

File No. 211133

Committee Item No. 4

Board Item No. 1

# COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date January 12, 2022

Board of Supervisors Meeting Date February 1, 2022

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Completed by: Brent Jalipa Date January 7, 2022

Completed by: Brent Jalipa Date January 18, 2022

1 [Lease of City Property - Dolphin Swimming and Boating Club - 502 and 504 Jefferson Street  
2 - Gross Receipts Rent]

3 **Ordinance approving a lease between the City and County of San Francisco and**  
4 **Dolphin Swimming and Boating Club, a California non-profit corporation, for City**  
5 **property located at 502 and 504 Jefferson Street, with an annual rent of 10% of all gross**  
6 **receipts that are not derived from its annual Dolphin Day and 4% of all gross receipts**  
7 **that are derived from its annual Dolphin Day, for a term of 25 years with an option to**  
8 **extend for 24 years, and general public access requirements; waiving the**  
9 **Administrative Code’s market rent determination requirement that otherwise would**  
10 **apply to this lease; and affirming the Planning Department’s determination under the**  
11 **California Environmental Quality Act.**

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

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

20 Section 1. Background and Findings.

21 (a) The premises at 502 and 504 Jefferson Street (“Original Premises”) at the eastern  
22 portion of Aquatic Park is a recreational swimming and boating clubhouse, dock, and beach,  
23 under the jurisdiction of the Recreation and Park Commission (“Commission”) and managed  
24 by the Recreation and Park Department (“Department”).

25 (b) Under Chapter 88 of the California Statutes of 1923, a copy of which is on file with  
the Clerk of the Board of Supervisors in File No. 211133, the State of California granted the

1 Original Premises to City for use in conjunction with other City property used as an aquatic  
2 park.

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

5 (d) Under a lease dated as of July 1, 1979, as modified by a first amendment dated as  
6 of July 1, 1979 (as amended, the "Original Lease"), a copy of which is on file with the Clerk of  
7 the Board of Supervisors in File No. 211133, Dolphin Swimming and Boating Club, a  
8 California non-profit corporation ("Tenant"), leases the Original Premises for use as a non-  
9 profit recreational swimming- and boating-oriented recreational club.

10 (e) The Original Lease expires June 30, 2028. The Tenant and the Department have  
11 negotiated a new 25-year lease ("New Lease"), a copy of which is on file with the Clerk of the  
12 Board of Supervisors in File No. 211133, for the Original Premises and a portion of adjacent  
13 submerged lands (the "Dock Area") under the jurisdiction of the Port Commission ("Port") on  
14 which the clubhouse dock extends from the Original Premises, as described in a  
15 Memorandum of Understanding between the Commission and the Port dated as of  
16 September 20, 2021 ("MOU"), a copy of which is on file with the Clerk of the Board of  
17 Supervisors in File No. 211133.

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

25 ///

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

3 (h) On June 17, 2021, the Commission adopted Resolution No. 2106-005 to  
4 recommend that the Board of Supervisors approve the New Lease. A copy of said Resolution  
5 is on file with the Clerk of the Board of Supervisors in File No. 211133.

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

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

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

15 Section 3. Environmental Findings.

16 The Planning Department has determined that the actions contemplated in this  
17 ordinance comply with the California Environmental Quality Act (California Public Resources  
18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
19 Supervisors in File No. 211133. The Board affirms this determination.

20 Section 4. Approval of New Lease.

21 (a) The Department's General Manager is authorized to execute and deliver the New  
22 Lease, to perform all acts required of the City under the New Lease, and to enter into  
23 amendments or other modifications to the New Lease (including, without limitation, attaching  
24 and modifying its exhibits) that the General Manager, in consultation with the City Attorney,  
25 determines are in the best interest of the City, do not materially decrease the City's benefits,

1 do not materially increase the City's obligations or liabilities, do not authorize any activities  
2 without pursuing all required regulatory and environmental review and approvals, and are  
3 necessary or advisable to complete the transactions which the New Lease contemplates and  
4 effectuate the purpose and intent of this ordinance.

5 (b) Within 30 days of the New Lease being fully executed by all parties, the  
6 Department shall provide the final lease agreement to the Clerk of the Board of Supervisors  
7 for inclusion in File No. 211133, the official file for this ordinance.

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

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13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By:           /s/            
16 CAROL WONG  
17 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Lease of City Property - Dolphin Swimming and Boating Club - 502 and 504 Jefferson Street - Gross Receipts Rent]]

**Ordinance approving a lease between the City and County of San Francisco and Dolphin Swimming and Boating Club, a California non-profit corporation, for City property at 502 and 504 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from its annual Dolphin Day and 4% of all gross receipts that are derived from its annual Dolphin Day, a term of 25 years, an option to extend for 24 years, and general public access requirements; waiving the Administrative Code’s market rent determination requirement that otherwise would apply to this lease; and affirming the Planning Department’s determination under the California Environmental Quality.**

Existing Law

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

Amendments to Current Law

If adopted, the proposed ordinance would authorize the lease of City property at 502 and 504 Jefferson Street (“Premises”) to Dolphin Swimming and Boating Club (“Tenant”) without a Market Rent determination.

Background Information

The Tenant currently leases the Premises under a lease that is scheduled to terminate on June 30, 2028. The Tenant is planning substantial improvements to the Premises (subject to City’s approval of the final designs, plans and specifications for them as required in the Lease) and would like a lease term that matches the useful life of those anticipated improvements. Because the Premises can only be used for aquatic recreational purposes and the new lease requires the Tenant to provide general public access to the Premises, there is not available and relevant data to determine the Market Rent of the lease.

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<p><b>Item 4</b> <b>File 21-1133</b></p>	<p><b>Department:</b> Recreation &amp; Parks</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would: (a) approve a new lease with the Dolphin Swimming and Boating Club (Dolphin Club), (b) waive market rent determination required by Administrative Code Section 23.30, and (c) affirm the Planning Department’s determination that the lease is not subject to review under the California Environmental Quality Act.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Dolphin Swimming and Boating Club is a non-profit membership organization that operates a clubhouse at Aquatic Park. Their original lease with the City expires in 2028.</li> <li>• Under the proposed lease, the Dolphin Club is responsible for maintenance, utilities, and taxes. The Dolphin Club is also responsible for paying for the capital improvements, which are expected to have a useful life of 30 years. The current lease, which expires in June 2028, is being terminated early to allow for the proposed lease with a longer term in order to amortize the cost of capital improvements. The scope, timeline, and cost of the improvements are not yet final, but are currently expected to cost approximately \$2.75 million. The final set of capital improvement projects, as well as any associated contracts, are subject to approval by the Recreation and Parks General Manager.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Consistent with the current lease, the proposed lease provides the City 10% of the Dolphin Club’s revenues as rent for the City property. However, the proposed lease reduces the City’s share of the Dolphin Club’s revenue from 10% to 4% for any revenue raised for Dolphin Day, the Dolphin Club’s annual fundraiser that it intends to start during the proposed lease. The foregone revenue in the new lease rent structure are projected to be \$300 to \$600 per year.</li> <li>• The Department expects \$80,000 per year in annual rent revenues, which total \$2.5 million over the initial 25-year term.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The lease only requires the Dolphin Club to be open for public access three days per week. A similar lease for the South End Rowing Club, next door to the Dolphin Club, provides for alternating three days of public access, such that the public may access one of the two sites six days per week (not Sunday).</li> <li>• As noted above, the proposed ordinance waives the requirement for market rate rent. According to the Recreation and Parks Director of Property, the market rate rent is not appropriate because the premises are partially open to the public three days per week and membership is open to the public.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• The proposed lease terms are consistent with a similar lease for South End Rowing Club approved by the Board of Supervisors in July 2019 (File 19-0463), we therefore recommend approval of the proposed ordinance.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that have anticipated revenues of \$1 million or more are subject to Board of Supervisors approval.

**BACKGROUND****Current Lease**

The Recreation and Parks Department has a lease with the Dolphin Swimming and Boating Club for premises around Aquatic Park. The original lease was signed in July 1979 and expires in June 2028.

**Dolphin Swimming and Boating Club**

The Dolphin Swimming and Boating Club is a non-profit membership organization that operates a clubhouse at Aquatic Park. The Dolphin Club organizes swimming, boating, and other athletic activities and has a weight room and sauna. The premises are open to the public three days per week for a day use fee, but otherwise access is restricted to dues-paying members.<sup>1</sup> Going forward, each year, the Dolphin Club will host an annual fundraiser, Dolphin Day.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would: (a) approve a new lease with the Dolphin Swimming and Boating Club (Dolphin Club), (b) waive market rent determination required by Administrative Code Section 23.30, and (c) affirm the Planning Department's determination that the lease is not subject to review under the California Environmental Quality Act.

**Lease Terms**

Exhibit 1 below shows the proposed lease terms.

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<sup>1</sup> According to the Recreation and Parks Department, the Dolphin Club had 2,010 day-use visitors in 2018 and 2,755 day-use visitors in 2019. The Dolphin Club currently has 1,822 members.



**Exhibit 1: Proposed Lease Terms**

<b>Premises</b>	Building, dock, and land on and around 502 & 504 Jefferson Street
<b>Term</b>	25 years, One 24-year extension at Lessee's option
<b>Rent</b>	10% of gross receipts, Except for annual Dolphin Day, on which the City would collect 4% of gross receipts
<b>Maintenance</b>	Tenant responsibility
<b>Capital Improvements</b>	Tenant responsible for cost; owned by City
<b>Utilities</b>	Tenant responsibility
<b>Taxes</b>	Tenant responsibility
<b>Security Deposit</b>	None
<b>Public Access</b>	Monday, Wednesday, Friday
<b>Membership Fees</b>	Day Use: \$10 Initiation: \$127 Locker: \$100 Annual Membership: \$542; Allowable escalation: Annual CPI adjustment

Source: Proposed Lease

As noted above, the proposed lease has an initial term of 25 years, with an optional 24-year extension exercisable at the tenant's discretion. The City has the right to reject the extension. The premises consist of land granted by the State to the City. According to the Recreation and Parks Department, the State's grant of the land limits leasing to less than 50 years.

The proposed lease adds land under the dock that is under the jurisdiction of the Port, which is documented in a Memorandum of Understanding between the Port and the Recreation and Parks Department. According to Recreation and Parks staff, this land is currently used to support the dock at the Dolphin Club and the proposed lease properly documents that use. The public access schedule and fee structure is not changed in the proposed lease.

**City and Tenant Responsibilities**

As shown above, the Dolphin Club is responsible for maintenance, utilities, and taxes. Any changes to the organization's bylaws, membership policies, public access schedule or fee are subject to the Recreation and Parks Commission's approval. The proposed lease also states that the Dolphin Club must comply with the Recreation and Parks Department's policy for private organizations' use of Department property. That policy requires public access to the property, non-discrimination in accepting members, and allows for fees to be charged for use of the property.

## Capital Improvements

According to the proposed lease, the Dolphin Club intends to undertake capital improvements, including upgrading the building foundation and systems, renovation of the building's galley and weight room areas, and other unspecified improvements. The Dolphin Club is responsible for paying for the capital improvements, which are expected to have a useful life of 30 years. The current lease, which expires in June 2028, is being terminated early to allow for the proposed lease with a longer term in order to amortize the cost of the capital improvements. The proposed lease has an initial term of 25 years, which is less than the useful life of the expected capital improvements.

The scope, timeline, and cost of the improvements are not yet final but are currently expected to cost approximately \$2.75 million, of which approximately \$2 million has been raised. The final set of capital improvement projects, as well as any associated contracts, are subject to approval by the Recreation and Parks General Manager. Under the proposed lease, these contractors are subject to the City's prevailing wage requirements, but not competitive bidding.

### FISCAL IMPACT

Consistent with the current lease, the proposed lease provides the City 10 percent of the Dolphin Club's revenues as rent for the City property. However, the proposed lease reduces the City's share of the Dolphin Club's revenue from 10 percent to 4 percent for any revenue raised for Dolphin Day, the Dolphin Club's annual fundraiser that it intends to start during the proposed lease. Dolphin Day revenues are expected to be \$5,000 - \$10,000 per year so the foregone revenue in the new lease rent structure are projected to be \$300 to \$600 per year.

According to the Recreation and Parks Director of Property, the Department expects \$80,000 per year in annual rent revenues from the new lease. Assuming 2 percent annual inflation over the initial 25-year term, the proposed lease would generate approximately \$2.5 million in total revenues.<sup>2</sup>

### POLICY CONSIDERATION

#### Public Access

Under City Charter Section 4.113, the Recreation and Parks Department must promote and foster a program of organized public recreation of the highest standards. According to Recreation and Parks Commission policy, Recreation and Parks Department property leased to private organizations is to be accessible to the public on the same terms as the members of the private organization. However, the lease only requires the Dolphin Club to be open for public access three days per week. A similar lease for the South End Rowing Club, next door to the Dolphin

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<sup>2</sup> According to the Department, FY 2018-19 revenues were \$75,869, FY 2019-20 revenues were \$82,076, and FY 2020-21 revenues were \$66,392.

