) (the "Past Due Rent"). Past Due Rent shall be payable as follows: on or before the 15th day of each month, Tenant shall pay to the City sum of Two Thousand Four Hundred Twenty-Three Dollars (\$2,423) beginning on January 15, 1999, and continuing until December 15, 2003. Time is of the essence with respect to the provisions of this Section.

1.3 Penalties and Interest. The City agrees to waive any penalties and interest provided under Section 7 of the Lease for the Past Due Rent through the date of this First Amendment; provided, however, should Tenant fail to pay any monthly installment of Past Due Rent on before the 15th day of each month as specified in Section 1.2 above, then all penalties and interest provided for under Section 7 of the Lease shall apply on the unpaid portion of such installment from date such installment was due through the date of payment in full.

1.4 Default. Any failure to pay any installment of Past Due Rent on or before the 15th day of each month as specified in Section 1.2 of this First Amendment shall be deemed a material default on the part of Tenant under the Lease without the need of the City to give Tenant any notice under the Lease (including any notice required under Section 40(a)), and shall afford the City all of the rights and remedies the City would otherwise have under the Lease, at law or in equity with respect to a failure to pay rent.

1.5 Exclusion from Gross Receipts. In the event Tenant elects to impose an additional dues charge on its members to pay the Past Due Rent to the City, then the revenues received by Tenant from such additional charge shall be excluded from Gross Receipts for the purpose of determining percentage rent, to the extent Tenant actually uses such revenues to pay the Past Due Rent in accordance with the provisions of this First Amendment. Otherwise, member dues shall continue to be included in Gross Receipts, consistent with the Lease.

1.6 Payment of Percentage Rent; Representations, Covenants and Warranties.

(a) All percentage rent payable from and after the effective date of this First Amendment shall be in strict compliance with the procedures and requirements in Section 7, 8, 9 and 10 of the Lease. Without limiting the foregoing, Tenant shall report all Gross Receipts by completely filling out the concessionaire payment statements to include Gross Receipts

information with its monthly rent payments to the City, and Tenant shall maintain adequate documentation to support its reports of Gross Receipts, including a general ledger, monthly income statements, daily sales summaries and cash register tapes which shall have non-resettable features as further provided in the Lease.

(b) Tenant represents, warrants and covenants to the City as follows:

(i) As of the date of this First Amendment, Tenant has installed a computerized cash register system with nonresettable features and shall continue to use such registers as required by the Lease, and Tenant has installed a system of itemizing gross receipts.

(ii) As of the date of this First Amendment, Tenant has delivered to the City complete and accurate signed copies of all of the SBA loan documents, including any amendments or modifications thereto. As of the date of this First Amendment, the outstanding principal amount of the SBA loan is \$355,370.83, the maturity date of the loan is August 1, 2022, the monthly payment under the loan is \$1,944, and the loan is fully amortizing over its term. Such monthly payment under the SBA loan shall be the amount deducted from Gross Receipts pursuant to Section 8 of the Lease (number 2 of the exclusions) for purposes of determining percentage rent owing to the City. The reference in Section 2 of the Lease to \$369,000 as the amount of the SBA loan shall be amended by substituting the sum of \$406,300 in its place.

(iii) As of the date of this First Amendment, Tenant has delivered to the City a certified copy of the annual audit required under Section 10 of the Lease for each prior season occurring during the term of the Lease, and Tenant shall provide such audits for the current and any future seasons to the City in a timely manner in strict accordance with the Lease.

(iv) As of the date of this First Amendment, Tenant has delivered to the City the full Five Thousand Dollar (\$5,000) security deposit required under Section 11 of the Lease.

(v) As of the date of this First Amendment, Tenant has removed all signs from the Demised Premises stating that the Demised Premises is a private club, and Tenant has posted notices, as required by Recreation and Park Commission Resolution number 11189 at all entrances of the Demised Premises advising members of the public that the Demised Premises is a public park facility operated on behalf of the Recreation and Park Commission by Tenant, that the property is open to the general public on the same terms and conditions as it is available to members of Tenant, of the hours during which the Demised Premises is open or otherwise available, of the procedures and fees for use, and that membership in Tenant is open and available to all interested parties.

(vi) In cooperation with the Recreation and Park Department of the City, Tenant will use its best efforts to provide a Junior Sailing Program.

(vii) By March 1, 1999, Tenant will submit to the Recreation and Park Department of the City a business plan proposing strategies to enhance Tenant's revenues.

(viii) Tenant will cooperate with the San Francisco Budget Analyst's management audit of Tenant's financial records for the purpose of investigating whether Tenant is operating as efficiently, effectively, and as economically as possible. Tenant will allow the Budget Analyst's audit to proceed before any other audits of Tenants financial records. Tenant will use good faith efforts to implement any recommendations resulting from the audit.

2. Prospective Annual Minimum Rent Guarantee. In no event shall the total percentage rent paid be less than the Annual Minimum Rent Guarantee. For each year beginning January 1, 2000, the percentage Annual Minimum Rent Guarantee for the previous year shall be \$54,000.

3. Reduction in Lease Term. Section 5 of the Lease is amended to reduce the term of the Lease from forty (40) years to twenty five (25) years from the Commencement Date. Accordingly, the term of the Lease shall end at 11:59 p.m. on May 31, 2017 (the "Expiration Date"), unless the Lease is earlier terminated in accordance with its terms. The parties acknowledge that the condition contained in the second paragraph of Section 5 of the Lease has been satisfied and no longer.

4. Lease Extension.

4.1 Option to Extend Term. City grants to Tenant a one-time option to extend the Term of this Lease as to the entire Demised Premises only (the "Extension Option") for an additional five (5) years (the "Extension Term") commencing upon the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term of the Lease, but if it determines to do so it must give written notice to the City thereof not less than one hundred fifty (150) days prior to the Expiration Date. Any such notice by Tenant shall be irrevocable by Tenant. Time is of the essence with respect to the date of delivery of Tenants notice of exercise of the Extension Option to the City. If any event of default by Tenant is outstanding hereunder either at the time of Tenant'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 Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void Tenant's Extension Option if Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Demised Premises. If Tenant exercises the Extension Option, all references to the Term of this Lease shall include the Extension Term.

4.2 Rent For Extension Term. If Tenant elects to exercise the Extension Option, then the Lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants, and conditions of this Lease and Lease Amendment, except that the Percentage Rent shall be adjusted in accordance with the prevailing market rate as follows:

(a) Fair Market Percentage Rent. -

(i) As used in this Section, "Fair Market Percentage Rent" means the annual Fair Market Percentage Rental value of the Demised Premises, which shall be expressed as a percentage (to the nearest half of a percentage point) of Gross Receipts and shall be determined as of the commencement of the Extension Term ("date of value"). Such determination of Fair Market Percentage Rent shall be the percentage rent that the City could obtain from a third party willing to lease the Demised Premises for the remainder of the Extension Term, considering the club improvements (in the condition they are required to be maintained pursuant to the Lease), the unique location of the Demised Premises, the amenities associated with the Demised Premises, and all other factors that would be relevant to a third party seeking to lease the Demised Premises for the applicable period, subject to the following considerations. The Fair Market Percentage Rent shall be based on a reasonably achievable development scenario for the Demised Premises consistent with the land use regulations (as defined below) in effect on the date of value. The Parties shall not assume that such land use regulations will be amended or modified after the date of value, other than as permitted under then-existing procedures for exceptions, variances or conditional use authorizations. As used in this Section, the term "land use regulations" means all federal, state and local laws, regulations, rulings, ordinances, codes, resolutions and plans governing the uses of land and the improvements thereon which may be applicable to the Demised Premises, including, without limitation, those relating to urban design, density, height and bulk of structures, parking, compatibility with surrounding land uses, requirements to mitigate or avoid environmental impacts, mitigation fees, and applicable legal limitations under the public trust for commerce, navigation and fisheries, and under Section 4.113 of the City's Charter with respect to property under the jurisdiction of the City's Recreation and Park Commission, as all of the same would reasonably and probably be applied to any particular development proposal at the location of the Demised Premises. The determination of Fair Market Percentage Rent shall exclude consideration of any of the particular terms of the Lease and shall be arrived at as if the Demised Premises were unencumbered by the Lease, except only that such determination shall assume that the base rent is the Annual Minimum Rent Guarantee specified in the Lease. In addition, such determination of Fair Market Percentage Rent shall exclude: consideration of any subleases or other use or occupancy agreements related to the Demised Premises, or any portion thereof, under the Lease; any leasehold mortgage or similar financing, any mechanics or materialperson's liens, or any other liens or encumbrances that are attributable to any default by Tenant under the Lease.

(ii) City and Tenant shall attempt in good faith to agree upon the Fair Market Percentage Rent for the Demised Premises in accordance with the provisions hereof. No later than ninety (90) days following Tenant's notice to the City exercising the Extension Option, City shall notify Tenant in writing of City's determination made in good faith of the Fair Market Percentage Rent for the Demised Premises to be used to calculate the percentage rent for purposes of the Lease (as amended hereby).

(iii) Within thirty (30) days after receipt of City's determination of the

Fair Market Percentage Rent, Tenant shall notify City in writing either of (i) Tenant's acceptance of such determination, in which case such determination shall constitute the new percentage rent as of the commencement of the Extension Term, or (ii) Tenant's own good faith determination of the Fair Market Percentage Rent, including written justification for its determination.

(iv) If Tenant provides City with its determination of the Fair Market Percentage Rent pursuant to clause (iii) above, then within thirty (30) days following Tenant's notice to City, the parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Fair Market Percentage Rent. The parties may mutually agree in writing to extend such 30-day consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within such 30-day period.

(b) Appraisal. If the Parties have not agreed in writing on the Fair Market Percentage Rent within the consultation period described in subsection (a)(iv) above, then the Fair Market Percentage Rent for the Demised Premises shall be determined by appraisal in accordance with the following procedure.

(i) Appointment of Appraisers; Appraisal Instructions. Each party shall appoint one (1) appraiser within thirty (30) days after the final date for agreement on the Fair Market Percentage Rent in accordance with subsection (a) above. Upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Each such appraiser may have a prior working relationship with either or both of the parties, provided that such working relationship shall be disclosed to both parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate in the City and County of San Francisco and, more specifically, shall also have significant experience valuing commercial recreational facilities on the City's waterfront. If either party fails to appoint its appraiser within such 30-day period, the appraiser appointed by the other party shall individually determine the Fair Market Percentage Rent in accordance with the provisions hereof.