Club, provides for alternating three days of public access, such that the public may access one of the two sites six days per week (not Sunday).

**Market Rate Rent Determination Waived**

Administrative Code Section 23.30 requires the Recreation and Parks Department to determine the market rate rent of City-owned property. As noted above, the proposed ordinance waives this requirement. According to the Recreation and Parks Director of Property, market rate rent is not appropriate because the premises are partially open to the public three days per week and membership is open to the public.

**Recommendation**

The proposed lease terms are consistent with a similar lease for South End Rowing Club approved by the Board of Supervisors in July 2019 (File 19-0463), we therefore recommend approval of the proposed ordinance.

**RECOMMENDATION**

Approve the proposed ordinance.

**LEASE**

**between**

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

**and**

**DOLPHIN SWIMMING AND BOATING CLUB, Lessee**

**For the Lease of**

**the Building at 502 and 504 Jefferson Street and the Associated Launching Dock  
at  
Aquatic Park,  
San Francisco, California**

**MONTH DATE, 2021**

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

**SAN FRANCISCO RECREATION and PARK COMMISSION  
Mark Buell, President  
Kat Anderson, Commissioner  
Laurence Griffin, Commissioner  
Joe Hallisy, Commissioner  
Annie Jupiter Jones, Commissioner  
Vanita Louie, Commissioner  
Larry Mazzola, Commissioner**

**Philip A. Ginsburg, General Manager**

**RECREATION AND PARK DEPARTMENT  
LEASE  
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**EXHIBITS**

- EXHIBIT A-1 – Depiction of Premises, Launching Dock, Adjacent Property Dock, Stair Area, and Cecco’s Garden
- EXHIBIT A-2 – Stair Area License Agreement
- EXHIBIT B – Rules and Regulations
- EXHIBIT C – Port MOU
- EXHIBIT D – Resolution No. 16169a
- EXHIBIT E – State Grant
- EXHIBIT F – Management Plan
- EXHIBIT G – Approved Rates and Charges
- EXHIBIT H – First Source Hiring Agreement
- EXHIBIT I – GASB 87 Checklist

## RECREATION AND PARK DEPARTMENT

### LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of \_\_\_\_\_, 2021, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and DOLPHIN SWIMMING AND BOATING CLUB, a California non-profit corporation ("Lessee").

### RECITALS

**A.** Lessee is a nonprofit organization established in 1877 for the purpose of advancement and enjoyment of rowing, swimming, and other aquatic sports in Aquatic Park and San Francisco Bay, and handball and running. Lessee is open to the public three days a week for a day use fee and annual membership is open to all applicants. Lessee is managed by volunteer members, currently has approximately 1641 members and hosts internationally known swimming and rowing events that are open to the public.

**B.** City and Lessee are parties to a Lease Agreement for Dolphin Swimming and Boating Club at Aquatic Park, dated as of July 1, 1979, as amended by a First Amendment dated as of July 1, 1979 (as amended, the "Existing Lease"), pursuant to which Lessee leases from City the improved real property commonly known as 502 and 504 Jefferson Street, situated at Aquatic Park in the City and County of Francisco and further depicted on Exhibit A to the Existing Lease (the "Original Premises"). The term of the Existing Lease is presently scheduled to expire on June 30, 2028.

**C.** The Original Premises includes the building ("Building") and the portion of the connecting dock from the Building under the jurisdiction of the Recreation and Parks Commission (the "RPD Dock"). Lessee also installed a dock (the "Port Dock") that extends beyond the Original Premises and is over submerged land that is owned by City, operating by and through the San Francisco Port Commission (the "Port Land").

**D.** South End Rowing Club ("SERC") leases the property commonly known as 500 Jefferson Street (the "Adjacent Property"), which is adjacent to the Premises, under a lease between Landlord and SERC dated as of July 1, 2020. Lessee granted SERC a license to use a portion of the Original Premises (the "Stair Area") for non-exclusive emergency egress purposes under a License Agreement dated as of October 23, 2019, and attached as **Exhibit A-2** to this Lease (the "Stair Area License Agreement"). The Stair Area is depicted in the attached **Exhibit A-1**.

**E.** Lessee wishes to make substantial improvements to the Building including, without limitation, Building foundation and system upgrades, renovation of the Building's galley and weight room areas and other related upgrades and renovations (collectively, the "Proposed Improvements") all of which are anticipated to have a projected useful life of at least 30 years. Lessee acknowledges the Proposed Improvements are subject to the General Manager's prior written consent pursuant to **Section 8.1**, and Lessee intends to request that consent once Lessee finalizes its plans for the Proposed Improvements.

**F.** To secure adequate funding for the Proposed Improvements in the interim, Lessee wishes to terminate the Existing Lease (but not the Stair Area License Agreement) and enter into a new lease for the Port Dock and the Port Land (together, the "Port Property") and the Original Premises for an initial term of twenty-five (25) years and an option to extend such term

by twenty-four (24) years, and City is willing to terminate the Existing Lease and enter into such a new lease on the terms and conditions of this Lease.

## AGREEMENT

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

### 1. BASIC LEASE INFORMATION

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

- Lease Reference Date: \_\_\_\_\_, 2021
- Landlord: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation
- Lessee: DOLPHIN SWIMMING AND BOATING CLUB,  
a California non-profit corporation
- Premises (Section 3): The Premises are comprised of (i) the improved real property comprised of a portion of APN 0405-004 commonly known as 502 and 504 Jefferson Street, San Francisco, California (the "Land"), including the building ("Building") and all other improvements presently located on the Land, and the RPD Dock, and (ii) during the term of the Port MOU (as defined in **Article 2**), the Port Property, all as more fully described in **Section 3.1** and generally depicted on **Exhibit A-1**. The Premises are owned by City and, except for the Port Property, under the jurisdiction of its Recreation and Park Department (the "Department").
- Term (Section 4): Twenty-five (25) years, as described in **Section 4**.  
Commencement Date: \_\_\_\_\_, 2021  
Expiration Date: \_\_\_\_\_, 2046
- Extension Option (Section 4.2): Lessee shall have the option to extend the term of this Lease for one twenty-four (24)-year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in **Section 4.2**.
- Base Rent (Section 5) Lessee shall pay Base Rent in the amount of (i) ten percent (10%) of all Gross Receipts (as defined in **Article 2**) that are not derived from its annual Dolphin Day and (ii) four percent (4%) of all Gross Receipts that are derived from its annual Dolphin Day received during the Term, payable in semi-annual installments, on the terms and conditions set forth in **Section 5**; provided, however, that Lessee shall pay the applicable monthly Base Rent amount specified in **Section 25.1** during any holdover period.

Use; Primary Purpose and Incidental Purposes (Section 7.1):	The “Primary Purpose” shall mean providing and operating facilities for aquatic activities and promoting and serving the public interest in the advancement of rowing, running, swimming, and other sports at Aquatic Park, all to be available to and for the benefit of the general public and a public purpose, and the performance of Lessee’s obligations under this Lease. Lessee’s use and operation may include the following uses incidental to the Primary Purpose (the “Incidental Uses”): club office and administrative uses, temporary private event activities, and such additional activities as are reasonably related to the non-profit promotion and development of aquatic sports at Premises and Aquatic Park, as more particularly described in <b>Section 7.1</b> .
Security Deposit:	None required
Notice Address of City (Section 27.1):	Recreation and Park Department Property Management McLaren Lodge Annex 501 Stanyan Street San Francisco, CA 94117 Re: Dolphin Swimming and Boating Club
with a copy to	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate/Finance Team
Address for Delivery of Insurance Certificates (Section 19.3):	1. Hard (paper) copy to first Notice Address listed above. 2. Electronic copy to jackie.suen@sfgov.org. Certificates must clearly indicate the Premises for which the certificate is issued
Key Contact for City:	Jackie Suen
Telephone No.:	415-831-6821
Address for Lessee (Section 27.1):	Dolphin Swimming and Boating Club 502 Jefferson Street San Francisco, California 94109
Key Contact for Lessee:	Dolphin Club President
Email Address:	president@dolphinclub.org
Brokers (Section 27.8):	None
Public Access (Section 7.3):	Lessee shall make the Premises available for public use, as more particularly described in <b>Section 7.3</b> .
Approval Requirements for Fee Increases: (Section 7.5):	Lessee shall not increase the amount of membership dues, Special Assessments, initiation fees or daily use fees charged in connection



with the use of the Premises without the prior written consent of the Commission (as defined in **Article 2**).

Stair Area (Section 3.5):

Lessee must provide SERC with non-exclusive emergency egress access to the Stair Area on the terms of the Stair Area License Agreement, as may be modified with Landlord's prior written consent. If the SERC Lease terminates during the term of this Lease, Lessee must provide any Landlord tenant or licensee at the Adjacent Property with non-exclusive emergency egress access to the Stair Area under a license agreement that is between Lessee and that Landlord tenant or licensee and substantially in the form of the Stair Area License Agreement.

## 2. DEFINITIONS

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

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

**"Adjacent Property"** has the meaning given in in Recital D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall not include gifts or bequests made to Lessee, but shall include any dividends, interest or other income subsequently received from such gifts or bequests.

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

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

**"Improvements"** means the RPD Dock, the Port Dock (to the extent the Port MOU remains in effect), and any and all buildings, structures, fixtures and other improvements on the Land as of the Commencement Date or constructed, installed or placed on the Premises or the Port Property by or on behalf of Lessee pursuant to this Lease, including, without limitation, the Building, any Proposed Improvements if installed, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, walks, fences, walls, stairs, poles, plantings and landscaping. Notwithstanding anything to the contrary in the foregoing sentence, if the Port withdraws the right of the Department to use and lease the Port Property to third parties at any time during the Term, the Improvements shall no longer include the Port Dock as of such withdrawal.

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

**"Indemnify"** means indemnify, protect, defend and hold harmless through the applicable statutory limitation periods for the applicable Losses.

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

**"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or

threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Port Property**" has the meaning given in **Recital F**.

"**Port MOU**" means the Memorandum of Understanding M-16811 between the Port and the Commission, dated as of \_\_\_\_\_, a copy of which is attached to this Lease as **Exhibit C**.

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

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

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

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

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

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

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

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

"**SERC**" has the meaning given in in Recital D.

"**SFPUC**" means the San Francisco Public Utilities Commission.

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

"**Stair Area**" has the meaning given in in Recital D.

"**Stair Area License Agreement**" has the meaning given in in Recital D.

"**Stairs**" has the meaning given in in **Section 3.5(f)**.

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

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

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

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

"**Transfer**" means any Assignment or Sublease.

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

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

### **3. PREMISES**

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

**3.2. Launching Dock; Port Property; Extent of Leasehold.** The Port Property consists of approximately 1,459 feet of submerged lands within Port's jurisdiction as depicted on **Exhibit A-1** attached hereto and the Port Dock. The City has the right to lease the Port Property, which is the "Premises" described in the Port MOU, to Lessee pursuant to this Lease under the Port MOU. In addition to the requirements of this Lease, Lessee's use of the Port Property shall be subject to such rules and regulations imposed by the Port from time to time and to the requirements of Port MOU. Notwithstanding the foregoing to the contrary, if the Port withdraws the right of the Department to use and lease the Port Property to third parties at any time during the Term, the Port Property shall no longer be part of the Premises as of the date of such withdrawal. The approximate line of Port jurisdiction showing the division of the Launching Dock between the RPD Dock and the Port Dock is shown on the attached **Exhibit A-1**.

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

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

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriate water rights to surface streams and the underflow of streams, and (ii) any and all

groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

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

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

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

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

(f) Without limiting the generality of **Section 3.2(e)**, the right to grant future easements, permits, licenses, and rights of way over, across, under, in and upon the Premises for installing, operating, maintaining, repairing, and removing (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement, permit, license, or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to any property that Lessee may sustain hereunder as a result of the grantee's use of the Premises; and

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

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

### 3.5. As Is Condition of Premises.

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

(b) **Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Lessee is hereby advised that the Premises has not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Lessee from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Lessee if requested by Lessee. Landlord and Lessee will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

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

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

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



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

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

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

**(f) Stair Area.** SERC installed stairs ("Stairs") in the Stair Area, and the Stair Area License Agreement grants SERC a license to maintain, repair and replace the Stairs and to use the Stair Area only for emergency egress from the building on the Adjacent Property to the extent required by City acting in its regulatory capacity (the "**Permitted Stair Area Uses**"). Lessee shall not terminate the Stair Area License Agreement for any reason without the prior written consent of the General Manager; provided, however, the Stair Area License Agreement can automatically terminate on the conditions specified in Section 4 of the Stair Area License Agreement.

If the Stair Area License Agreement terminates because SERC no longer leases the Adjacent Property from Landlord, Lessee must grant a license for the Permitted Stair Area Uses to any other Landlord tenant or licensee at the Adjacent Property within \_\_\_\_ days of Landlord's request for that grant if (i) the new Landlord tenant or licensee executes a license agreement that is substantially in the form of the Stair Area License Agreement, as reasonably modified to reflect the name of the Landlord tenant or licensee and the date of its lease or license with Landlord, and (ii) neither of the conditions described in Section 4(c) or Section 4(d) of the Stair Area License Agreement have occurred.

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

**4.1. Term of Lease; Commencement Date and Expiration Date.** The Premises are leased for a term (the "Term") commencing on \_\_\_\_ 2021 (the "Commencement Date"), and ending at 11:59 pm on \_\_\_\_ 2046, or any earlier date on which this Lease is terminated pursuant to its provisions (the "Expiration Date").

**4.2. Potential Option to Extend.** City grants to Lessee a one-time potential option (the "Extension Option") to extend the Term for an additional twenty-four (24) years (the "Extension Term"), starting immediately following the Expiration Date on the following terms and conditions. Lessee may request the Extension Term by giving written notice to City thereof

not earlier than five (5) years before or later than one (1) year before the Expiration Date. Any such exercise notice by Lessee shall be irrevocable by Lessee. Upon receipt of the notice, the City will have thirty (30) days to determine, in its sole discretion, whether to accept the Extension Option and grant the Extension Term to Lessee. If City rejects the Extension Option, the Extension Option shall immediately become null and void. In addition, if Lessee is in default either at the time of Lessee's exercise of the Extension Option or at any time before the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Lessee to reject Lessee's exercise of the Extension Option at that time, whereupon the Extension Option shall immediately become null and void. City shall also have the right to void Lessee's Extension Option at any time if Lessee has assigned its interest hereunder or sublet any portion of the Premises, except as consented to by the City or as allowed under **Section 16.1**. If Lessee elects to exercise the Extension Option and the City agrees to the Extension Term, then the lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease without amendment except for the expiration date.

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

**4.4. Termination of Existing Lease.** Notwithstanding the terms of the Existing Lease to the contrary, the term of the Existing Lease shall expire on the day immediately preceding the Commencement Date, provided, however, that the parties' indemnification obligations under the Existing Lease shall survive such early expiration with respect to all claims, injuries, losses, damages, costs and expenses, including attorneys' fees, arising from or connected with circumstances, actions or omissions that occurred prior to midnight on the day immediately preceding the Commencement Date.

## **5. RENT**

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

**5.2.** [Intentionally deleted]

**5.3. Payment.** Rent shall be paid in lawful money of the United States and, if mailed, must be postmarked by the due date, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may require Lessee to make all future payments in cash or by cashier's check. City reserves the right

to direct Lessee, upon 30 days' written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer.

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

**5.5.** [Intentionally deleted]

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

**(a) Books and Records.** Lessee agrees to keep accurate books and records in accordance with reasonable accounting systems and procedures that permit City to accurately compute the Gross Receipts, disbursements, and all other expenditures and expenses for the operation of activities at the Premises. Lessee shall make such records, and a reasonable accounting report or record, available for City's review within 5 business days of City's request. For purposes herein "books and records" shall include, but not be limited to, summaries from online tracking services for membership and event registration, treasurer reports, profit and loss reports by income and expense categories, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds.

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

**(i)** On or before the ninetieth (90<sup>th</sup>) day immediately following (i) the second anniversary of the Commencement Date and every other anniversary of the Commencement Date thereafter during the Term (e.g., if the Commencement Date is on March 1, 2021, then March 1 of 2023, 2025, 2027, etc.), and (ii) the Expiration Date, Lessee shall deliver to City a statement (the "Biennial Audited Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and in form satisfactory to City. Each Biennial Audited Gross Receipts Statement shall set forth the Gross Receipts, as shown on Lessee's books and broken down by category, for the two (2) Lease Year period immediately preceding such Biennial Audited Gross Receipts Statement; provided, however, that the Biennial Audited Gross Receipts Statement to be provided on or before the ninetieth (90<sup>th</sup>) day immediately following the Expiration Date shall be for the period between the immediately preceding Biennial Audited Gross Receipts Statement and the Expiration Date.

(ii) On or before the ninetieth (90<sup>th</sup>) day immediately following the first anniversary of the Commencement Date and every other anniversary of the Commencement Date thereafter during the Term (e.g., if the Commencement Date is on March 1, 2021, then March 1 of 2022, 2024, 2026, etc.), Lessee shall deliver to City a statement (the "Biennial Certified Gross Receipts Statement"), certified as correct by an officer or owner of Lessee and in form satisfactory to City. Each Biennial Certified Gross Receipts Statement shall set forth the Gross Receipts and expenditures, as shown on Lessee's books and broken down by category, for the Lease Year immediately preceding the date of such Biennial Certified Gross Receipts Statement.

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

(c) **Audit.** Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to accurately determine the Gross Receipts. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by ten percent (10%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts or overstates its expenditures with knowledge of such understatement or overstatement or by reason of gross negligence, as demonstrated by the City, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

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

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

interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

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

## **6. TAXES, ASSESSMENTS AND OTHER EXPENSES**

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

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

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

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

arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

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

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

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

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

**7.1. Lessee's Permitted Use.** Lessee shall continuously use the Premises for the Primary Purpose and the Incidental Uses on a non-profit basis as defined by and pursuant to prevailing Internal Revenue Service codes and regulations (collectively the "Permitted Uses"), and for no other use or purpose, without City's prior written consent. Lessee shall cause all activities at the Premises to be performed in a first-class manner, and the Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses and conditions and manner of conducting and exercises the Permitted Uses set forth in a management plan, which Lessee shall provide to the Department, in form and in content approved in writing by the General Manager, prior to the Commencement Date (the "Management Plan"). For purposes of this Lease, Lessee's current Bylaws, attached as **Exhibit F** shall constitute the Management Plan unless replaced pursuant to this Section. In the event of a conflict between the provisions of the Management Plan and the provisions of this Lease, the provisions of this Lease shall control.

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

**7.2. Appropriate Operations, Goods, and Services.** The Management Plan shall include Lessee's proposed manner to manage and operate the Premises and further the Permitted Uses, which shall be consistent with the Permitted Uses and the other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the Premises are not in keeping with the approved Management Plan, Lessee shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency

cannot be corrected within the 30-day period, Lessee shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Lessee's proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Lessee's plan for cure by such date, the Lessee shall be in default of this Lease.

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

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

**7.5. Rates and Charges.** The rates and charges for membership application or initiation fees, membership dues, locker fees, and daily access fees for public use of the Premises for the Primary Purpose shall be as described in the attached **Exhibit G** (the "Approved Rates and Charges"), which charges can be proportionately increased on each anniversary of the Commencement Date to reflect any increase in the Consumer Price Index for all Urban Consumers in San Francisco-Oakland-Hayward as of such adjustment from the Consumer Price Index for all Urban Consumers in San Francisco-Oakland-Hayward that is in effect twelve (12) months before that adjustment, and shall comply with the requirements of Resolution No. 16169a. The Department reserves the right for its General Manager to review and approve the increases in fees for private events, which approval shall not be unreasonably withheld. Special Assessments, or any increase in the membership application or initiation fees, annual dues for members, or in public daily use fees from the levels specified in **Exhibit G**, must have the prior written approval of the General Manager (which shall not be unreasonably withheld) and the Commission (as required by Resolution No. 16169a). Any Lessee request to raise such rates or charges or charge

such Special Assessments shall be in writing and shall not be effective until approved by the Department or Commission, as applicable, in writing.

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

**7.7. Branded Products.**

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

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

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

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

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

(c) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance, and shall not place any loads on the floor, walls or ceiling that endanger the Building or the Launching Dock, or materially obstructs sidewalks, passageways, or stairs in front of, within, or adjacent to the Premises. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises, the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable



opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

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

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

**(f) No Tree Planting.** Except as currently allowed in the beach and dock area known as "Cecco's Garden" (as depicted in Exhibit A-1), Lessee shall not plant any trees or any other vegetation on the Premises without the prior written approval of the General Manager.

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

**(h) Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Lessee shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the term of this Lease, (ii) describes the steps Lessee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. Lessee shall comply, and shall require all of Lessee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Lessee were a City

department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Lessee to keep certain records and to report to City all pesticide use at the Premises by Lessee's staff or contractors. If Lessee or Lessee's contractor will apply pesticides to outdoor areas at the Premises, Lessee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website.

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

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

(k) **Sewerage System.** Lessee shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewage system.

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

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

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

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

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

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

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

## **8. ALTERATIONS AND IMPROVEMENTS**

**8.1. Construction of Alterations and Improvements.** All Improvements and Alterations shall be done at Lessee's sole expense (i) by duly licensed and bonded contractors or mechanics, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances) and the applicable requirements of this Article, and (v) with the insurance coverage required under

**Article 19.** In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access without the prior written consent of the General Manager. Prior to the commencement of any work on the Premises to construct any Improvements or make any Alterations, Lessee, at its sole expense, shall procure all required permits and approvals. City and its Agents shall have the right to inspect the course of construction of any Improvements or Alterations at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. If the cost of any proposed Improvements or Alterations (including the Proposed Improvements) exceeds Five Thousand Dollars (\$5,000), Lessee shall reimburse City for the actual staff costs in reviewing the submitted project plans and drawings. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

In addition to the requirements of the foregoing paragraph, Lessee shall not construct, install or otherwise place, make or permit any Material Alterations in, to or about the Premises without the General Manager's prior written consent in each instance, which the General Manager shall not unreasonably withhold. Lessee shall further (a) obtain the General Manager's prior written approval to the designs, plans and specifications of each Material Alteration and strictly comply with such approved designs, plans and specifications, (b) obtain the General Manager's prior written approval to the contractors and mechanics performing each Material Alteration, and (c) comply with all other conditions that the General Manager or the Commission reasonably impose on such Material Alteration, including, without limitation, provision of such completion security as is acceptable to City. Lessee shall reimburse City for its actual staff costs in reviewing the designs, plans and specifications for a proposed Material Alteration within thirty (30) days of receiving City's invoice for such reimbursement. Prior to the commencement of any work on the Premises to construct any Material Alteration, Lessee, at its sole expense, shall deliver copies of all permits and approvals for such Material Alterations to City. No material change from the plans and specifications for any Material Alteration approved by City may be made without City's prior written consent.

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

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

delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

**8.4. [Intentionally deleted]**

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

Lessee shall include, and shall require its sublessees and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Lessee’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call the City’s Office of Labor Standards Enforcement at 415-554-6573.

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

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

**8.7. [Intentionally deleted]**

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

**8.9. Improvements or Alterations that Disturb or Remove Lead Based Paint.** Lessee, on behalf of itself and its Agents or Invitees, shall comply with all requirements of all applicable Laws, including but not limited to the San Francisco Building Code, Section 3407, the requirements of any board of fire underwriters or other similar body, administrative laws, rules, regulations, orders and other governmental requirements, and any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations), when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Lessee and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Lessee and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

**9. REPAIRS AND MAINTENANCE**

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

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

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

sole cost, repair any and all such damage and restore the damaged Premises or City property to its previous condition.

Notwithstanding anything to the contrary in the foregoing paragraph, Lessee shall have no obligation to maintain or repair the Stairs, except to the extent damaged by the sole gross negligence or willful misconduct of Lessee. Lessee shall require SERC to comply with its obligations to maintain and repair the Stairs under the Stair Area License Agreement, and shall require any future Landlord tenant or licensee at the Adjacent Property to comply with its obligations to maintain and repair the Stairs to the extent it has executed a license agreement in substantially the same form as the Stair Area License Agreement for the Stair Area. **[Discuss]**

(c) **Personal Property; Removal of Trash.** Lessee shall keep, at its sole expense, all furniture, other personal property, fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times, and shall furnish all furniture, other personal property, fixtures and equipment reasonably necessary for the Primary Purpose. Lessee shall, on a regular basis, remove all waste, trash, rubbish, papers, cartons and refuse from the Premises and pick up trash and debris in the immediate vicinity of the Premises, including the adjacent beach, between the Launching Dock and the dock at the Adjacent Property (as depicted in the attached Exhibit A-1) and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility. Lessee shall keep the trash containers in clean and orderly condition.