Each appraiser will make an independent determination of the Fair Market Percentage Rent. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently determine the appropriate assumptions to make based on the provisions of this Section and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other Party regarding the instructions contained in this Section before

the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Percentage Rent (to the nearest half percentage point) to the parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Percentage Rent is not more than one hundred ten percent (110%) of the lower appraised Fair Market Percentage Rent, then the Fair Market Percentage Rent shall be the average of such two (2) Fair Market Percentage Rent figures (to the nearest half percentage point).

(ii) “Baseball” Appraisal. If the higher appraised Fair Market Percentage Rent is more than one hundred ten percent (110%) of the lower appraised Fair Market Percentage Rent, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to paragraph (i) above, and shall also have experience acting as an third appraiser of disputes involving commercial recreational real estate or real estate development opportunities, including ground leases and rental valuation. The two appraisers shall inform the parties of their appointment at or before the end of the 30-day appointment period. Each party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal set forth in this Lease. Either party may, by written notice to the other party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two appraisers determine that the objection was made in good faith, the two appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such 30-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of an third appraiser meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the party first applies to the Court for appointment of the third appraiser, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other party and the appraiser such party selected, at the same time it submits the same to the third appraiser. Neither party, and neither of the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Fair Market Percentage Rent determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Fair Market Percentage Rent. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Fair Market Percentage Rent. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of the Lease.

(iii) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Percentage Rent by appraisal shall be conclusive, final and binding on the parties. Neither the appraisers nor the third appraiser shall have any power to modify any of the provisions of the Lease (as amended hereby) and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers (but not the third appraiser) can utilize the services of special experts, including experts to determine property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

(iv) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the appraiser it selects under subsection (b)(i) and of any experts and consultants used by the appraiser. The fees, costs and expenses of the third appraiser under subsection (b)(ii) shall be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(c) Delay in Determination of Fair Market Percentage Rent. The Fair Market Percentage Rent determined in connection with the First Adjustment shall be effective beginning at the commencement of the Extension Term and continuing through the end of the term of the Lease. If, either by agreement of the parties or by the appraisal procedure provided above, the Fair Market Percentage Rent is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Fair Market Percentage Rent determined by City until such time as the Fair Market Percentage Rent is finally determined by agreement of the parties or by the

appraisal procedure set forth in this Section, at which time City shall refund any excess amount to Tenant or Tenant shall pay any shortage to City, as the case may be, plus interest on such over or underpayment at the rate of seven percent (7%) per year, compounded monthly, from the date of original payment to the date of payment (or refund) in full of such under-payment or over-payment. No such delay in the determination of Fair Market Percentage Rent shall be deemed to constitute a waiver by either party of the adjustment of Fair Market Percentage Rent as provided in this First Amendment.

5. Effect of Amendment.

5.1 No Waiver of Other Rights. This First Amendment shall not be construed as a waiver of any rights or remedies with respect to the Lease, other than as expressly set forth in Sections 1.1, 1.2 and 1.3 above.

5.2 No Third Party Beneficiaries. This First Amendment shall not be deemed to confer any rights or benefits on any party other than the parties to this agreement.

5.3 Effect on Lease. Except as modified by this First Amendment, the Lease remains unmodified and in full force and effect.

6. General Provisions

6.1 Non-Discrimination. From and after the effective date of this First Amendment, the following provisions shall govern Section 49 of the Lease:

(a) Covenant Not to Discriminate. In the performance of the Lease, Tenant 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, 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 Tenant, in any of Tenant'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 Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Demised Premises and entered into on or after the effective date of this First Amendment a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant 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 subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of the Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this First Amendment and will not during the remaining term of the Lease, in any of its operations in San Francisco 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. Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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. Tenant 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, Tenant 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 Tenant and/or deducted from any payments due Tenant.

6.2 Tropical Hardwood and Virgin Redwood Ban. The Lease is amended by adding the following provision: ~~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. Except as permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood wood products, virgin redwoods and virgin redwood wood products in the construction of the any improvements by or on behalf of Tenant on the Demised Premises.

6.3 MacBride Principles - Northern Ireland. The Lease is amended by adding the following provision:

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and

understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

6.4 Tobacco Product Advertising Prohibition. The Lease is amended by adding the following provision:

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Demised Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

6.5 Burma (Myanmar) Business Prohibition. The Lease is amended by adding the following provision:

Tenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The City reserves the right to terminate the Lease for default if Tenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein, and the failure of Tenant comply with any applicable requirements thereof shall be deemed a material breach of the Lease. In the event Tenant fails to comply in good faith with any of the applicable provisions of Chapter 12J of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in an amount equal to Tenant's net profit under this Lease, or 10% of the total amount of the Lease, or \$1,000, whichever is greatest. Tenant acknowledges and agrees the liquidated damages assessed shall be payable to the City upon demand and may be set off against any moneys due to Tenant from the City under the Lease.

6.6 Restaurant Uses. Tenant hereby represents and warrants to the City that Tenant does and will not operate a Hotel or Restaurant Project for which the San Francisco Employee Signature Authorization Ordinance (San Francisco Administrative Code Section Chapter 23) is applicable because there are fewer than the equivalent of 50 full or part-time employees in restaurant use on the Demised Premises, and Tenant further covenants that if at any point during the term of the Lease (as amended hereby) Tenant employs more than 50 full or part-time employees in restaurant use on the Demised Premises, Tenant shall comply with the San Francisco Employee Signature Authorization Ordinance to the extent that it is then otherwise applicable.

6.7 Representations and Warranties. Tenant hereby represents, warrants and covenants to the City that this First Amendment has been duly authorized, executed and delivered on the part of Tenant.

6.8 Counterparts. This First Amendment may be executed in counterparts, all of which taken together shall constitute one instrument.

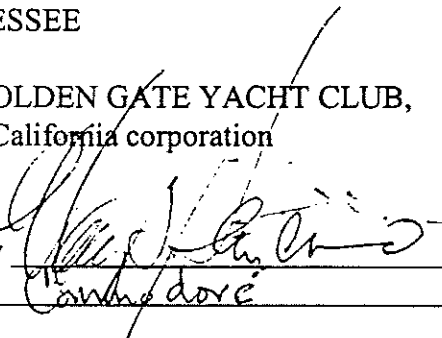
6.9 Effective Date. This First Amendment shall become effective on August 1, 1998.

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

IN WITNESS WHEREOF, the City and Tenant, being duly authorized, have each executed and delivered this First Amendment as of the date first written above.

LESSEE


GOLDEN GATE YACHT CLUB,
a California corporation

By 
Its _____

By _____
Its _____

CITY:

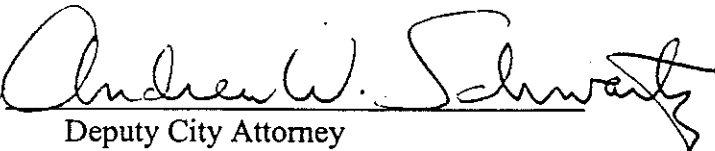
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Recreation and Park Commission

By 
Joel Robinson
General Manager, Recreation and Park Department

Pursuant to Recreation and Park Commission Resolution No. 9901-020

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By 
Deputy City Attorney



April 28, 1999

Ms. Mary Sancimino, Commodore
Golden Gate Yacht Club
c/o Hunter & Bavarneck
345 Grove Street
San Francisco, CA 94102

Dear Ms. Sancimono:

Enclosed is a signed copy of the Golden Gate Yacht Club lease amendment for your files. The Recreation and Park Commission and the Board of Supervisors have approved this amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel B. Robinson".

Joel B. Robinson
Acting General-Manager

JRB/vr

Enclosure

c: Andrew Schwartz, Deputy City Attorney w/enclosure
Margaret McArthur, Commission Secretary w/enclosure
Jaci Fong, Property Management w/enclosure

FILE NO. 981923 ORDINANCE NO. 16-99

1 [Golden Gate Yacht Club]
2 APPROVING THE FIRST AMENDMENT TO THE LEASE BETWEEN THE CITY AND THE
3 GOLDEN GATE YACHT CLUB TO REDUCE THE RENTAL RATE FROM 10% TO 7.5% OF
4 THE CLUB'S MONTHLY GROSS REVENUE FOR THE PERIOD MARCH 1993 THROUGH
5 JANUARY 1999 AND REDUCING THE LEASE TERM FROM 40 TO 25 YEARS.

6 Note: This entire section is new.

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

8 Section 1. The Board of Supervisors approves the First Amendment to the Lease
9 between the City and County of San Francisco, a municipal corporation, acting by and
10 through its Recreation and Park Commission, and the Golden Gate Yacht Club dated
11 February 1, 1999, a copy of which is contained in the Board's file in this matter.
12

13
14 APPROVED AS TO FORM: RECOMMENDED:

15 LOUISE H. RENNE, City Attorney Recreation & Park Department

16
17 By: *Andrew W. Schwartz*
18 Andrew W. Schwartz
19 Deputy City Attorney
20
21
22
23
24
25

See file for signature
Joel Robinson
General Manager

FINANCE COMMITTEE
BOARD OF SUPERVISORS

C. E. Brundage
J. Fong
R. de Leon
M. Morley
C. Davis

Page 1
2/1/99

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City and County of San Francisco

Tails

Ordinance

File Number: 981923 Date Passed:

Ordinance approving the first amendment to the lease between the City and the Golden Gate Yacht Club to reduce the rental rate from 10% to 7.5% of the Club's monthly gross revenue for the period March 1993 through January 1999 and reducing the lease term from 40 to 25 years

January 25, 1999 Board of Supervisors -- PASSED ON FIRST READING

Ayes: 11 - Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee, Ammianno

February 1, 1999 Board of Supervisors -- FINALLY PASSED

Ayes: 10 - Leno, Newsom, Teng, Yaki, Yee, Ammianno, Bierman, Becerril, Brown, Katz
Absent: 1 - Kaufman

RECEIVED

MAR 1 1 1999

San Francisco Recreation & Parks

GOLDEN GATE YACHT CLUB LEASE

AT

MARINA YACHT HARBOR,
SAN FRANCISCO, CALIFORNIA

SAN FRANCISCO RECREATION AND PARK DEPARTMENT
MCLAREN LODGE
GOLDEN GATE PARK
FELL AND STANYAN STREETS
SAN FRANCISCO, CALIFORNIA 94117

COMMISSIONER CONNIE O'CONNOR, PRESIDENT
COMMISSIONER KEITH EICKMAN, VICE PRESIDENT
COMMISSIONER RICHARD J. GUGGENHIME
COMMISSIONER TRENT ORR
COMMISSIONER SANTIAGO RUIZ
COMMISSIONER SIDNEY CHAN

1918T
July 15, 1991

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Exhibits

A: Map of Demised Premises

B: Commission Resolutions #11189 & #16169a: Resolutions Governing The Use of Recreation and Park Department Properties by Private Organizations

C: Non-Discrimination Ordinances

D: Assignment of Real Estate Lease And Agreement: Addendum to GGYC's US Small Business Administration Loan Document

GOLDEN GATE YACHT CLUB LEASE
AT
MARINA YACHT HARBOR, SAN FRANCISCO

This Lease, made the Twenty Fifth day of July 1991, by and between the City and County of San Francisco, a Municipal Corporation, acting by and through the Recreation and Park Commission, Lessor, and hereinafter referred to as "City", and "Commission", respectively, and Golden Gate Yacht Club, hereinafter referred to as "Club" and "Lessee".