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

(e) **Food Preparation, Service and Seating Areas.** Lessee shall keep the food preparation, service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean and orderly condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

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

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

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

## **10. UTILITIES**

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

**10.2. Interruption of Services.** City shall have no obligation under this Lease for providing any utilities and services for the Premises. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

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

**10.4. Antennae.** No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Lessee agrees, at the request of City, to permit City to install, at



City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee. This paragraph shall not apply to the installation of webcams or similar equipment that (i) inside the Building and (ii) do not interfere with City's emergency and non-emergency communications or transmission facilities.

## **11. LIENS**

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

## **12. COMPLIANCE WITH LAWS**

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

## **12.2. Regulatory Approvals**

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

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

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

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

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

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

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

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

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

## **14. DAMAGE OR DESTRUCTION**

**14.1. Damage or Destruction to the Improvements.** If the Premises or the Improvements are damaged by fire or other casualty, within ninety (90) days after the date of such fire or other casualty, Lessee shall notify City in writing (a "Repair Determination") if any of the following conditions (the "Repair Conditions") are met: (i) the repair of such damage can be commenced within two hundred forty (240) days of the date of such fire or other casualty subject to force majeure and delay beyond Lessee's reasonable control, (ii) Lessee elects to repair such damage at its sole cost, and (iii) Lessee has funds available to fully pay for such repairs. If each of the Repair Conditions are met, this Lease shall remain in full force and effect and Lessee shall diligently pursue such repairs in the manner required for Alterations under **Article 8**. If any of the Repair Conditions is not met, either City or Lessee shall have the right to terminate this Lease by delivering written notice to the other party within thirty (30) days following City's receipt of the Repair Determination and this Lease shall terminate as of the date specified in such notice. If Lessee does not timely deliver a Repair Determination to City, City shall have the right to terminate this Lease by delivering written notice to the Lessee of such termination within one hundred twenty (120) days following the date of such fire or other casualty and this Lease shall terminate as of the date specified in such notice.

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

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

## **15. EMINENT DOMAIN**

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

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

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

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

(b) Intentionally omitted.

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

**15.4. Rent; Award.** Upon termination of this Lease pursuant to an election under **Section 15.3**, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 15.5** for any period during which this Lease continues in effect after the Date of Taking, and (ii) Lessee shall be entitled to any portion of the Award made for the value of any installed Proposed Improvements (provided Lessee obtained City's consent to install them pursuant to Section 8.1) and Lessee's furniture (if applicable), fixtures and equipment (provided Lessee will use any portion of the Award it receives to construct or lease another clubhouse or dock to be used by its members), and City shall be entitled to any portion of the Award made for the value of the leasehold estate created by this Lease, and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

**15.5. Partial Taking; Continuation of Lease.** If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3**, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) Lessee shall be entitled to any portion of the Award made for the value of any installed Proposed Improvements (provided Lessee obtained City's consent to install them pursuant to Section 8.1) and Lessee's fixtures or equipment on the portion of the Premises taken (provided Lessee will use such portion to improve the functionality of the remaining portion of the Improvements to offset the loss of the portions of the Premises taken), and City shall be entitled to any portion of the Award made for the value of the leasehold estate created by this Lease. Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

**15.6. Temporary Takings.** Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in

excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Lessee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **16. ASSIGNMENT AND SUBLETTING**

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

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

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

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

**16.4. City's Response.** Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "Response Period"), City may, by written notice to Lessee, elect to deny the Proposed Transfer, and City shall state in such notice its reasons for denial. Lessee shall have the right to submit a revised proposal for Proposed Transfer on terms more acceptable to City. Lessee shall provide

City with such information regarding the proposed transferee and the revised Proposed Transfer as City may reasonably request.

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

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

**16.6. Indemnity for Relocation Benefits.** Without limiting Section 16.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee with respect to the Premises.

## **17. DEFAULT; REMEDIES**

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

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

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

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

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

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

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

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes of this Lease, none of the following shall constitute a termination of Lessee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Rent due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Rent owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Rent for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

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

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

## 18. WAIVER OF CLAIMS; INDEMNIFICATION

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

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease except as to the gross negligence, or intentional misconduct of City or its Agents.

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

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

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

**18.2. Lessee's Indemnity.** Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by



Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease.

## **19. INSURANCE**

### **19.1. Lessee's Insurance.**

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

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, liquor liability, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the Term and, without lapse,

for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

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

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

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

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

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

(d) Each insurance policy required hereunder shall be issued by an insurance company or companies reasonably acceptable to the City with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

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

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

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

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

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

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

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

## **20. ACCESS BY CITY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **21. ESTOPPEL CERTIFICATES**

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

## **22. SURRENDER**

**22.1. Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date

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

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

## **23. HAZARDOUS MATERIALS**

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

**23.2. Lessee's Environmental Indemnity.** If Lessee breaches any of its obligations contained in **Section 23.1**, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises or any other City property, without limiting Lessee's general Indemnity contained in **Section 18.2**, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity

includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Notwithstanding the above, Lessee shall have no responsibility for the remediation of Hazardous Materials that have migrated to the Premises from the San Francisco Bay, or any part of it, or otherwise from offsite.

**23.3. Hazardous Substance Disclosure.** California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Lessee is hereby advised that Hazardous Materials may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports described in Schedule 2 to the Port MOU, copies of which have been delivered to or made available to Lessee, are present on the Port Property. By execution of this MOU, Lessee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Lessee must disclose the information contained in this Section to any subtenant, licensee, transferee, or assignee of Lessee's interest in this Lease.

**24. [Intentionally deleted]**

**25. HOLDING OVER**

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

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

(a) On or before the fifteenth (15<sup>th</sup>) day following each monthly anniversary of the Expiration Date, Lessee shall deliver to City a statement (a "Holdover Monthly Statement") certified as correct by an officer or owner of Lessee and in form satisfactory to City, showing a true and factual accounting of all taxes paid, the Gross Receipts and expenditures resulting from, and the calculated Rent for, the preceding month. Each Holdover Monthly Statement shall indicate and distinguish funds received from private events, vending machines, sales of clothing,

equipment, or other items, daily use fees from non-members, application fees, membership fees, gifts, bequests, and any other source of funds during the applicable period, and indicate and distinguish expenditures expended for improvements, repairs, maintenance, salaries, supplies, utilities, taxes, insurance, and any other source of expenditures during the applicable period.

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

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

## 26. GENERAL PROVISIONS

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



**26.2. No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

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

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

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

**26.6. Interpretation of Lease.** The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any

general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

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

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

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

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

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

**26.12. Attorneys' Fees.** In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to

judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **Non-Discrimination in Benefits.** Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and

employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

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

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

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

**26.27. Tropical Hardwood and Virgin Redwood Ban.** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code Lessee shall not provide or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of any alterations or

improvements in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**26.28. Tobacco Product Advertising and Sale Prohibition.** Lessee acknowledges and agrees that no advertising or sale of cigarettes (including electronic cigarettes, as defined in the San Francisco Health Code) or tobacco products is allowed under this Lease. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Lessee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

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

**26.30. First Source Hiring Ordinance.** Lessee and City are parties to the First Source Agreement attached to this Lease as **Exhibit H** under San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Lessee under such a first source hiring agreement shall be a default under this Lease.

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

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

**26.33. [Intentionally deleted]**

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

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

**26.36. Notification of Limitations on Contributions.** For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Lease, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Lessee further acknowledges that (i) the prohibition on contributions applies to Lessee, each member of Lessee's board of directors, Lessee's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Lessee, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Lessee, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Lessee certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

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

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

**26.39. Preservative-Treated Wood Containing Arsenic.** Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an

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

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

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

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

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

**26.44. San Francisco Packaged Water Ordinance.** Lessee will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Lessee may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Lessee obtains a waiver from City's Department of the Environment. If Lessee violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.



**26.45.** [Intentionally deleted]

**26.46. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall remove all graffiti from the Property within forty-eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **29. SIGNS AND ADVERTISING.**

As of the Commencement Date, Lessee has several signs outside its primary Jefferson Street entry to the Premises and side gate to the west of the Premises, which states the name of Lessee, the hours the Premises is available for public use on payment of a daily use fee, and all other sign information specified in Resolution No. 16169a (the "Club Sign"). Lessee shall keep the Club Sign in good condition and repair at all times, and not allow any landscaping or trees to obscure visibility of the Club Sign. Lessee hereby agrees not to erect or maintain, nor permit to

be erected or maintained, upon any part of the Premises, any other signs without obtaining City's written consent in advance. Lessee represents and certifies the Jefferson Street entry is the only entrance to the Premises, and acknowledges all entries to the Premises must have the sign information specified in Resolution No. 16169a.

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

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

### **31. GASB 87 LEASE ACCOUNTING**

The Governmental Accounting Standards Board (GASB), an independent organization that establishes accounting and financial reporting standards for U.S. state and local governments, issued Statement 87 to improve certain reporting and accounting practices. In connection with GASB 87, Lessee agrees to complete the checklist set forth in Exhibit F and provide the same to City within thirty (30) days of the Effective Date in order to facilitate the City's collection and evaluation of information for City's financial reporting purpose.

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

[No further text this page.]

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

**LESSEE:** **DOLPHIN SWIMMING AND BOATING CLUB,**  
a California non-profit corporation

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

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

Its: \_\_\_\_\_

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

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

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

Its: \_\_\_\_\_

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

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

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

Philip Ginsburg, General Manager  
Recreation and Park Department

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

**APPROVED BY:**  
**RECREATION AND PARK COMMISSION**  
**PURSUANT TO RESOLUTION NO. 2106-005**  
**DATED: June 17, 2021**

\_\_\_\_\_  
Ashley Summers, Commission Liaison

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA, City Attorney**

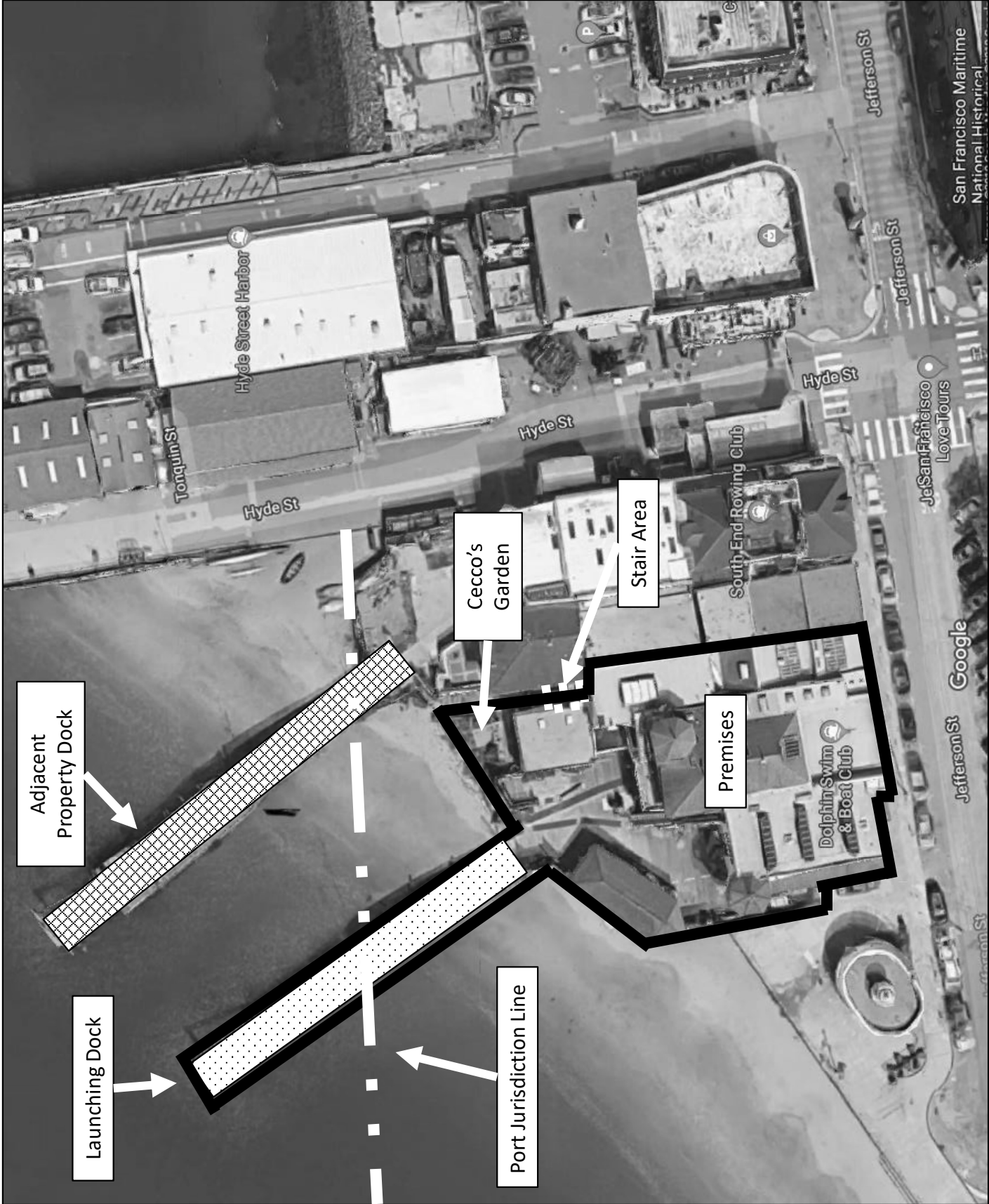
By: \_\_\_\_\_

Carol Wong, Deputy City Attorney

**EXHIBIT A-1**

**DEPICTION OF PREMISES, LAUNCHING DOCK,  
ADJACENT PROPERTY DOCK, STAIR AREA AND CECCO'S GARDEN**

[See Attached]



**EXHIBIT A-2**

**STAIR AREA LICENSE AGREEMENT**

[See Attached]



## LICENSE AGREEMENT

This License Agreement (“**Agreement**”) is made as of October 23, 2019, for reference purposes only, by and between DOLPHIN SWIMMING AND BOATING CLUB, a California non-profit corporation (the “**Licensor**” or “**DSBC**”), and SOUTH END ROWING CLUB, a California non-profit corporation (the “**Licensee**”).