WITNESSETH

For and in consideration of the premises and covenants of the parties hereto, each to the other, hereinafter contained, the Lessor and Lessee agree as follows:

1. EXTENT OF LEASEHOLD

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described real property which is comprised of at total land and water area of 31,256 square feet. This area includes the clubhouse, grounds, parking area, and four guest berths, to-wit, a portion of that certain premises which occupies 359 linear feet of birth, 3,600 square feet of land and 7,968 square feet of water described "Demised Premises" and which is outlined on the Marina Small Craft Harbor map, a copy of which is attached hereto, marked Exhibit A, and incorporated in the terms of the Lease.

2. USE OF PREMISES

Lessee is granted the exclusive right to occupy and use the demised premises to operate and maintain a first rate and complete non profit recreational boating and racing oriented yacht club. It is understood that upon commencement of the term of this Lease, Lessee shall undertake the reconstruction of the existing clubhouse with major funding provided by the US Small Business Administration, hereafter alternately referred to as "SBA", in the amount of \$369,000. The clubhouse will be expanded by approximately 1,800 square feet. The new space will include a new dining room placed over the existing one story portion of the club, additional storage space and men's and women's showers. In addition, the existing building will be placed on a proper foundation, the entry and restrooms will be remodeled to be handicapped accessible and the exterior and windows will be refurbished and upgraded. The existing decks will be rebuilt and new code conforming handrails will be installed. The race deck will be moved to the Bay side of the club. All utility systems and services will be upgraded as necessary to meet current building codes.

Lessee shall provide on the leased premises (1) a clubhouse with amenities for family type participation, and (2) meeting room and dining facilities for the use of marine oriented organizations and for yacht club functions; and for banquet and event functions. It is further understood and agreed that the articles sold within the Yacht Club shall be of a general marine oriented character and nothing shall be sold therein which will be inappropriate to the end of maintaining the yachting spirit. Lessee shall cooperate with the Commission in the development and implementation of programs to facilitate youth involvement in watercraft education and watercraft activities. Such involvement may include use of the club facilities.

Lessee shall, at all times during the term hereof, actively use the demised premises for the above purposes, and shall not at any time leave the demised premises without written consent of Lessor. Lessee shall not 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, regulations 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 purpose, or place any load upon the floors, walls, ceiling or decking, moorings slips and docks which endanger the structures or obstruct the passageways in or about the demised premises.

3. OWNERSHIP OF PREMISES

In consideration of improvements made to the real property by the Club prior to the commencement hereof, and of further improvements contemplated in this Lease, it is acknowledged that title to buildings and other improvements made within the demised premises has historically rested with the Golden Gate Yacht Club. It is acknowledged by the parties to the Lease that the improvements to the leasehold and clubhouse which are contemplated during the term of this Lease are to be the full responsibility of the Golden Gate Yacht Club and belong to the Club during the term hereof. All real property improvements shall become the property of the Lessor immediately upon the expiration or earlier termination hereof. Lessee, during the term hereof, shall have no right to convey any interest in the real property improvements to any third party, except as provided herein.

4. POSSESSION OF PREMISES

Golden Gate Yacht Club shall have exclusive possession and control of the premises, subject to Lessor's right to inspect and to public access requirements, and may allow any assurances to the SBA for their access which may be necessary and proper.

5. TERM

The term of this agreement shall be Forty (40) years, commencing on the first of the month following approval of this Lease by the Board of Supervisors and execution of the approving Ordinance by the Mayor, and terminating at midnight on the last day of the Four-hundred-eightieth month thereafter. The Commencement Date of this Lease is June 1, 1992.

In the event that (1) loan funding to be provided by the SBA is not finalized, and/or (2) plans and specifications for construction of improvements specified herein are not fully approved by all agencies having jurisdiction, no later than the first day of the tenth month following the Commencement Date, this Lease shall immediately terminate and be of no further force and effect.

6. RENTAL

I. PERCENTAGE RENT: Lessee shall pay to Lessor, monthly as set forth hereinafter, the amount of Ten Percent (10%) of all of its Gross Receipts, as defined in Section 8 ("Gross Receipts") of this Lease.

II. ANNUAL MINIMUM RENT GUARANTEE: Each year during the term hereof, Lessee shall pay percentage rent monthly as set forth above, but in no event shall the total percentage rent paid be less than the Annual Minimum Rent

Guarantee specified herein. Each year on January 1, the percentage rent paid during the preceding twelve months shall be calculated and any deficiency necessary to make up the Annual Minimum Rent Guarantee shall be paid to the Lessor with the payment of percentage rent due for the first month of the succeeding Lease Year.

The amount of the Annual Minimum Rent Guarantee is as follows:

A. During the initial year of this Lease, or until the doors of the renovated clubhouse have opened for business, whichever is earlier, Minimum Rent shall be waived.

B. Minimum Rent for the second year of the Lease shall be 105% of 10% of the gross receipts, as herein defined, collected from all sources during the last 12 months prior to construction shut down. A proportionate amount of Minimum Rent at this level shall also apply to any portion of the first lease year after the renovated clubhouse has opened for business to which minimum rent may apply.

C. Minimum Rent for years 3,4,5 and 6 of the Lease shall be adjusted annually, effective on the lease anniversary date, to equal 105% of the percentage rent payable for the previous year. Minimum rent for years 7 and 8 of the Lease shall be the same rent as is calculated for year 6.

D. Minimum rent for years 9 through 40 of the Lease shall be adjusted every three years at the anniversary date, beginning with year 9, to equal 90% of the average percentage rent paid for the preceding three years.

E. In no event shall rent be less than \$18,000 per year.

7. PERIODIC PAYMENTS

Lessee agrees to pay Lessor on or before the fifteenth day of each month for the preceding month of operation the rentals as stipulated in Section 6 ("Rental") above.

Lessee shall furnish a statement showing the gross receipts for all operations each time a payment is made to Lessor. The statements required of Lessee in this section shall comply in form and methods of accounting as directed by the Controller of the City and County of San Francisco.

It shall be Lessee's responsibility to see that all payments are made when due and delivered to Lessor. All payments shall be made payable to the Recreation and Park Department, Property Management Office, McLaren Lodge, Golden Gate Park, Fell and Stanyan Streets, San Francisco, CA 94117. Lessee hereby acknowledges and agrees that if payment is not made within the time period mentioned above, Lessee will be assessed a late charge of five percent (5%), of the amount due for the period of time which the payment is late and said late charges shall be due and payable on demand by Lessor. Rents not paid when due shall bear interest from the date due until paid at one percent (1%) per month.

Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, or prevent the Department from exercising any of the other rights and remedies available to the Department.

8. DEFINITION OF GROSS RECEIPTS

The term "Gross Receipts" as herein used is defined to mean the total gross revenues derived from dues and assessments to members, day use fees, guest berth fees, earned income and all other revenues derived by Lessee or any other person, firm or corporation from operations of Lessee on the demised premises, however, (a) that the total amount deposited in vending machines operated solely by Lessee shall be and become a part of the "Gross Receipts" within the meaning hereof and further, (b) that only the commissions received by Lessee from operations of said vending machines by an independent third party shall be and become a part of "Gross Receipts" within the meaning hereof.

The following are the only sums which may be deducted from "Gross Receipts" for the purposes of calculating percentage rent:

1. Taxes, such as California sales tax, collected from patrons and payable directly to the taxing authority;
2. The full amount of monthly payments due to the Small Business Administration in payment of the construction loan recited hereinabove may be deducted from the full amount of monthly gross receipts before calculation of percentage rent;
3. Lessee may collect a one-time assessment from its membership during the initial year of this Lease for capital improvement of the clubhouse. It is anticipated that this assessment will total approximately One Hundred Forty Thousand Dollars. This one-time assessment shall be exempt from the payment of percentage rent.

9. ACCOUNTING AND RECORDS

Lessee shall install and maintain such bookkeeping and accounting methods, and methods of collection of monies as shall permit the Lessor accurately to compute the "Gross Receipts" from all operations of Lessee and said records shall be made reasonably available to Lessor for such purpose. The Controller of the City and County of San Francisco, or any other authorized representative of the City and County of San Francisco, or the Lessor shall have the right to examine the books and records of the Lessee at any reasonable time for the purpose of auditing the same.

Lessee shall keep full, true and correct books of account showing the amounts and character of items and articles sold or charge in or about the hereinabove described premises and said books of account shall at all times be open and available for inspection by Lessor or its representatives. Lessee shall also use a cash register, with tape, built-in features such as the nonresettable sequential transactions, date, and time on which all sales shall be recorded. Lessee shall retain until needed hereunder such original source documents as are necessary for verification of Lessee's reports of gross sales, according to the requirements of the Controller's office, City and County of San Francisco.

10. AUDIT OF BOOKS

The books of accounts and records of Lessee covering the gross receipts of Lessee under this Lease shall, at the cost and expense of Lessee, be audited annually by a certified public accountant firm. A certified copy of the report of such audit for the financial year shall be furnished to the Commission within ninety (90) days of the end of each season. Lessee shall have available at all times the books of accounts and records of Lessee's operation upon request for inspection by the Recreation and Park Department and the Controller.