### RECITALS

A. Pursuant to that certain Lease Agreement dated July 1, 1979 (“**Original Dolphin Club Lease**”) between the City and County of San Francisco (“**City**”) and Licensor, as amended by a First Amendment dated as of July 1, 1979 (“**First Amendment to Dolphin Club Lease**”, and together with the Original Dolphin Club Lease, the “**Dolphin Club Lease**”), City leased to Licensor certain improved real property commonly known as 502 and 504 Jefferson Street, situated at Aquatic Park in the City and depicted on **Exhibit A** attached hereto (the “**DC Premises**”).

B. Pursuant to that certain Lease Agreement dated October 23, 2019, for reference purposes only, (“**SERC Lease**”) between the City and Licensee, City leased to Licensee certain improved real property commonly known as 500 Jefferson Street, situated at Aquatic Park in the City and depicted on **Exhibit B** attached hereto (the “**SERC Premises**”). The SERC Premises is adjacent to the DC Premises.

C. Prior to the Effective Date of the SERC Lease, Licensee made certain improvements and renovations to the SERC Premises which necessitated, among other things, the construction of an emergency secondary egress from the second story of the SERC Premises to the ground level for egress to Hyde Street. SERC built a stairway (“**Stairs**”) to serve as such emergency egress. The Stairs were built over and encroach on the DC Premises, as shown on **Exhibit C** (“**Stair License Area**”), as do some of the improvements made in connection with the Stairs.

D. Licensor verbally agreed to allow Licensee to construct and use the Stairs subject to a definitive written use agreement, which, prior to the Effective Date, has never been achieved. Licensee now desires to obtain a formal license to use the Stairs and the Stair License Area as a means of emergency secondary egress from the SERC Premises subject to the terms and provisions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the covenants of the parties hereto, it is AGREED as follows:

1. **Recitals; Effective Date.** The recitals set forth above are true and correct and incorporated into this Agreement by this reference. As used herein, the “Effective Date” shall mean the date that the last party signed this Agreement as shown by the date set forth next to said party’s signature below.

2. **Grant of License.** Licensor hereby grants to Licensee a non-exclusive license to use the Stair License Area only for emergency egress from the second floor of the SERC Premises and for no other uses or activities (“**Permitted Use**”). The Stairs were constructed by Licensee and Licensee acknowledges and agrees that the Stairs and the use of the Stair License Area is being delivered in its “as-is and with all faults” condition, and Licensor makes no representations and/or warranties regarding the condition of the Stairs and the Stair License Area as of the Effective Date and during the term of this Agreement. Licensee shall not use, nor permit its agents, guests or invitees, to use the Stairs and the Stair License Area for any purpose other than the Permitted Use, including without limitation, storage equipment or other materials. Licensee shall use, and shall cause its agents, guests or invitees to use, the Stairs and the Stair License Area for the Permitted Use in a reasonable manner, and such use shall not interfere or be inconsistent with Licensor’s use of the Stairs the Stair License Area or any surrounding adjacent areas. Subject to the License granted herein, Licensor retains all rights in and to the Stair License Area, including without limitation the rights to place personal property, fixtures, landscaping and improvements in that area and to otherwise improve, use and occupy the Stair License Area as permitted under the Dolphin Club Lease, as amended from time to time.
  
3. **Maintenance, Repair and Replacement.** Licensee shall keep and maintain, repair and/or replace the Stairs and the Stair License Area in a good operating condition at all times and comply with all Laws (as defined hereinafter) during the term of this License, and shall comply with the following requirements when maintaining, repairing and/or replacing the Stairs and the Stair License Area (“**Stair Repair Work**”):
  - (a) Licensee shall, at its sole cost and expense, pay for and perform any Stair Repair Work during the times approved in advance and in writing by Licensor and written approval of the City and any other agencies if required by the City or terms of the SERC Lease.
  - (b) The Stair Repair Work shall comply with all Laws.
  - (c) The Stair Repair Work shall not interfere with or be inconsistent with any uses in or around the Stair License Area by Licensor in connection with the Dolphin Club Lease.
  - (d) Licensee shall keep the Stair License Area free and clear of all of all personal property of Licensee and Licensee Parties (as hereinafter defined), equipment, trash receptacles, and swimming and boating gear (collectively, “**Personal Property**”) at all times. Licensor shall have the right to dispose of any Personal Property in the Stair License Area on fourteen (14) days written notice to Licensee, or sooner, and without notice in the event of an emergency.

As used herein “Laws” mean any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Stairs and Stair License Area, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the parties.

4. **Term of License.** Subject to the provisions contained herein, the term of the License under this Agreement shall commence on the Effective Date and shall continue in full force and effect until the earliest to occur of any of the following events:
- (a) The expiration or earlier termination of the Dolphin Lease, as amended or renewed, from time to time; or
  - (b) The expiration or earlier termination of the SERC Lease, as amended or renewed, from time to time; or
  - (c) The demolition of the SERC Premises or any damage, destruction or condemnation of all or a portion of the SERC Premises that would render the Permitted Use no longer necessary; or
  - (d) The demolition of the DC Premises or any damage, destruction or condemnation of all or a portion of the DC Premises where the Dolphin Club elected to or was required to rebuild its facility in or around the Stair License Area.

Upon the first to occur of any of the foregoing events, the License shall be deemed terminated and no longer in force or effect.

5. **Repair of Damage.** Licensee shall, at its sole cost and expense, promptly repair or replace all damage to the Stairs and/or Stair License Area caused by Licensee or any Licensee Parties (as defined hereinafter).

6. **Insurance, Release and Indemnity.**

- (a) **Insurance.** Licensee shall procure and maintain in effect at all times during the term of this Agreement, the commercial general liability insurance and policy limits that Licensee is required by City to maintain for the SERC Leased Premises under the SERC Lease (or any successor lease agreement between City and Licensee for the SERC Premises), to cover Licensee's use and maintenance of the Stairs and the Stair License Area. Licensee shall name Licensor as an additional insured on such policies and provide to the Licensor certificate(s) of insurance specifically naming the Licensor as "Additional Insured" for such policy. Certificates of insurance and policies shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Licensor.
- (b) **Release and Indemnity.** Licensee hereby releases Licensor, its partners, agents, employees, principals, contractors, representatives, invitees, licensees, successors and assigns (the "**Licensor Parties**"), from any and all cost, loss, damage, expense (including reasonable attorneys' fees and court costs) and liability that Licensee may suffer or that Licensee's partners, agents, employees, principals, contractors, representatives, invitees, licensees, successors and assigns (the "**Licensee Parties**") may suffer in the Stair License Area or in connection with the Licensee Parties' use of the Stairs and/or the Stair License Area; provided,

however, that the foregoing release shall not apply to costs, losses, damages, expenses (including reasonable attorneys' fees and court costs) and liabilities arising out of Licensor's gross negligence or willful misconduct. In addition, Licensee hereby agrees to indemnify, defend, protect and hold Licensor and the Licensor Parties harmless for, from and against any loss, cost, damage, liability, expense (including reasonable attorneys' fees and court costs), claim, action or cause of action resulting from Licensee's or the Licensee Parties' use of the Stairs and/or the Stair License Area; provided, however, that the foregoing indemnity shall not apply to costs, losses, damages, expenses (including reasonable attorneys' fees and court costs) and liabilities arising out of Licensor's sole negligence or willful misconduct. Licensee's obligations under this Section 6(b) shall survive any expiration or termination of this Agreement.

7. **Default and Remedies.**

(a) **Default.** Any party will be in default hereunder (each, an "**Event of Default**") if such party fails to perform or comply with any covenant, agreement or condition contained in this Agreement and does not cure such failure within fourteen (14) calendar days after receipt of a written notice of default ("**Notice of Default**") from the non-defaulting party (or if such default is of a nature which cannot reasonably be cured within fourteen (14) calendar days, then an Event of Default shall occur if such party does not cure such failure within such longer period of time as is reasonably necessary to cure such default, provided that the defaulting party undertakes in good faith to commence such cure within fourteen (14) calendar days after receipt of such Notice of Default and diligently prosecutes such cure to completion).

(b) **Remedies.**

(i) If there is an Event of Default or either party believes the other party to this Agreement has failed to comply with its terms, or wishes to propose an amendment to this Agreement to address any term or condition herein, the parties agree to meet and confer within ten (10) days of receipt of a written request for consultation delivered to the other party as set out in Section 8(f) herein.

(ii) If the consultation process set out in Section 7(b)(i) fails to resolve any dispute arising out of or relating to this Agreement or the performance or breach thereof, the parties agree to participate in good faith in non-binding mediation with JAMS in San Francisco in order to resolve their dispute prior to pursuing any available legal remedies, as soon as possible, but not later than thirty (30) days after the failure to resolve issues after a meet and confer session, on written notice from either SERC or DSBC to the other. The parties shall share equally in any mediation fees and costs, and any agreement shall be enforceable as a settlement agreement in San Francisco Superior Court. In the event the parties are unable to resolve their differences by mediation, each shall be entitled to pursue all available legal and/or equitable remedies in court.

Notwithstanding the above, the parties shall be entitled to seek immediate judicial relief, including injunctive relief and specific performance, in the event of any

Event of Default involving insurance obligations under Section 6(a) or any dangerous or hazardous conditions concerning the Stairs or the Stair License Area.

**8. Miscellaneous.**

- (a) Assignment. Licensee shall not have the right to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Licensor.
- (b) Binding Effect. Subject to the provisions of Section 8(a), this Agreement shall be binding upon and inure to the benefit of all parties and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns.
- (c) Waivers. The waiver by either party of a breach of or a default under any provision of this Agreement, shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- (d) Governing Law. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles.
- (e) Amendment. No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties.
- (f) Notices. All notices, certificates or other communications required or permitted to be given hereunder must be given in writing and must be delivered: (a) in person; (b) by U.S. Postal Service next day delivery (postage prepaid, return receipt requested); or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt. For the convenience of the parties, copies of notices given pursuant the foregoing may also be given by email to the addresses listed below or such other addresses as may be provided from time to time. Notices shall be directed as follows:

If to Licensee: South End Rowing Club  
500 Jefferson Street  
San Francisco, CA 94109  
Attn: President  
Email: [sercoffice@serc.com](mailto:sercoffice@serc.com)

If to Licensor: Dolphin Swimming and Boating Club  
502 Jefferson Street  
San Francisco, CA 94109  
Attn: President  
Email: [president@dolphinclub.org](mailto:president@dolphinclub.org)

Each party may from time to time specify a different notice address or email address for copies of notices by sending a written notice to the other party in accordance with this Section. Notices delivered in person, by certified mail or by a courier shall be effective upon delivery or refusal to accept delivery.