11. SECURITY DEPOSIT

Lessee hereby agrees that prior to the commencement of the term of this Lease, Lessee will at its own expense, obtain and deliver to Lessor a security deposit in the amount of Five Thousand Dollars (\$5,000) guaranteeing payment of the minimum rental or the percentage of gross receipts called for herein as well as the faithful performance of all of the other terms and conditions of this Lease by Lessee. The deposit shall be in cash or in such other form as shall be acceptable to Lessor according to the policy of the Recreation and Park Commission. The Lessor shall be entitled to retain such deposit or such portion thereof as shall be sufficient to reimburse loss or damages to Lessor in the event of breach by Lessee of any or all of the terms, covenants and conditions of this Lease. The Security Deposit shall be returned to Lessee following expiration of the Lease if Lessee shall have fully and faithfully performed all of the terms, covenants and conditions hereof.

12. TAXES, ASSESSMENTS AND LIENS

Lessee shall pay for and obtain all licenses and permits necessary for the operations hereunder and shall pay all fees, taxes, including possessory interest taxes, and charges lawfully assessed against it. 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 said premises or upon any equipment or personal property located thereon without promptly discharging the same.

In the event that the Lessee shall fail to pay all license and permit fees necessary for the operation of its business within thirty (30) days after the due date, on Lessee's part to be kept or performed, then the Lessor shall be entitled with ten day written prior notice to Lessee to immediately cancel and terminate this Lease and remove the Lessee and all persons from the premises, as provided in Section 41 ("Termination") hereof.

13. UTILITIES

Lessee hereby agrees to pay for all costs of utility services including, but not limited to, gas, electricity, telephone service, water, sewer and all other services necessary and required for the occupancy and use of the demised premises under the terms of this Lease from the meters in to the demised premises, including the cost of bringing the utilities to the locations where needed or required. Lessee shall be responsible for maintenance of the sewer line which runs underneath the channel, and for any upgrade of the sewer service. Lessee shall be responsible for compliance with all applicable codes regarding utility services and connections. Lessee shall be responsible for reasonable accommodation which may be necessary within the demised premises during any dredging which shall be done within the Marina Yacht Harbor.

14. DAYS AND HOURS OF OPERATION

Lessee shall actively operate the premises and use its best business-like efforts to further the operations thereof. Lessee shall be open for business at least Friday evenings and weekends.

15. QUALITY OF SERVICE

Lessee hereby agrees that all goods offered for sale shall be of good quality and quantity and that the service shall be prompt, clean, courteous and efficient. Lessor shall have the right to raise objections to the conditions of the premises, and quality of the food, items or articles sold, as well as the character of the service rendered and to require all

objectionable practices discontinued and remedied. All waste material shall be stored in a manner satisfactory to Lessor and Lessee agrees to promptly dispose of all waste material at its own expense.

16. 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 and amenities of the Club. 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.

Lessee will provide access to the public according to the provisions of Commission Resolution #11189 with the following specifications:

- a) Restrooms must be available for free public use whenever the club is open for its members.
- b) Club facilities must be made available to the public at least one-half of the total days and hours they are open for club members, including at least one weekend day and evening per week.
- c) A day-use fee of \$5 per person will be charged for access to club facilities; changes in day-use fees will be set by Commission for use of all club amenities.

17. RATES AND CHARGES

Rates and charges for the following activities shall be filed with and subject to prior approval by Commission. Any change in the rates or charges shall be subject to prior approval by the Commission.

- a) Membership dues and initiation fees
- b) Special assessments charged to members
- c) Day use fees for club facilities by non-members

18. USE OF GUEST BERTHS

Lessee agrees that guest berths are to be used only by bonafide guests of the Club or visiting guests of Club members, or in connection with Club-sponsored activities such as competitive boating events. No boat, which is not owned by the club, may be berthed at Club guest berths for longer than fourteen days without prior notification to the Harbormaster's office. Long-term berthing at designated guest berths is not permitted. Restrictions on use of guest berths will not apply during the months November through March of each year. Rental rates for guest berths shall be established by the Club. Visiting members of the public may use guest berths to the extent they are not required for club activities by payment of the day use fee and the guest berth rental.

19. CONDITION OF PREMISES

Lessor does not warrant the condition of the premises as of the day of occupancy use under the terms of this Lease, in regard to safety, repair, fitness for use or otherwise, and Lessee hereby accepts said 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.

Lessee will not commit or permit any waste or injury or damage to any part of said premises, or properties adjacent thereto, and will maintain and return at the expiration of the term hereinabove mentioned said demised premises and properties adjacent thereto in as good condition and repair as when received, reasonable and ordinary wear and tear thereof excepted.

20. PREMISES TO BE KEPT CLEAN/CLEANUP

Lessee agrees to keep the 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 premises used solely for and by Lessee in containers provided for that purpose by Lessee. Lessee also agrees to keep all waste, trash, rubbish, papers, cartons, and refuse in a dumpster and keep dumpster area clean, neat, safe, sanitary and in good order at all times. If Lessee fails after notice from Lessor to maintain, repair or keep the premises clean and orderly, such action shall be constituted a breach of the Lease.

21. REPAIRS BY LESSOR

Under no circumstances shall the Lessor be responsible for repairing Lessee's demised premises, real property improvements, personal property, equipment and machinery, including landscaping, parking lot area and guest berths.

22. 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 services, gas 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 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.

23. REPAIR, MAINTENANCE AND IMPROVEMENT BY LESSEE

Lessee, at its own cost and expense, shall keep and maintain the premises and all improvements thereon and such improvements as will be constructed thereon in good order and repair and in good and safe condition and shall make all repairs necessary thereto. Lessee shall furnish all supplies and equipment and with qualified personnel and qualified licensed contractor to maintain, repair and improve the premises, whichever required. These obligations of Lessee shall be performed to the satisfaction of the Lessor.

No addition and alteration of any kind shall be made to the premises by Lessee without the prior written consent of the Lessor. Lessee shall not do any act or thing which will void or impair any insurance policies hereinafter required or which may endanger the safety of persons or property in and about the demised premises.

All alterations, improvements and repairs shall be in conformity with the general architectural requirements of the City and County of San Francisco and shall meet all health and building codes and ordinances as well as applicable State and Federal regulations. Before any alterations, improvements and repairs to be done to the premises, Lessee must obtain all necessary permits.

Any alterations, improvements and repairs completed must be inspected by the appropriate City agencies as well as by the Lessor.

Lessee is responsible for notifying the Lessor, in writing, of any non-routine maintenance or repair work done to facility within fifteen days of completion of the work.

Lessee waives the benefits of sub-sections 1 and 2 of Section 1932, sub-section 4 of Section 1933, and of Sections 1941 and 1942 of the California Civil Code and all rights to make repairs at the expense of Commission as provided in Section 1942 of said Code.

24. IMPROVEMENTS BECOME PROPERTY OF LESSOR

Any alterations, additions, improvements and repairs which may be affixed to the premises, shall become the property of the Lessor immediately upon the expiration or earlier termination hereof, and shall remain upon and be surrendered with the premises upon expiration or sooner termination of this Lease, except that Lessee shall retain ownership and shall have the right to remove all fixtures, furniture, furnishings and personal property used by Lessee in the operation of the premises which were purchased by or added to the premises of Lessee and which can be removed from the Premises without damage to the walls, floors or other appurtenances. Lessee shall obtain written approval of Lessor before making any alterations or 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.

25. EQUIPMENT/TRADE FIXTURES/MATERIALS/SUPPLIES

Lessee hereby agrees to, at Lessee's own expense, furnish and install any and all equipment, trade fixtures, materials and supplies, as well as any and all other items and services necessary and required for the proper operation and maintenance of the demised premises.

26. NOTICE TO PROCEED WITH IMPROVEMENTS

Lessee agrees that the alterations, improvements and repairs to be made by Lessee pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by ordinance of the Board of Supervisors of the City and County of San Francisco and the Lessee obtains from the Lessor written approval to proceed. All alterations, improvements and repairs shall be in conformity with the general architectural requirements of the City and County of San Francisco and shall meet all health and building codes and ordinances as well as applicable State and Federal regulations.

27. CODE COMPLIANCE

Lessee agrees that they will abide by all laws and governmental orders or regulations, and amendments thereto, controlling or limiting the use of the premises. Lessee agrees that they will use the premises herein designated for no purpose other than hereinabove specified. Lessee does hereby agree to comply with all police, health, fire and safety rules and regulations of the City and County of San Francisco and the State of California pertaining to the operations hereunder and to the sale of food and refreshments and to secure all necessary permits prior to the first day of operation under the terms of this Lease.

28. HAZARDOUS MATERIALS/PESTICIDES

Lessee agrees to comply with all applicable laws and regulations of any governmental authority having jurisdiction with regard to the handling and/or disposal of toxic or hazardous materials, including pesticides, including the safety and training of lessee's employees and the safety of the public.

29. RIGHTS NOT TRANSFERABLE

It is expressly agreed that this Lease is granted based in part on the personal qualifications of Lessee in the conduct of the yacht club as stipulated in this Lease. The rights and privileges herein given are granted to Lessee and the same shall not be transferable by operation of law. Lessee shall not assign or transfer any right, privilege or license conferred by this Lease, either in whole or in part, or sublet the premises without having obtained in advance the written consent of the Lessor.

The Lease shall not be assignable except to the SBA and may be re-assigned by SBA upon Lessee's default under either the Lease or Lessee's SBA Loan, Number DLB 41326230-08 ("the SBA Loan"). Lessee understands and agrees that Lessor shall have the absolute right to withhold consent to any other proposed assignment or sublease to any third party for any reason.

It is expressly agreed that SBA is a third party beneficiary under this Lease and any successive Lease until the SBA Loan is paid in full and provisions for the protection of the interests of SBA are set forth in section 41 ("Termination") hereof. It is further agreed by the parties hereto that the rights of SBA hereunder and under an "Assignment of Real Estate Lease and Agreement" entered into on _____, 1992 by and between the SBA and Lessee and consented to by the Lessor shall be cumulative and not alternate and shall be in addition to any and all rights which SBA may have as a matter of Law.

30. INDEMNIFICATION

Lessee shall assume the defense of and indemnify and save harmless the Lessor, Recreation and Park Commission and the City and County of San Francisco, its officer, commissioners, agents and employees, and each of them from any and all claims, demands, loss, damage, injury and liability of any and every kind, nature and description arising directly or indirectly from the maintenance or use of any of the premises or other property, or any activity, acts or omissions whatsoever in any way connected with or arising out of the subject matter of this Lease, irrespective of whether any act, omission or conduct of the Recreation and Park Commission or the City and County of San Francisco, its officers, commissioners, agents or employees connected or unconnected or otherwise, of the claim, liability, loss, damage or injury, and irrespective of whether the act, omission, or conduct of the Lessee is merely a condition, rather than a cause of the claim, liability, loss, damage or injury, except for claims or injuries directly caused by the wilful misconduct of Lessor.