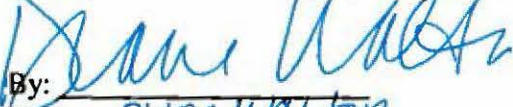
- (g) Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- (h) No Third Party Rights. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.
- (i) Severability. Invalidation of any one of the provisions of this Agreement by a court of competent jurisdiction shall in no way affect any other provisions, all of which shall remain in full force and effect.
- (j) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to this subject matter.
- (k) Counterparts; Signatures. This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement. Each such counterpart may be delivered by facsimile or email (as a pdf or similar attachment) and any signatures which are so delivered by facsimile or email shall be deemed original signatures for all purposes. All counterparts so executed shall constitute one agreement, binding on all parties, even though all parties are not a signatory to the same counterpart.

*[Signatures follow on next page]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth below.

**LICENSOR:**

DOLPHIN SWIMMING AND BOATING CLUB, a California non-profit corporation



By: \_\_\_\_\_  
Name: Diane Walton  
Title: President

Date: 10/20/19

**LICENSEE:**

SOUTH END ROWING CLUB,  
a California non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth below.

**LICENSOR:**

DOLPHIN SWIMMING AND BOATING CLUB, a California non-profit corporation

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

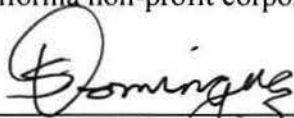
Name: \_\_\_\_\_

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

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

**LICENSEE:**

SOUTH END ROWING CLUB, a California non-profit corporation

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

Name: SIMON DOMINGUEZ

Title: PRESIDENT

Date: 10-29-2019



Exhibit A

DOLPHIN CLUB : LEASE DESCRIPTION

A PORTION OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF JEFFERSON STREET AND THE WEST LINE OF HYDE STREET; THENCE S82°04'00"W, 199.98' TO THE TRUE POINT OF BEGINNING; THENCE N6°13'00"W, 131.21'; THENCE N37°08'40"W, 146.91'; THENCE S82°04'00"W, 7.25'; THENCE N7°56'00"W, 84.38'; THENCE N82.04'00"E, 204.31'; THENCE S7°56'00"E, 343.75'; THENCE S82°04'00"W, 133.62' TO THE TRUE POINT OF BEGINNING.

---

Exhibit A

**Exhibit B**



**Exhibit B**

Exhibit C



Exhibit C

## **EXHIBIT B**

### **RULES AND REGULATIONS**

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

[https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_park/0-0-0-2](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_park/0-0-0-2)

**EXHIBIT C**  
**PORT MOU**



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

---

**MEMORANDUM OF UNDERSTANDING**

**MOU M-16811**

**BY AND BETWEEN**

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

**AND**

**THE SAN FRANCISCO RECREATION AND PARK COMMISSION**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
JOHN BURTON, COMMISSIONER  
GAIL GILMAN, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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**EXHIBITS AND SCHEDULES**

**EXHIBIT A MAP OF PREMISES**

**SCHEDULE 1 FEMA NOTICE**

**SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated September 20, 2021, for reference purposes only, by and between the Recreation and Park Department ("RPD"), a department of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City.

### RECITALS

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

**B.** RPD, which has the jurisdiction over certain real property in Aquatic Park commonly known as 502 and 504 Jefferson Street, leases the building (the "Clubhouse") and the associated launching dock within its jurisdiction at such property to the Dolphin Swimming and Boating Club ("Dolphin Club") to provide access to the waters of San Francisco Bay to their club members, and during certain hours to the public, as a public benefit.

**C.** The Clubhouse launching dock extends into Port's jurisdictional area.

**D.** The Dolphin Club keeps the Clubhouse and associated dock open to and visited by the general public for access to the bay for a reasonable daily use fee and the Dolphin Club also hosts internationally known swimming and rowing events both of which provide a valuable public benefit.

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

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

### AGREEMENT

#### 1. RECITALS

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

#### 2. PREMISES.

The "Premises" consists approximately of 1,459 square feet of submerged lands within Port's jurisdiction near the intersection of Tonquin Street and Jefferson Street as more particularly described on Exhibit A attached hereto.

RPD acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and possession. RPD acknowledges that it has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. RPD acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for RPD's intended use. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations



or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for RPD's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed subtenant.

**3. EFFECTIVE DATE**

The "Effective Date" of this MOU shall be the later date to occur of the full execution of (i) this MOU and (ii) a lease between RPD and Dolphin Club that grants Dolphin Club a sublease for the Premises.

**4. TERM**

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

**5. NO USE FEE**

Use of the Premises by RPD will enliven the waterfront by attracting people to the waterfront and raising awareness of the waterfront and its benefits and amenities at no cost to Port. Given the existing RPD lease with Dolphin Club, there is no other practical user of the Premises. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, RPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the RPD lease with Dolphin Club.

**6. PERMITTED USE**

RPD shall have the right to sublease the Premises to Dolphin Club for the provision of member and public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose (collectively, the "Permitted Use").

**7. RESTRICTIONS ON USE; COMPLIANCE WITH LAW**

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

RPD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof. RPD, at RPD's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, which shall impose any duty

upon Port or RPD necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to RPD's use of the Premises.

## **8. MAINTENANCE; SURRENDER OF PREMISES**

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

Nothing contained herein shall require either RPD or the Port to repair or replace the Premises as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that if the Premises are damaged by fire or other casualty, then RPD shall require its tenant at the Premises to repair the same provided that (i) funds for such repairs are available for such purpose and (ii) such repairs can be made within 210 days after the date of such damage.

## **9. INSURANCE**

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

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

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

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

Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iv) Personal Property Insurance. An Operator, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements and alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Operator's sole discretion, for the replacement of Operator's personal property and improvements and alterations. The proceeds from any such policy shall be used by the Operator for the replacement of its personal property. Port shall have no responsibility or obligation to maintain insurance or replace such property or any improvements regardless of cause of loss.

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

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

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

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

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

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

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

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

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

(f) **General Insurance Matters.**

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

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

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

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

## 10. CLAIMS AND DAMAGES

Because Port will not be receiving any fees for the use of the Premises and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or on connection with

RPD's use of the Premises. Therefore, RPD agrees to be responsible or cause its tenants, subtenants, or licensees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by RPD, its agents, contractors, tenants, subtenants, licensees, or invitees and (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises from any cause, which arise as a result of RPD's acts or omissions or its tenants, subtenants, or licensees. The foregoing obligation of RPD shall survive the expiration or termination of this MOU.

#### **11. PRESENCE OF HAZARDOUS MATERIALS**

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, RPD is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports listed in *Schedule 2* are present on the property, copies of which have been delivered to or made available to RPD. By execution of this MOU, RPD acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. RPD must disclose the information contained in this Section 12 to any subtenant, licensee, transferee, or assignee of RPD's interest in this MOU. RPD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

#### **12. DEFAULT BY RPD**

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

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

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

#### **13. PORT'S REMEDIES**

Upon the occurrence of default by RPD with respect to the Premises, Port may at its option, without further notice or demand of any kind to RPD or to any other person, terminate RPD's right to possession of the Premises.

#### **14. ENTRY BY PORT**

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

## 15. NOTICE

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

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

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

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

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

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

## 16. MINERAL RESERVATION

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

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

## 17. UTILITIES

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

## 18. ASSIGNMENT AND SUBLEASING

Port hereby consents to the anticipated sublease between RPD and Dolphin Club for the Premises subject to all of the terms and conditions of this MOU, including without limitation the

disclosures, insurance provisions and waiver of claims. If RPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld.

**19. ENTIRE AGREEMENT**

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

[REMAINDER OF PAGE LEFT BLANK]

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

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

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

By: *Elaine Forbes*  
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ELAINE FORBES  
Executive Director  
Port of San Francisco

By: *Phil Ginsburg*  
DocuSigned by:  
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PHIL GINSBURG  
General Manager  
San Francisco Recreation and Park  
Department

Date Signed: 9/24/2021

Date Signed: 9/23/2021

REVIEWED:  
**DENNIS J. HERRERA, City Attorney**

By: *Rona H. Sandler*  
DocuSigned by:  
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Rona H. Sandler  
Deputy City Attorney

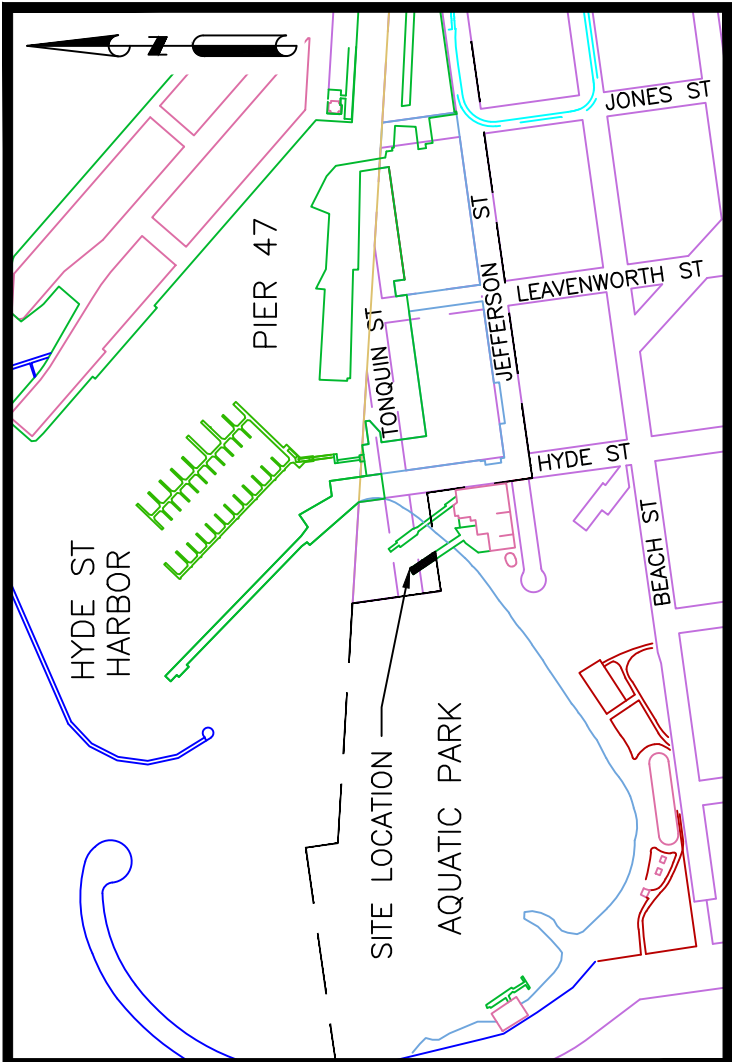
Recreation and Park Commission Resolution No. 2016-006  
Port Commission Resolution No. 21-37

MOU Prepared By: Kimberley Beal, Port Senior Property Manager  
(initial)

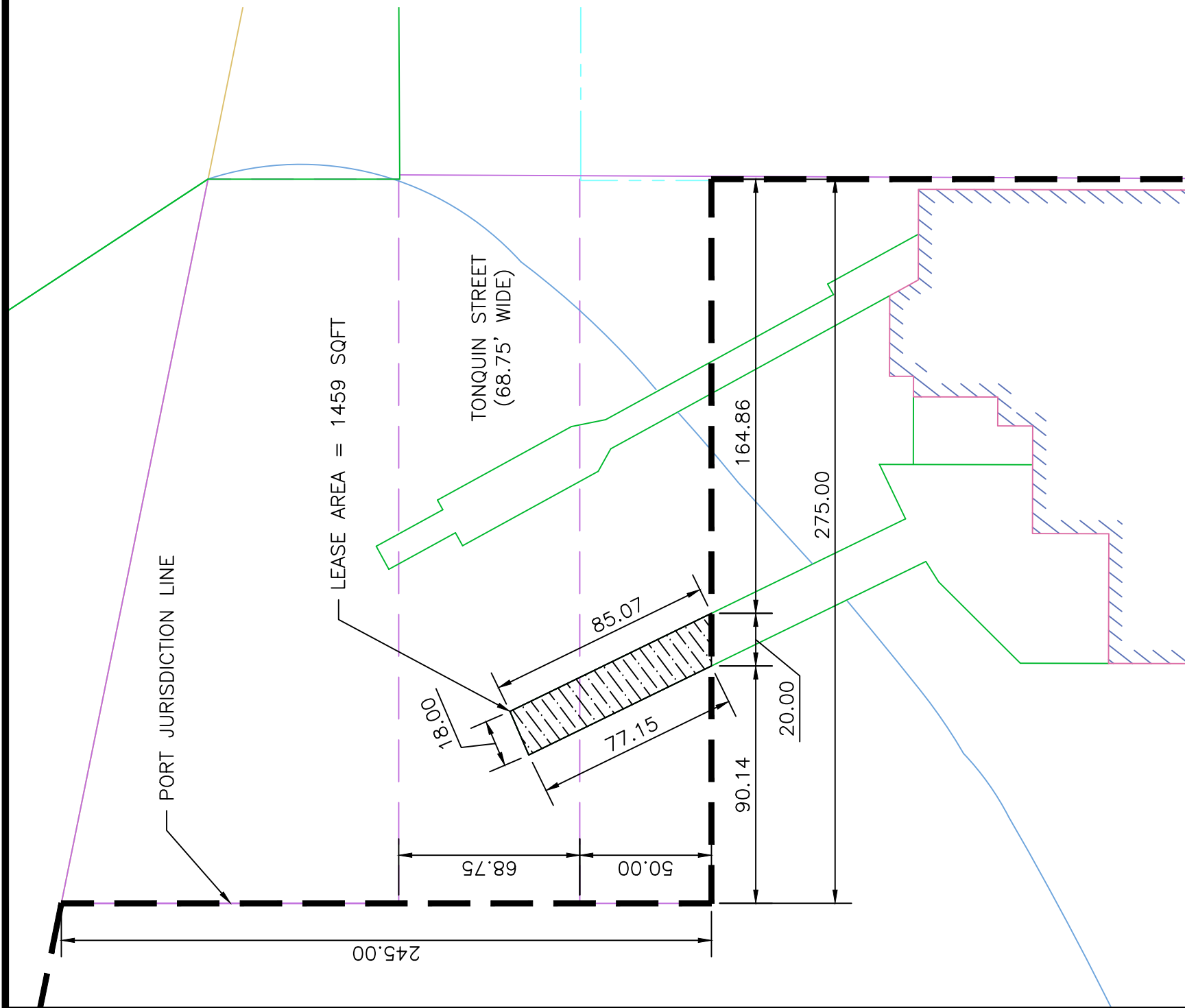
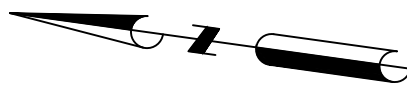
*KB*  
DS