31. INSURANCE

The Lessee shall procure and maintain during the term of this Lease the following insurance from a California licensed carrier:

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.
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 insurance on building and fixtures insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in an amount equal to 100% of the replacement value. Any loss shall be appraised by a licensed appraiser. SBA shall be designated a Loss-Payee on the insurance policy insuring against the aforesaid perils.

All insurance policies shall be endorsed to provide the following:

1. Name as Additional Insureds the City and County of San Francisco, Recreation and Park Department, 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. Said policy or policies shall provide that with respect to the City and County of San Francisco, the insurance will operate as primary insurance and no other insurance effected by said City and County of San Francisco will be called on to contribute to a loss covered by said policy or policies. If such policy or policies also provides insurance for Lessee or anyone other than said City and County of San Francisco, then such policy or policies shall also contain a standard cross liability endorsement. Said policy or policies shall be effected in insurance company or companies having a policy holder's surplus of at least \$10,000,000.

All policies shall be endorsed to provide:

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

Recreation and Park Commission
Property Management Office
McLaren Lodge, Fell and Stanyan Streets
San Francisco, CA 94117

Certificates of insurance evidencing all coverage above shall be furnished to the City ten (10) days before commencing any operations under this contract. In the event Lessor has not received satisfactory evidence of the required insurance coverage by the stated deadline, Lessor may proceed with obtaining insurance to protect its interests at the expense of the Lessee.

32. 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, in or about the premises and against the City and County of San Francisco and further releases and discharges the Lessor, the City and County of San Francisco, its commissioners, officers, servants, agents and employees from any and all demands, claims, judgements, actions and causes arising from any of the causes aforesaid, excepting matters caused by Lessor's willful act, or from Lessor's failure to keep the surrounding area in good condition.

33. WAIVER OF BREACH

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 term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed 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.

34. RIGHT TO AMEND

Lessor and Lessee reserve the right to amend by supplementing this Lease at any time by mutual consent for any purpose related to the functions herein and the administration thereof or to overcome any unforeseen problems arising hereafter. Furthermore, it is mutually understood and agreed no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein, and no alteration or variations of the terms hereof, unless made in writing between the parties hereto, shall be binding on any of the parties hereto.

No amendments will be made to the Lease without the written consent of SBA, which shall not be unreasonably withheld.

35. RENT CREDIT

In the event Lessor requires and authorizes improvements to be made by Lessee beyond those contemplated in this Lease, Lessee may be allowed rent credits for those authorized improvements, with the prior written approval of Lessor.

36. DESTRUCTION OF PREMISES

In the event of the destruction of the premises, or any part thereof, in which the operation is situated so as to make the service untenable and which destruction Lessee elects not to repair, 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 6 ("Rental") of this Lease or to continue with repairs and improvements as provided for in this Lease for the period following the date of destruction of the premises.

37. 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, strike, epidemic outbreaks, or any other labor disturbance, 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 suspended or terminated and Lessor shall be under no legal obligation to Lessee by reason of said suspension or termination.

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. BANKRUPTCY OR REORGANIZATION PROCEEDINGS

In the event that Lessee shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against Lessee and Lessee is thereafter adjudicated bankrupt pursuant to such proceedings, or that the court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization Act, or that a receiver of Lessee's assets shall be appointed, or in the event that Lessee executes an assignment for the benefit of its own creditors, Lessor shall have the right to terminate this Lease forthwith. Such termination shall, in such instance, be deemed to occur upon the happening of any of said events and from thenceforth Lessee shall have no rights in or to the premises, or to any of the rights herein conferred, and Lessor shall have the right to take possession of said premises forthwith.

40. DEFAULT

The occurrence of any of the following events shall constitute default under this Lease.

- a. Lessee defaults in the due and punctual payment of Rent, and such default continues for five (5) days after written notice from Lessor; however, Lessee will not be entitled to more than one (1) notice for monetary defaults during any twelve (12) month period, and if after such notice any Rent is not paid when due, Default will be considered to have occurred without further notice;
- b. Lessee vacates or abandons the Premises;
- c. The appointment of a receiver to take substantially all of the assets of the Lessee.
- d. A general assignment by the Lessee for the benefit of creditors.
- e. Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state.
- f. Lessee fails to finalize a loan agreement with the SBA within six months after the Commencement of the term hereof.

42. DELIVERY OF POSSESSION BY LESSEE

Lessee agrees to yield and deliver to Lessor possession of the premises at the termination of this Lease or as otherwise herein provided, in good condition and in accordance with the express obligation hereunder, except for reasonable wear and tear.

43. 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.

It is expressly agreed that each term stipulation, 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 it of any one of the within terms, stipulation, rent, payment, conditions or covenants shall be a ground for the termination by Lessor, at its election, of the entire Lease as provided in Section 41 ("Termination") hereof.

44. LESSOR'S RIGHTS CUMULATIVE

The rights of 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.

45. NOTICES

All notices required to be given to the Lessee hereunder shall be mailed by postage prepaid by Lessor to GOLDEN GATE YACHT CLUB, One Yacht Road, San Francisco, CA 94123 or at such other address as may be thereafter in writing so designated by the Lessee to Lessor. All notices required to be given to Lessor hereunder shall be mailed postage prepaid, by Lessee to Lessor addressed to the RECREATION AND PARK COMMISSION, McLaren Lodge, Golden Gate Park, Fell and Stanyan Streets, San Francisco, CA 94117.

46. AUTHORITY OF AGENTS OF LESSOR

No agents or representative of the Lessor has any authority to vary the terms of this Lease, or to extend the rights and privileges, as herein set forth in writing and approved by Commission, or to make any statements or representations concerning this Lease, or the rights and privileges herein set forth, except such as may be endorsed herein in writing, and then only after approval by the General Manager of the Recreation and Park Department.

47. 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 as required by law.

48. 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 provision of this Lease.

49. NON DISCRIMINATION

Provisions of the San Francisco Administrative Code Sections 12B and 12C are incorporated herein and by reference made a part of this Lease as though fully set forth. (See Exhibit C).

50. SIGNS AND ADVERTISING

Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the premises, any signs, without obtaining in advance the written consent of the Lessor.

51. 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.

52. CONTRACTS AND COUNTERPARTS

If this Lease is executed in counterparts, each shall be deemed an original.

53. TIME

Time is of the essence of this Lease and every part hereof.

54. INDEPENDENT CONTRACTOR

Lessee shall perform its work under this Lease as an independent contractor and not as the agent or employee of the City. Lessee has and hereby retains the right to exercise full control and supervision of the services and full control of employment, direction, compensation and discharge of all persons assisting him in the performance of services hereunder. Lessee agrees to be solely responsible for all matters relating to payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. Lessee agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Lease.

55. CONFLICT OF INTEREST

Lessee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Lease.

56. 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.

57. LOITERING

Lessee hereby agrees that there shall be no undue loitering in or about the premises and no boisterous or objectionable 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.

58. TRESPASS

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

59. INSPECTION AND USE OF PREMISES BY LESSOR

Lessee will permit Lessor, its agents or employees, to enter into and upon the premises at all reasonable times for the purpose of inspection the same. All requirements of the City and County or State Board of Health contained in health or sanitary regulations adopted by the City and County, State or any legal authority, shall be fully met by Lessee and Lessee shall give access for inspection purposes to any duly authorized representative of said departments or of Lessor.

60. APPLICATION OF PROVISION 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.

61. 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 and executed by the Mayor of San Francisco.

62. HOLDING OVER

Any holding over of the term created shall be a tenancy from month to month only, at the rental established for the fortieth year of the term, subject to adjustment as set forth in Section 6 ("Rental") hereof, and otherwise be on the same terms and conditions herein specified.

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

LESSOR

LESSEE

Approved as to Form:
Louis Renne, City Attorney

Golden Gate Yacht Club,
a non profit corporation

By: *Mara Rosales*
Mara Rosales
Deputy City Attorney

By: *Karen A. McHann*
KAREN A. MCHANN Commodore

City and County of San Francisco
Recreation and Park Commission

By: *Shauna Marie Rose*
Shauna Marie Rose, Secretary
Date: July 25, 1991
Resolution No. 16176

By: *Mary E. Burns*
Mary E. Burns, General Manager
Recreation and Park Department

1
2 APPROVING THE LEASE WITH THE GOLDEN GATE YACHT CLUB TO OPERATE A YACHT
3 CLUB AT THE SAN FRANCISCO MARINA.

4
5 Be it ordained by the people of the City and County of San Francisco:

6 Section 1. That certain lease between the Recreation and Park
7 Commission, for and on behalf of the City and County of San Francisco and
8 Golden Gate Yacht Club, for the purpose of operating a yacht club at the
9 San Francisco Marina, a copy of which agreement is on file in the office
10 of the Clerk of the Board of Supervisors and to which reference is hereby
11 made, is hereby approved.