**EXHIBIT A**  
**Map of Premises**



SITE LOCATION  
NOT TO SCALE



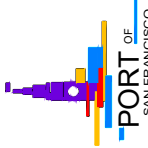
TENANT

**SAN FRANCISCO PORT COMMISSION**  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

**SF RECREATION  
AND PARK DEPARTMENT**

PREPARED BY: JTM	CHECKED BY: JTM
DRAWN BY: KMK	DATE: 3/21/2020
CONTRACT NO.	SCALE: 1" = 50'
DRAWING NO.	SHEET NO. 1
	OF 1 SHEETS

**M-16811**



EXHIBIT

INITIALS: PORT: DS  
KB

TENANT: DS  
*[Signature]*

DATE: 9/23/2021

**SCHEDULE 1**  
**FEMA Notice**

04/12/21

### **FEMA-National Flood Insurance Program Disclosure Notice**

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as "Special Flood Hazard Areas" (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter "A" or "V" on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:


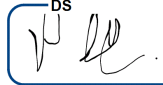
<https://onesanfrancisco.org/san-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

[www.FloodSmart.gov](http://www.FloodSmart.gov).

Initial :   
Port: \_\_\_\_\_  
Tenant:   
\_\_\_\_\_

**SCHEDULE 2**  
**Hazardous Materials Disclosure**

## **Environmental Reports and Documents Regarding Hazardous Materials**

**September 2, 2021**

### **Aquatic Park**

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

### **Fisherman's Wharf Harbor**

Final Environmental Risk Assessment, Former Mobil Bulk Terminal, 440 Jefferson St.(Wharf J10), Acton Mickelson Environmental, 5/30/14.

Fisherman's Wharf Hydrodynamic Circulation Study, PWA - Philip Williams & Associates, June 2004.

Groundwater investigation for proposed joint operations security JOS building project; Hyde Street Pier, Baseline Environmental Consulting, September 2009.

Hazardous Materials Survey Report; JOS building demolition project; At the Hyde Street Pier, Millennium Consulting Associates, July 2009.

Hyde Street Harbor Hydrocarbon Seep - Sampling and Analysis Plan, CDIM Engineering, Inc., 12/11/2020.

Hyde Street Harbor Hydrocarbon Seep - Work Plan, CDIM Engineering, Inc., 9/21/2020.

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Results of Chemical, Physical and Bioassay Testing of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 10/24/98.

Results of Chemical, Physical and Bioassay Testing of Sediments from Hyde Street Harbor, MEC Analytical Systems, Inc, August 1998.

Results of PAH Reanalysis of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 4/21/99.

Revised Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, July 1998.

Risk Management Plan, 440 Jefferson St. (Wharf J10 area), Acton Mickelson Environmental, 10/23/15.

Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, June 1998.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kellco Services, January 9, 1998.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kinnetic Laboratories Inc., October 22, 1997.

Underground Storage Tank Closure Documentation, Port of San Francisco, 3/21/1996.

### **Hyde Street Pier**

Groundwater investigation for proposed joint operations security JOS building project; Hyde Street Pier, Baseline Environmental Consulting, September 2009.

Hazardous Materials Survey Report; JOS building demolition project; At the Hyde Street Pier, Millennium Consulting Associates, July 2009.

Hyde Street Harbor Hydrocarbon Seep - Sampling and Analysis Plan, CDIM Engineering, Inc., 12/11/2020.

Hyde Street Harbor Hydrocarbon Seep - Work Plan, CDIM Engineering, Inc., 9/21/2020.

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2012/2013, Port of San Francisco, 2012/2013.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2013/2014, Port of San Francisco, June 16, 2014.

### **Seawall Lot 302**

Lead Paint inspection report; Lous fish shack; 300 Jefferson street, California Environmental Consulting Services, February 4, 2011.

Limited Lead and Asbestos Sampling, 360 Jefferson St, North Tower environmental, 11/25/2008.

Limited Roofing Asbestos Survey and Evaluation, 340 Jefferson St, ProTech Consulting and Engineering, 12/2006.

Pre-renovation asbestos survey; Lous fish shack fishermen's wharf; 300 Jefferson Street, California Environmental Consulting Services, February 9, 2011.

### **Seawall Lot 303**

Final Environmental Risk Assessment, Former Mobil Bulk Terminal, 440 Jefferson St.(Wharf J10), Acton Mickelson Environmental, 5/30/14.



Final Site History Report and Subsurface Investigation Workplan, Hyde Street Harbor, Tetra Tech, Inc., February 1999.

Proposal for Contamination Mitigation, San Francisco Marine, Former Mobil Oil Marine Bulk Plant, 440 Jefferson Street, Accutite, April 23, 1990.

Quarterly Progress Report, First Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, April 19, 2000.

Quarterly Progress Report, First Quarter 2001, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, April 12, 2001.

Quarterly Progress Report, Fourth Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, January 15, 2000.

Quarterly Progress Report, Fourth Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, January 15, 2001.

Quarterly Progress Report, Fourth Quarter 2002, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 1/8/02.

Quarterly Progress Report, Second Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, July 15, 1999.

Quarterly Progress Report, Second Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, July 13, 2000.

Quarterly Progress Report, Third Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 10/15/99.

Remedial Action Work Plan, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, September 8, 1994.

Remedial Excavation and Recovery Well Installation Report, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, September 17, 1996.

Risk Management Plan, 440 Jefferson St. (Wharf J10 area), Acton Mickelson Environmental, 10/23/15.


Site Investigation / Characterization Report at Former Mobil Oil Bulk Plant, 440 Jefferson Street Project, Alton Geoscience, September 20, 1990.

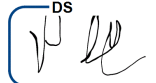
Site Summary Report, Former Mobil Bulk Plant, 440 Jefferson Street, TRC Alton Geoscience, 1/21/01.

Subsurface Investigation Report, Hyde Street Harbor, Tetra Tech, Inc., July 1999.

Waste Classification Application for Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, May 27, 1994.

Wharf j-10, SCA Environmental, Inc., .

Initial :   
Port: \_\_\_\_\_

Tenant:   
\_\_\_\_\_

**EXHIBIT D**  
**RESOLUTION NO. 16169a**

Recreation and Park Commission Minutes - July 18, 1991

\* \* \* \* \*

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

RESOLUTION #16169a

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

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

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

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

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

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

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

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

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

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

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

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

The charter 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 E**  
**STATE GRANT**



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

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

Prerequisites  
to issuance  
of permits.

## CHAPTER 88.

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

[Approved May 2, 1923.]

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

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

Lands  
granted  
to San  
Francisco.

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

For aquatic  
park.

Use of  
land  
restricted.

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

Land not  
to be  
alienated.

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

#### CHAPTER 89.

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

[Approved May 2, 1923.]

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

Stats. 1921,  
p. 1446,  
amended.

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

**EXHIBIT F**  
**MANAGEMENT PLAN**

# Dolphin Swimming & Boating Club

## Bylaws Updated September 2021

### Article I: Principal Office

The principal office of this Club is hereby fixed and located at 502 Jefferson Street, San Francisco, California 94109. This property is maintained on behalf of the Recreation and Park Commission of the City and County of San Francisco.

### Article II: Purpose

The purpose of this Club is to provide facilities and host events for rowing and swimming and to engage in such other athletic activities as may be beneficial to the health and well-being of the members. In times in which the Club occupies public park property in San Francisco, the Club's purpose also is to operate and maintain that property on behalf of the Recreation and Park Commission, in accordance with such policies, rules, regulations, and purposes as the Commission may decree.

### Article III: Membership

**Section 1: Classification of Members.** There shall be three classes of members:

#### (a) Life Members

Any person who completes twenty-five (25) consecutive years of paid up membership in good standing shall automatically become a Life Member and shall be accorded all rights and privileges of active Members. Life Members shall not be liable for payment of dues. Life Members who maintain lockers in the Club shall pay a yearly locker fee in advance in an amount determined by the Board of Governors. If a member resigns, or is terminated for non-payment of delinquencies, and later rejoins or is reinstated, prior and subsequent membership periods shall be counted in calculating years of consecutive paid up membership toward Life Membership, provided that all of the following requirements are met:

1. the period elapsed between any date of resignation or termination and the subsequent date of rejoining or reinstatement does not exceed six (6) months;
2. the member has paid all dues and other assessments that would have been applicable during the elapsed period;

3.the member has paid all amounts required under Section 2 of this Article if rejoining, or the reinstatement fee determined by the Board of Governors and other amounts required under Section 11 of this Article if reinstating; and

4.the member has paid any other fees and other obligations or charges incurred for services or benefits actually received, dues, assessments or fines as otherwise required under this Article III.

#### (b) Out of Town Members.

Any person who resides more than 100 miles from the Club's principal address, may, upon consent of the Board, be placed on the out of town membership list. Each Out of Town Member shall pay dues in an amount determined by the Board but shall not be entitled to maintain a locker at the Club.

#### (c) Active Members.

All other members of this Club shall be Active Members.

## Section 2: Eligibility

Any person of at least eighteen (18) years of age, shall be eligible for membership without regard to race, color, religion, age, ancestry, ethnicity, national origin, sex (including pregnancy, sexual orientation, gender identity, or gender expression), political affiliation, disability or medical condition (including mental or physical, including HIV/AIDS, AIDS related conditions, cancer, and genetic characteristics), physical handicap, marital status, military or veteran status, or any other grounds prohibited by law. Each applicant shall access the application form (which shall have an electronic link to these bylaws) from the Club website, or by request, obtain a copy from the Membership Director in paper or digital format, which shall be completed and submitted to the Membership Director at least one day before the monthly Board of Governors meeting. The Membership Director also shall provide each applicant electronic access to these bylaws, or a copy upon request. The Membership Director shall determine the date the completed application is deemed made and shall notify each applicant of the time at which the application shall be considered by-and the time at which an initiation fee and dues as specified by the Board of Governors, shall be required to be paid. The Membership Director (or an alternate designee of the Board, if necessary) shall present the applicants to the Board of Directors at the monthly meeting for acceptance as members.

Each application form for membership shall contain the following statement in a conspicuous place: "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 the Dolphin Swimming and Boating Club, 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 (including pregnancy, sexual orientation, gender identity, or gender expression), political affiliation, disability or medical condition (including mental or physical, including HIV/AIDS, AIDS related conditions, cancer, and genetic characteristics), physical handicap, marital status, military or veteran status, 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.”

An application for membership shall be rejected only for good cause and applicant shall be notified in writing by the Membership Director of the reason for the rejection of the application and all money submitted in support of the application shall be returned to the applicant. Good cause for rejection of the application shall be determined 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 maintained by the Club, the health, safety, or welfare of its intended users, or the preservation or maintenance of the property. A rejected applicant shall be eligible to re-apply for membership in three months of the rejection for membership. An applicant shall be deemed accepted to the membership 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.