12 RECOMMENDED:

13 *Mary E. Burns*
14 Mary E. Burns, General Manager
15 Recreation and Park Department

16 APPROVED

17 *Sheldon Barlow*
18 Sheldon Barlow, Secretary
19 Recreation and Park Commission

20 APPROVED AS TO FORM:

21 *Louise H. Reine*
22 Louise H. Reine, City Attorney
23
24 *Kara E. Rosales*
25 Kara E. Rosales, Deputy City Attorney

BOARD OF SUPERVISORS

Board of Supervisors, San Francisco
Passed for Second Reading
April 20, 1992

Ayes: Supervisors Rontenberg Alibio
Brite Conroy Gonzalez Hallinan
Kennedy Maher Higgins Shelley
None: Supervisor Ileson

Finally Passed
April 27, 1992

Ayes: Supervisors Rontenberg Alibio
Brite Conroy Gonzalez Hallinan
Kennedy Maher Shelley
Absent: Supervisor Ileson

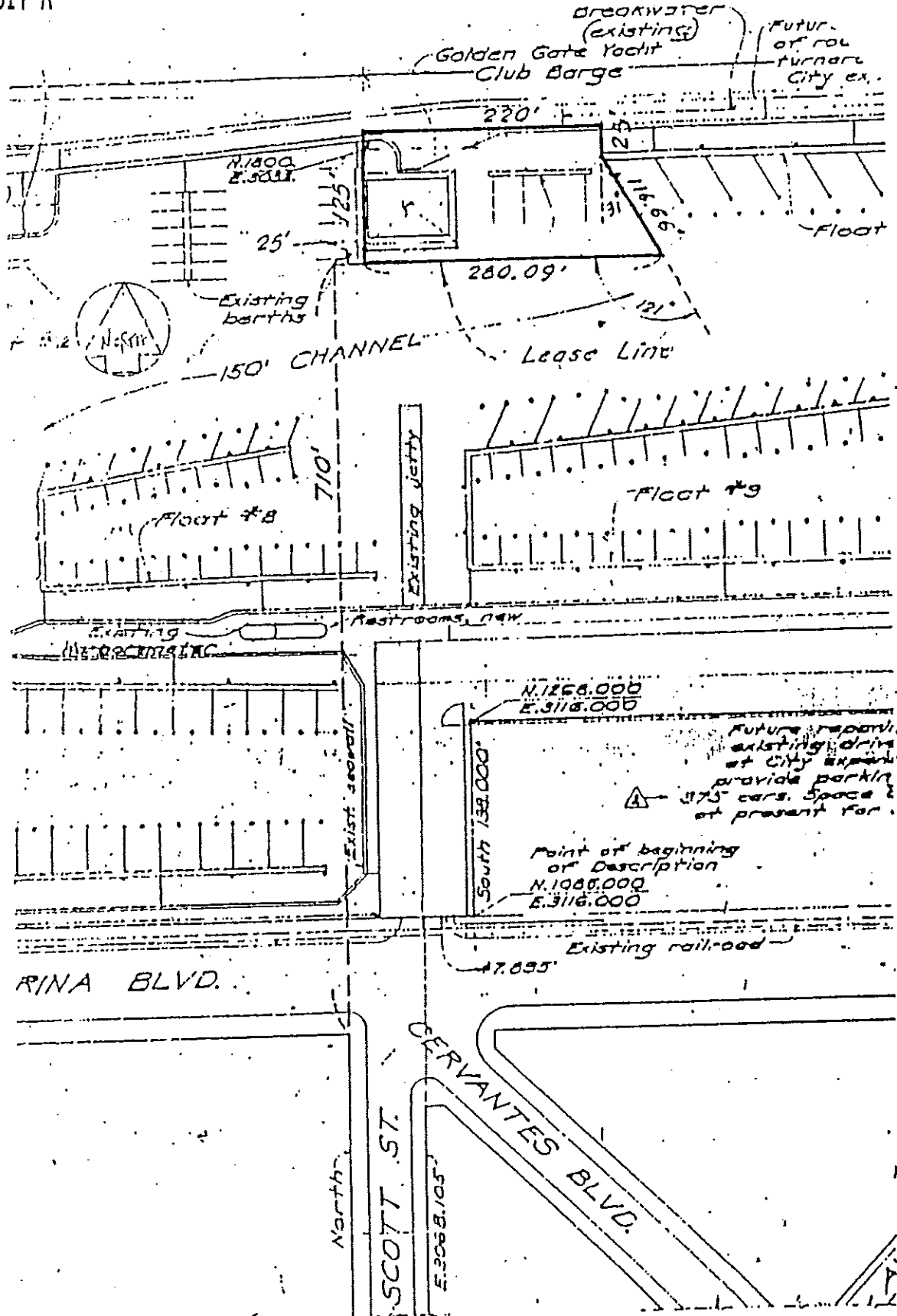
I hereby certify that the foregoing ordinance
was finally passed by the Board of Supervisors
of the City and County of San Francisco

File No.
65-92-6

MAY 6 1992
Date Approved

Sheldon Barlow
Sheldon Barlow
Clerk
David M. Fisher
David M. Fisher
Mayor

Golden Gate Yacht Club Lease
EXHIBIT A



CASE MAP IS "HARBOR PLAN, MARINA SMALL CRAFT HARBOR, SAN FRANCISCO"
PREPARED FOR RECREATION & PARK COMMISSION BY E. ELMORE HUTCHISON
AND RAYES & LITTLE, DATED MAY 15, 1962.

RECREATION & PARK FILE NO. RP-078-62.

LEASE LINE INFORMATION PREPARED BY MARTIN M. ROH ASSOCIATES, INC.

EXHIBIT B

City and County of San Francisco

Recreation and Park Department



COMMISSION RESOLUTION #11189

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 be the promotion and fostering of a program providing for organized public recreation of the highest standard; and

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 to 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 members 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 members.

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, national origin, sex, political affiliation, sexual orientation, disability, or any other grounds prohibited by law. Each membership applicant shall be given a copy of these bylaws 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, national origin, sex, political affiliation, sexual orientation, disability, 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.

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 club 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 club, 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.

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 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 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.)

EXHIBIT D

WHEN RECORDED MAIL TO:

U.S. Small Business Administration

P.O. Box 13795

Sacramento, CA 95853-4795

Attn: Legal Dept.

SBA Loan No. DLH-41326230-08 Space above this line for Recorder's use only

ASSIGNMENT OF REAL ESTATE LEASE AND AGREEMENT

This Assignment of Real Estate Lease and Agreement made and entered into by and between The Golden Gate Yacht Club (Lessee, hereinafter called Borrower), and the City and County of San Francisco by and through the Recreation and Park Commission (hereinafter called Lessor), and the SMALL BUSINESS ADMINISTRATION, an agency of the United States Government (hereinafter called Assignee):

WITNESSETH:

WHEREAS, Borrower and Lessor have entered into a 40 year lease dated July 25, 1991, of premises commonly referred to as One Yacht Road, San Francisco, CA 94123 more specifically described as follows:

Real property which is comprised of a total land and water area of 31,256 square feet. This area includes the Clubhouse, grounds, parking area and four guest berths, to-wit, a portion of that certain premises which occupies 359 linear feet of berth, 3,600 square feet of land and 7,968 square feet of water described and which is outlined on the Marina Small Craft Harbor map dated May 15, 1962, a copy of which is attached hereto, marked Exhibit A, and incorporated in the terms of this Assignment. (Hereafter referred to the "Leased Premises".)

AND, WHEREAS, Assignee has authorized a loan to Borrower in the amount of \$368,900.00 due and payable on or before July 31, 2021;

AND, WHEREAS, the loan benefits both Borrower and Lessor, in that loan funds are to be used in whole or in part for repair of the leased premises and for the benefit of the Activities conducted on the leased premises;

NOW, THEREFORE, for and in consideration of the matters herein above stated and of disbursement of the loan or any part thereof, Borrower, with the consent of Lessor, hereby assigns, transfers, and conveys to Assignee the lease above described, to have and to hold the same for and during the remainder of the term mentioned in the lease and all renewals and extensions of said term.

A. Borrower and Lessor further Covenant and Agree:

1. Borrower is not now in default in the performance of the lease, and Borrower and Lessor will each perform the covenants and conditions required of him by the lease for the term of the loan and any extensions, substitutions, or renewals of it.
2. Except as otherwise herein permitted, Borrower and Lessor will not, alone or by agreement between them, modify or terminate the lease without consent of Assignee.
3. In the event Borrower defaults on the lease, Lessor shall have the right to terminate the lease in accordance with its terms, provided however Lessor shall first give Assignee 10 days written notice of the default. Assignee shall then first have the right to transfer and assign the lease and borrower's rights therein to a party who is mutually satisfactory to the Assignee and Lessor and upon assignment the obligations of the lease shall be binding on the transferee.
4. In the event Borrower defaults in the performance of any of his obligations on the aforesaid loan, any renewal, substitution, or extension thereof, or any agreement made in connection therewith, including this agreement, then Assignee, may, at its option, without notice and using such force as may be necessary, enter the leased premises and do any one or more of the following:

- a. Remove all property of Borrower that is hypothecated as collateral for loan.
- b. Sell the property referred to in Paragraph 4a on the leased premises.
- c. Transfer and assign the lease and Borrower's rights therein to a party who is mutually satisfactory to Assignee and Lessor, and upon Assignment the obligations of the lease shall be binding on the transferee.

In the event Assignee shall exercise any of the options provided in Paragraphs 4a, 4b, or 4c, it shall have no obligation to pay rent or any reasonable rental value accruing during the period of its possession of the premises.

- 5. None of the property required to be hypothecated as collateral for the aforesaid loan constitutes fixtures or real property.
- B. Lessor and Borrower hereby agree that the rights of assignee hereunder and under a Lease Agreement dated July 25, 1991 between the Lessor and Borrower shall be cumulative and not alternate and shall be in addition to any and all rights which Assignee may have as a matter of law.
- C. Lessor represents and warrants that it holds title to the leased premises and that it has full power and authority to enter into this agreement.
- D. This agreement shall be binding upon and inure to the benefit of the personal representatives, successors and assigns of the parties hereto.

Dated _____, 19____.

The Golden Gate Yacht Club
Lessee

By: Karen McManus
Karen McManus, Commodore

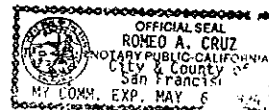
By: Femie King
Femie King, Secretary

State of California)
County of SAN FRANCISCO)

On JUNE 10, 1992 before me, a Notary Public in and for the State of California, personally appeared KAREN McMANUS; FEMIE KING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Romero



City and County of San Francisco
Recreation and Park Commission

APPROVED AS TO FORM:
Louise Renne, City Attorney

By: Wendy E. Lusk
Deputy City Attorney

Lessor

By: Shauna Marie Rose
Shauna Marie Rose, Secretary
Date 7/25/91
Resolution No. 16175

By: Mary Burns
Mary Burns, General Manager,
Recreation and Park Department

for Second Reading
of Supervisors, San Francisco
MAR 26 1984

Supervisors Britt, Houghsbo, Kennedy,
Molinar, Molinari, Nelder, Reame, Silver,
Ward
Supervisor ADEN

Clerk

L. Taylor

4/11/84
Approved

53

Read Second Time and Finally Passed
Board of Supervisors, San Francisco
APR 2 1984

Ayes: Supervisors Britt, Houghsbo, Kennedy,
Molinar, Molinari, Nelder, Reame, Silver,
Walker, Ward
None Supervisor ADEN

Absent: Supervisor HONIGSMO

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

Clerk

L. Taylor

William A. Harrison
Mayor

Supervisors on the progress of the City and County toward the
implementation goals established by Section 12B.7 of this Ordinance,
together with an identification of problems and specific
recommendations for improving the City and County's performance.

(C) The Director may require such reports, information and
documentation from contractors, bidders, contract awarding
authorities and the head of any department, division, or office
of the City and County, as are reasonably necessary to determine
compliance with the requirements.

(D) In addition to the requirements set forth in Section
12B.14(C), awarding authorities shall maintain accurate records
for each contract awarded, its dollar value, the nature of the
goods or services to be provided, the name of the contractor to
award the contract, the efforts made by said contractor to
solicit bids from and award the contract to MBEs and WBEs and all
subcontracts awarded by the contractor, identifying for each its
dollar value, the nature of the goods or services provided, and
the name of the subcontractor.

(E) Each contract awarding authority is to include in its
Departmental Management by-Objectives, objective measures with a
quarterly target for the total dollar amount awarded to MBEs and
to WBEs.

(F) Contractors and consultants must negotiate an
affirmative action agreement with the Director which shall set
the requirements of the Human Rights Commission in conformance
with Chapter 12B of the Administrative Code.

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GEORGE AGOSTI
CITY ATTORNEY
SAN FRANCISCO

(D) Whenever the Director finds after investigation that
contract awarding authority has failed to comply with the
provisions of this Ordinance, a written Finding of Noncompliance
within a specified time period specifying the nature of the
noncompliance shall be transmitted to the contract awarding
authority, to the Commission and to Mayor; and

The Director shall attempt to resolve any noncompliance
through conference and conciliation. Should such attempt fail to
resolve the noncompliance, the Director shall transmit a copy of
the Finding of Noncompliance along with a finding that
conciliation was attempted and failed to the Commission which
shall notify the contract awarding agency to take appropriate
action to secure compliance.

(E) When the contract awarding official has been
determined to be culpable in the Finding of Noncompliance, that
factor shall be communicated to the Mayor or the Chief
Administrative Officer.

(F) If the Director has reason to believe that any person
has knowingly made, filed, or caused to be filed with the City
any materially false or misleading statement or report made in
conformance with this Ordinance, the Director shall report that
information to the City Attorney for appropriate action under the
San Francisco Municipal Code.

Sec 12D.15. Revise.

(A) The Commission shall review and report to the Board of

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with these requirements of minority and women employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority and women bidders on the basis of substantially equal proposals in the light most favorable to said minority and women businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid.

Sec. 12D.12. Utilization Requirements -- Consultants, Professional Services and Other Contracts.

(A) For all contracts for consultants or other services, the contract awarding authority shall furnish the Director with an informational copy of all bid conditions and requests for proposals, if any, along with a statement identifying all funds provided by any other governmental agency which will be used in payment of the contract. Prior to solicitation of bids or proposals, the Director may make recommendations to the contract awarding authority with respect to provisions pertaining to MBE and WBE utilization.

(B) Contracts for consultant or other services, the estimated cost of which exceeds ten thousand dollars (\$10,000), shall be awarded and administered in accordance with the following standards and procedures:

1. The contract awarding agency shall solicit bids or

Proposals from MBEs and WBEs certified to provide the specified services. MBEs and WBEs shall be provided every practical opportunity to submit bids or proposals;

2. Bids and proposals shall identify the participation MBEs and WBEs to be utilized in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the bid or proposal;

3. During the term of the contract any failure to comply with the levels of MBE and WBE participation identified in the bid or proposal shall be deemed a material breach of contract. (C) All consultant selection panels and awarding officers shall give appropriate consideration to the utilization goals of the contract awarding authority in evaluating, recommending and selecting contractors. The Director may assist such panels and the department staff in evaluating the impact of their recommendation or selection on achievement of the contract awarding authority's utilization goals.

(D) All City and County departments, commissions, boards, officers and employees, in the deposit of City and County funds and performance of their other official duties, shall make every good faith effort to equitably utilize the services of Minority Business Enterprises and Women Business Enterprises. Such services shall include, but are not limited to, the financial services of banks, savings and loan companies and other

and not in an amount of \$30,000 or greater for architects and engineers shall contain the following clause:

Contractor agrees that he/she shall actively solicit the employment of minority group members and women. Contractor further agrees that he/she shall actively solicit bids for the subcontracting of goods or services from qualified minority and women businesses.

Contractor shall furnish evidence of compliance with these requirements of minority and women employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority and women bidders on the basis of substantially equal proposals in the light most favorable to said minority and women businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid.

(C) All architect and engineer selection panels and awarding officers shall give appropriate consideration to the utilization goals of the contract awarding authority in evaluating, recommending and selecting contractors. The Director may assist and direct such panels and the department staff in evaluating the impact of their recommendation or selection on achievement of the contract awarding authority's utilization

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GOVERNMENT
OPERATIONS

goals.

Sec. 12D.10. Utilization Requirements Purchasing Contracts.

All contracts awarded by the City Purchaser for the purchase of materials, equipment or supplies covered by purchase orders and term purchase agreements shall be awarded and administered in accordance with the following standards and procedures:

(A) The City Purchaser shall solicit and obtain bids and quotations from MBEs and WBEs certified by the Commission to supply the required materials, equipment, supplies or services. (B) For purchases upon quotations of five thousand dollars (\$5,000) or less, the Purchasing Department shall grant preference to MBEs and WBEs pursuant to the City Purchaser's authority under Section 21.5 of the Administrative Code to accept other than the lowest quotations if the City Purchaser believes that the public interest would best be served.

(C) For expenditures for the purchase of materials, supplies, equipment or contractual services, estimated by the City Purchaser to exceed five thousand dollars (\$5,000), the City Purchaser shall grant preference to MBEs or WBEs even when the bid is other than the lowest price or unit cost in accordance with Section 12D.8.B(3) this Ordinance and pursuant to the City Purchaser's authority under Section 21.6 of the Administrative Code.

(D) The City Purchaser shall maintain, with the assistance

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CLARENCE ACHOST
CITY ATTORNEY
ADMINISTRATIVE SERVICES
AND FINANCIAL OFFICE
1000 10TH ST
DENVER, CO 80202

1 specifications shall require the bidder to keep records of such
2 efforts adequate to permit a determination of compliance with the
3 specifications;

4 2. contracts shall incorporate this Ordinance by
5 reference and shall provide that the failure of any bidder,
6 contractor or subcontractor to comply with any of the
7 requirements shall be deemed a material breach of contract;

8 3. contracts shall require the contractor during the
9 term of the contract to:

10 (a) fulfill the MBE and WBE participation commitments
11 submitted with their bid or proposal;

12 (b) continue to make efforts to utilize MBEs and WBEs;

13 (c) require that their subcontractors make every effort
14 to utilize MBEs and WBEs; and,

15 (d) maintain records reasonably necessary for
16 monitoring their compliance with the provisions of this Ordinance.

17 4. Whenever contract supplements, amendments or change
18 orders are made which cumulatively increase the total dollar
19 value of the contract by more than ten percent (10%) of the
20 dollar value of the original contract, the contractor shall
21 comply with those provisions of this Ordinance which applied to
22 the original contract with respect to the supplement, amendment
23 or change order.

24 (D) All contracts or other agreements between the City and
25 County of San Francisco and other governmental or
26 quasi-governmental agencies, or public corporations, where such

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GEORGE AGOSTINI
CITY ATTORNEY
400 GOLD GATE AVENUE
SAN FRANCISCO, CALIF. 94102

agencies receive money from or through the City and County for
the purpose of contracting with businesses to perform public
improvements, shall require such agencies to comply with the
provisions of this Ordinance in awarding and administering such
contracts.

(E) For the purpose of determining Minority and Women
Business Enterprise participation:

Contracts or subcontracts awarded to joint ventures in
which one or more MBEs or WBEs are combined with one or more
businesses which are not Minority or Women Business Enterprises
shall be deemed to be awarded to Minority or Women Business
Enterprises only to the extent of the Minority or Women Business
Enterprise participation in the joint venture.

Sec. 12D.9. Utilization Requirements - Public Works.

(A) For all public works contracts for construction and
for architectural and engineering services, the contract awarding
authority shall furnish the Director with an informational copy
of all bid conditions and requests for proposals, along with a
statement identifying all funds provided by any other
governmental agency which will be used in payment of the
contract. Prior to solicitation of bids or proposals, the
Director may make recommendations to the contract awarding
authority with respect to provisions pertaining to MBE and WBE
utilization.

(B) Contracts for construction, the estimated cost of

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annual goals, consistent with Section 120.7. These goals shall be expressed in terms of a percentage of the total dollar value of all prime contracts to be awarded by the City and County. With the concurrence of the Commission, the Director may establish goals separately for categories of contracts, such as public works construction, architects and engineers, leases, franchises and concessions, professional services and purchasing contracts. Goals shall be reasonably achievable, and shall be based upon, but are not limited to, the following factors:

1. the degree to which such annual goals will contribute to the achievement of the ultimate goal of eliminating the effects of historic discrimination and increasing the participation of MBEs and WBEs in City contracts as set forth in Section 120.3 of this Ordinance (Declaration of Policy).
2. the level of participation of MBEs and WBEs in contracts awarded by other governmental agencies in the San Francisco Bay Area which have utilized MBE and WBE requirements;
3. the availability of MBEs and WBEs which are capable of providing goods and services to the City and County while actively encouraging the development of Minority and Women Business Enterprises;

(B) The Director, with the advice of each contract awarding authority, shall recommend to the Commission the establishment of separate annual goals for utilization of MBEs and WBEs by that awarding authority.

See 120.8. Utilization Requirements -- General.

GEORGE AGOSTINI
CITY ATTORNEY
1000 BAY CITY AVENUE
SAN FRANCISCO, CALIF. 94109

(A) The City and County of San Francisco shall have the authority to:

1. take action, within the limitations of State and Federal law, to assist MBEs and WBEs to meet bonding, insurance and other fee-related requirements; such action could include the creation of a special revolving fund;
2. establish a central office where all bids, requests for proposals and solicitations will be listed and kept current;
3. provide technical assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City and County contracts.

(B) Contract awarding authorities shall:

1. solicit and obtain bids and proposals from MBEs and WBEs on all solicitations, or document their unavailability;
2. set aside ten percent (10%) of the total dollar value of all contracts to be awarded by each contract awarding agency for MBEs and set aside two percent (2%) for WBEs for the fiscal year with the provision that a joint venture can be credited to the extent of Minority or Women Business Enterprise participation in the joint venture;
3. extend a five percent (5%) preference for a local business (except where prohibited by State or Federal law or regulation) and a five percent (5%) preference for a minority or women bidder or proposer in the award of all bids and contracts and in the composition of rating scales; however, local minority or women bidders shall receive a ten percent (10%) preference;

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1 Tenants shall mean and include a person or tenant taking
2 possession of property under a lease as herein provided, and
3 further include a lessee under a bailment agreement providing a
4 rental for personal property.

5 "Local Business" shall mean a business firm with fixed
6 offices or distribution points located within the boundaries of
7 the City and County of San Francisco and listed in the Permits
8 and License Tax Paid File with a San Francisco business street
9 address. Post Office box numbers or residential addresses may
10 not be used solely to establish status as a "Local Business".

11 "Minority", "Minorities", or "Minority person" shall mean
12 ethnic persons of color including American Indians, Asians
13 (including, but not limited to, Chinese, Japanese, Koreans,
14 Pacific Islanders, Samoans, and Southeast Asians), Blacks,
15 Filipinos and Hispanics.

16 "Minority Business Enterprise (MBE)" shall mean an
17 independent and continuing business for profit, which performs a
18 commercially useful function, and which is owned and controlled
19 by one or more minority persons residing in the United States or
20 its territories.

21 "Owned", for purposes of determining whether a business is
22 a minority business enterprise or women business enterprise,
23 shall mean that the minorities or women as the context requires,
24 shall possess an ownership interest of over fifty percent (50%)
25 of the business, and shall:

1. Possess incidents of ownership, such as an interest in profit and loss, equal to at least

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(the required ownership interest percentage) and
2. Contain no capital, equipment and expertise
to the business equal to at least the required
ownership percentage.

Ownership shall be measured as though not subject to the
community property interest of a spouse. It both spouses own
that (a) only one spouse participates in the management of the
business, and (b) the non-participating spouse relinquishes
control over his/her community property interest in the subject
business.

"Person" includes one or more individuals, partnerships,
associations, organizations, trade or professional associations,
corporations, cooperatives, legal representatives, trustees,
trustees in bankruptcy, receivers, or any group of persons,
including any official, agent or employee of the City and County
of San Francisco.

"Subcontractor" shall mean any business providing goods or
services to a contractor for profit, if such goods or services
are procured or used in fulfillment of the contractor's
obligations arising from a contract with the City and County of
San Francisco.

"Women Business Enterprise (WBE)" shall mean an independent
and continuing business for profit which performs a commercially
useful function and which is owned and controlled by one or more
women residing in the United States or its territories.

Sec. 12D.6. Powers and Duties.

(A) In addition to the duties and powers given to the

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GEORGE AGREST
1000 CALIFORNIA STREET
SAN FRANCISCO, CALIF. 94108
SAN FRANCISCO, CALIF. 94108

1 In this area and that can erode trust in government
2 and detrimentally affect the peace and harmony that
3 must exist among the richly diverse population of
4 the City and County of San Francisco; and
5 The Board further finds it is necessary, in complying
6 with the intent of this Ordinance, that within one hundred and
7 twenty (20) days of its enactment, appropriate rules,
8 regulations and procedures be developed, adopted, and publicly
9 promulgated by the Human Rights Commission; and that the public
10 and affected agencies have the opportunity to provide input to
11 and comment on the regulations prior to their formal adoption.

12 Sec. 12D.3. Declaration Of Policy.

13 It is the policy of the City and County of San Francisco to
14 ensure the full and equitable participation by Minority Business
15 Enterprises and Women Business Enterprises, and by local
16 businesses, as prime contractors in the provision of goods and
17 services to the City and County on a contractual basis. The
18 thrust of this program is to ensure the award of prime contracts
19 to MBE/WBEs and local businesses and to develop their status and
20 capability as prime contractors of the City and County of San
21 Francisco. The ultimate goal of this Ordinance is to eliminate
22 the effects of historic discrimination which is manifested in the
23 present low levels of MBE and WBE participation in City
24 contracting, and to offset some of the economic disadvantages
25 faced by local businesses.

26 3/26/84

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1 The City will rely on the relationship between the
2 percentages of minorities and women in the community and their
3 respective shares of city contracts as a measure of the
4 effectiveness of this Ordinance in remedying the effects of af-
5 mentioned discrimination. The immediate aim is to achieve annual
6 City and County-wide goals of not less than thirty percent (30
7 for Minority Business Enterprises and not less than ten percent
8 (10%) for Women Business Enterprises.

9 The City and County of San Francisco is utilizing a
10 preference for local business in the award of City and County
11 contracts in order to encourage business to locate and remain in
12 San Francisco and thereby increase the number of employed persons
13 living in San Francisco. The additional cost to businesses
14 located in San Francisco has been estimated as high as 15%: a
15 preference of 5% for local businesses bidding on City contracts
16 constitutes "good faith" on the part of the City in support of
17 businesses which contribute to the economic health of the City.
18 The percentage is a reasonable expression of that good faith,
19 does not unduly hamper non-local businesses in the contracting
20 process, and parallels the preferences awarded in many other
21 local jurisdictions.

22 Sec. 12D.4. Scope.

23 The provisions of this Ordinance shall apply to all
24 contracts awarded by the City and County and services utilized
25 by the City and County except as may be hereinafter specifically
26 exempted, and shall be liberally construed to accomplish its

3/26/84

COUNCIL AGENDA
CITY ATTORNEY
DATE FORWARDED: 3/26/84

SEC. 12B.3. HUMAN RIGHTS COMMISSION EMPOWERED. The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 hereof. (Added by Ord. 261-66, App. 10/21/66)

SEC. 12B.4. AFFIRMATIVE ACTION GUIDELINES. The following affirmative action guidelines shall apply to all contracts for or on behalf of the City and County of San Francisco, as provided in Section 12B.1 hereof.

In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission.

The Human Rights Commission may also require contractors, subcontractors and suppliers to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying affirmative action program.

(a) Affirmative action nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months next succeeding the date of approval by the Human Rights Commission. Contractors, subcontractors and suppliers who are members in good standing of a trade association which has negotiated an affirmative action nondiscrimination program with the Human Rights Commission may make this association program their commitment for the specific contract upon approval of the Human Rights Commission. The process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months next succeeding the date of approval by the Human Rights Commission. Trade associations shall provide the Human Rights Commission with a list of members in good standing in such association. The Human Rights Commission shall annually supply contracting agencies of the City and County with a list of contractors, subcontractors and suppliers who have developed approved affirmative action nondiscrimination programs.

(b) The awarding agency shall be responsible for notifying all prospective bidders of the requirements of this Section and also when requested by Human Rights Commission, for notifying the Human Rights Commission of each contract which is being proposed for award to public bid.

(c) The proposed affirmative action program required to be submitted under Section 12B.4 hereof, and the pre-bid or pre-award conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

- (1) Apprenticeship where approved programs are functioning, and other on the job training for nonapprenticeable occupations;
- (2) Classroom preparation for the job when not apprenticeable;
- (3) Preapprenticeship education and preparation;
- (4) Upgrading training and opportunities;
- (5) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall

require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City and County of San Francisco for such work; and

(6) The entry of qualified minority journeymen into the industry.

(d) Affirmative action nondiscrimination agreements resulting from the proposed affirmative action programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Human Rights Commission at its discretion. In addition, the Human Rights Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this ordinance.

(e) Any job training or education program using the funds, facilities, or services of the City and County of San Francisco which, in the judgment of the Board of Supervisors or the Human Rights Commission, can make a contribution to the implementation of this ordinance shall submit reports to the Human Rights Commission as requested and shall be required to cooperate with the Human Rights subcontractors, suppliers and unions and with the Human Rights Commission for the effectuation of the affirmative action nondiscrimination programs developed under this ordinance. (Amended by Ord. 498-75, App. 1/5/75)

SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES. This Chapter shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors, subcontractors or suppliers engaged in the performance of City and County contracts.

(a) The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this ordinance. (Amended by Ord. 340-68, App. 12/6/68)

SEC. 12B.6. SEVERABILITY. If any clause, sentence, paragraph or part of this Title or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this title. (Amended by Ord 261-66, App. 10/21/66)

color, ancestry, national origin, age, sex, sexual orientation or disability. Any solicitations or advertisements that satisfy similar requirements under federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(e) The contractor, subcontractor or supplier will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union of workers' representative of the contractor's, subcontractor's or supplier's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor, subcontractor or supplier will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the awarding authority, the Fair Employment Practices Commission or the San Francisco Human Rights Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this contract, and on request provide evidence that he or she has or will comply with the nondiscrimination provisions of this contract.

(g) That contractor, subcontractor or supplier shall be deemed to have breached the nondiscrimination provisions of this contract upon:

(1) A finding by the director of the San Francisco Human Rights Commission, or such other official who may be designated by the Human Rights Commission, that contractor, subcontractor, or supplier has willfully violated such nondiscrimination provisions; or

(2) A finding by the Fair Employment Practices Commission of the State of California that a contractor, subcontractor or supplier has violated any provision of the Fair Employment Practices Act of California or the nondiscrimination provisions of this contract; provided, that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, or the Fair Employment Practices Commission, the awarding authority shall notify the contractor, subcontractor or supplier that unless he or she demonstrates to the satisfaction of the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, within such reasonable period as the Human Rights Commission shall determine, that the violation has been corrected, action will be taken as set forth in subparagraph (h) and (i) hereof.

(4) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with

SEC. 12B.2. NONDISCRIMINATION PROVISIONS OF CONTRACT. Every contract or subcontract for or on behalf of the City and County of San Francisco, as provided in Section 12B.1 hereof, shall contain the provisions following which shall be known as the nondiscrimination provisions of such contract.

In the performance of this contract, the contractor, subcontractor or supplier agrees as follows:

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, disability or AIDS/ARC. Discrimination on the basis of sex includes sexual harassment as defined in Section 6.9-25(b) of this Code. The contractor, subcontractor or supplier will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, sexual orientation, disability or AIDS/ARC. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) Except as in this Section provided or in cases where the law compels or provides for such action any provisions in any contract agreement or undertaking entered into on or after the effective date of this Chapter which prevent or tend to prevent the employment of any person solely by reason of his or her age, who has attained the age of 40 years and has not attained the age of 65 years shall be null and void.

(c) The contractor, subcontractor or supplier shall provide reasonable accommodation for qualified applicants for employment and for qualified disabled employees. Said contractor, subcontractor or supplier need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or would present a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor, subcontractor or supplier will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to race, creed,