### Section 3: Rights and Privileges

Except as provided elsewhere in the Bylaws, each member shall have all the rights and privileges of membership including, but not limited to, the right to use the property and facilities of this Club subject to rules and regulations adopted by the Board of Governors, the right to attend Annual and Special Meetings, the right to nominate and vote for candidates for Club offices, and the right to run for Club offices.

### Section 4: Dues

Except as provided elsewhere in the Bylaws, all members shall pay dues in an amount to be determined by the Board of Governors.

### Section 5: Assessments

The Board of Governors may impose assessments on members in the event of an extreme emergency that places the Club in jeopardy. Such an assessment shall require an affirmative vote of two-thirds of the total number of authorized Governors and consent by a majority of the members voting at a meeting or by written ballot. Each member shall be informed of the assessment by notice sent to the member. Any member may avoid liability for such assessment by sending a written resignation to the Membership Director within thirty (30) days after the date of the notice of the assessment.

### Section 6: Annual Meetings

An Annual Meeting of the membership shall be held at the principal office of the Club at 6:30 p.m. on the third Wednesday in October. At that meeting, the Board of Governors shall review with the members the business of the past year, proposed activities for the next year, and may present any other issue for action of the members. Any issue may be presented for action of the members by the President, the Board of Governors, or by written petition to the Board at least five (5) days before the meeting and signed by five percent (5%) or more of the membership. Except for those issues presented for action of the membership, members shall not be entitled

to vote, but, upon recognition by the President, shall be allowed to speak on any issue. There shall be no proxy voting, and the number of voting members present shall constitute a quorum. Except when a greater number is required by law or by other provisions of the Bylaws, approval by a majority of votes cast on a matter shall constitute approval by the membership. Blanks and abstentions shall not be counted.

## Section 7: Special Meetings

Special Meetings of the members may be called by the Board of Governors or by five (5%) percent or more of the membership for any lawful purpose. The number of voting members present shall constitute a quorum. Except when a greater number is required by law or by other provisions of the Bylaws, approval by a majority of votes cast on a matter shall constitute approval by the membership. Blanks and abstentions shall not be counted.

## Section 8: Notice of Meetings

Notice of all Annual or Special Meetings shall be given in writing to all voting members by the Recording Secretary. Such notices shall be sent no less than twenty (20) days and no more than ninety (90) days before such meetings. Each notice shall state the location, date, and time of the meeting and, in addition, those matters which the Board of Governors intends to present for action by the members.

## Section 9: Action by Written Ballot

The Board of Governors shall be elected by the members by written ballot and not by action at any meeting. In addition, any action which may be taken at any meeting of the members may be taken by written ballot.

A. The number of ballots required for a quorum and for approval shall be the same as the number of members and votes required at a meeting.

B. All ballot solicitations shall state, with respect to ballots other than for the election of governors, the percentage of approvals necessary to pass the matter submitted. The solicitation must specify the time by which the ballot must be received, in order to be counted.

C. The written ballot, which may be sent by and to the Club by electronic transmission, shall afford each member the opportunity to specify choice between approval and disapproval of each matter; blanks and abstentions shall not be counted. In any election of governors, the written ballot shall instruct the member to vote for no more candidates than there are vacancies; blanks and abstentions shall not be counted.

D. The Board of Governors shall be elected by a plurality vote.

## Section 10: Leave of Absence

The Board of Governors may grant a leave of absence to any member due to military service or other good and sufficient reason. Military leave shall be for the duration of service plus three (3)

months. Other leaves of absence shall not exceed six (6) months, but may be extended by the Board upon written request.

## Section 11: Termination of Membership

A member may resign at any time, but resignation shall not relieve the member from any obligations or charges incurred, services or benefits actually received, dues, assessments or fines.

- A. Any member whose indebtedness to the Club, incurred for dues, fines, assessments or other reasons, exceeds the sum of one month's dues shall be considered delinquent. If, after written notification, via United States Postal Service or electronic delivery by the Membership Director, the delinquent member fails to repay the outstanding debt by the next Board Meeting, the membership of that person shall be terminated. Provided the period elapsed between any date of resignation or termination and the subsequent date of rejoining or reinstatement does not exceed six (6) months, the Membership Director may accept a member application to rejoin or be reinstated upon payment of all amounts required for joining or reinstating, as applicable; together with any other fees and other obligations as otherwise required under this Article III. If such elapsed period exceeds six (6) months, then approval of the Board of Governors by a two-thirds vote of those present shall be required. Blanks and abstentions shall not be counted.
- B. A member may be expelled from the Club for good cause. Good cause shall be determined based on a record of past acts or conduct demonstrating that maintenance of the member's membership would substantially impair the public recreational purpose of the property maintained by the Club, the health, safety, or welfare of its intended users, or the preservation or maintenance of the property. Expulsion must be in accordance with the following procedure:
  - a. The Board of Governors may, by majority vote, initiate an-expulsion determination proceeding and shall set a hearing date before the Board of Governors at a future Board Meeting at least 30 days after the written notice in subsection (b) is sent.
  - b. The Board of Governors shall send written notice to the member, specifying the charge(s) that the expulsion determination proceeding will consider, the reasons supporting the charge(s), the names of the person(s) making the charges, and advising the member of the member's opportunity to submit a written or oral statement at the hearing.
  - c. The Board of Governors, at the hearing, shall advise the member of the charge(s), may call witnesses and shall give the member a reasonable opportunity to present any explanation or defense.
  - d. At the close of the hearing, the Board of Governors shall meet in executive session and shall vote on whether to expel the member; approval of expulsion by the Board of Governors requires a two-thirds vote of those present. Blanks and abstentions shall not be counted. Any finding of good cause for expulsion shall be communicated in writing to the member.
  - e. 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.

## Section 12: Inspection



Any member of the Club shall have the right to inspect the books, records and membership lists of the Club for purposes reasonably related to the member's interest as a member and shall also have the right to inspect the financial reports of the Club upon written request. This should not be construed to mean that any member, other than an officer who is directly involved, shall have access to confidential information concerning any other member, including, but not limited to, address, telephone number, or personal financial records.

## Section 13: Liability

No member shall lend any of the boats or other property of the Club to any person except upon consent of the Board of Governors. Any member who violates this prohibition or who shall maliciously or through gross carelessness injure or destroy boats or other property of the Club shall be responsible for all damage or loss to the Club and is subject to Board action.

## Article IV: Board of Governors

### Section 1: Powers

The Club shall have powers to the full extent allowed by law. All powers and activities of the Club shall be exercised and managed by the Board directly or, if delegated, under the ultimate direction of the Board.

### Section 2: Number of Governors

The authorized number of governors shall be fifteen (15): the President, Vice-President, Recording Secretary, Membership Director, Treasurer, Boat Captain, House Captain and eight (8) governors elected at large.

### Section 3: Term of Office of Governors

Each governor shall be elected for a term of office of one (1) year, beginning January 2 in the calendar year following the date of election. No governor shall serve more than two consecutive full terms in any one office.

### Section 4: Nomination and Election

Any person who has been a member for one (1) year or more and is in good standing is eligible for nomination to the Board of Governors. Each candidate shall be nominated by five (5) members in good standing. Nominating petitions furnished by the Club shall be submitted by the candidate to the Recording Secretary for certification. No member may run for more than one office. Each candidate shall appear at the November meeting of the Board of Governors to confirm that member's candidacy. The Board of Governors may, on good cause shown, waive the requirement that a candidate personally appear at the November meeting.

a. The election of governors shall be in accordance with the written ballot provisions contained in Article III, Section 9. In addition, the mechanics of the election shall be handled jointly by the Recording Secretary and the Membership Director in coordination with the Ballot Committee.

b. Nominating petitions for candidates must be received by the Recording Secretary on or before the November meeting of the Board of Governors.

c. A Ballot Committee of three (3) members in good standing who are not nominees for election shall be elected by the Board of Governors in November. The Ballot Committee shall set the date, time and place for ballot tabulation.

d. The double envelope mail ballot system and/or an electronic transmission system shall be used for the election of governors. Ballots must be returned for counting no less than twenty-four (24) hours before the December meeting of the Board.

e. Election results shall be published in the Dolphin Log and posted on the Club bulletin board.

## Section 5: Vacancies

A vacancy in the Board of Governors shall be deemed to exist in the event that the actual number of governors is less than that specified in Article IV, Section 2 (Number of Governors) for any reason. Vacancies may be filled by the Board for the unexpired portion of the term remaining until the next annual election.

## Section 6: Resignation and Removal

Resignation of any governor shall be effective upon receipt of written notice by the Recording Secretary.

The Board may remove a governor who has been declared of unsound mind by final order or court or convicted of a felony or found by a judgment of any court to have breached the Standard of Care provided for in these Bylaws. The Board may remove and replace any governor who has missed two (2) consecutive Regular Meetings, or three (3) Regular Meetings in total during the calendar year. A governor may be removed for any other reason only by a vote of a majority of the members by written ballot or at a meeting.

## Section 7: Regular Meetings

Regular Meetings of the Board of Governors shall be held at the principal office of the Club on the third Wednesday of each month at 7 p.m., provided, however:

A. That if the third Wednesday of a month occurs on or within one (1) calendar day of a major holiday, the Board of Governors may, at its sole discretion, move the meeting to another date within seven (7) calendar days of the original date. The Board of Governors shall notify the

membership of the schedule of Regular Meetings for its term no later than January 31. B. That the meeting in October shall convene after closure of the Annual Meeting.

## Section 8: Special Meetings

Special Meetings of the Board of Governors may be called by the President or by written request of twenty five (25) members. No other business than that for which the meeting was called shall be transacted.

## Section 9: Notice

Written notice of any Special Meeting of the Board shall be given to each governor at least four (4) days before any such meetings.

## Section 10: Waiver of Notice

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present, and, either before or after the meeting, each of the governors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any governor who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

## Section 11: Quorum

A majority of the governors then in office shall constitute a quorum. The act of a majority of the governors present at a meeting at which a quorum is present shall be the act of the Board of Governors, except as provided in Article III, Sections 5 and 11. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of governors if any action taken is approved by at least a majority of the required quorum for such meeting.

## Section 12: Standard of Care

### (a) General

A governor shall perform the duties of a governor, including duties as a member of any committee of the Board on which the governor may serve, in good faith, in a manner such governor believes to be in the best interest of this Club, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a governor, a governor shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

a. One or more officers or employees of the Club whom the governor believes to be reliable and competent in the matters presented;

b. Counsel, independent accountant or other persons as to matters which the director believes to be within such person's professional or expert competence; or

c. A committee of the Board upon which the governor does not serve, as to matters within its designated authority, which committee the governor believes to merit confidence, so long as in any such case, the governor acts in good faith, after reasonable inquiry when the need thereof is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a governor in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a governor including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

## (b) Investments

Except with respect to assets held for use or used directly in carrying out the Club's activities, in investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing the corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the Club's capital. No investment violates this Section which conforms to provisions authorizing such investments contained in an instrument or agreement pursuant to which the assets were contributed to the Club.

## Section 13: Prohibited Transactions

### (a) Loans

This Club shall not make any loan of money or property to or guarantee the obligation of any governor or officer; provided, however, that the Club may advance money to a governor or officer of this Club for expenses reasonably anticipated to be incurred in performance of the duties of such officer or governor so long as such individual would be entitled to be reimbursed for such absent that advance.

### (b) Self-Dealing Transaction

Except as provided in Subsection C below, the Board shall not approve a self-dealing transaction. A self-dealing transaction is a transaction to which this Club is a party and in which one or more of the governors has a material financial interest.

### (c) Approval

The Board of Governors may approve a self-dealing transaction if the Board determines that (1) the Club is entering into the transaction for its own benefit; (2) the transaction is fair and reasonable to the Club; and (3) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the

circumstances. Such determinations must be made by the Board, in good faith, with knowledge of the material facts concerning the transaction and the governor's interest in the transaction, and by a vote of a majority of the governors then in office, without counting the vote of any interested governor.

## Section 14: Indemnification

This Club shall provide indemnification to the full extent allowed by law. The Board of Governors may adopt a resolution authorizing the purchase of Insurance on behalf of any agent of this Club against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not this Club would have the power to indemnify the agent against that liability under law.

## Section 15: Inspection

Every governor shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this Club.

## Section 16: Compensation

The governors shall serve without compensation. This provision shall not prevent the Board from authorizing the payment of reasonable compensation to a governor for work performed for the Club in any capacity other than governor. At all times, however, at least fifty-one percent (51%) of the Board shall consist of governors who have not been compensated by the Club within the prior twelve (12) months and who are not related by blood or marriage to any person so compensated.

## Section 17: Committees

The Board of Governors may, by resolution, authorize such committees as it may deem necessary and shall appoint the membership of such committees. Meetings and actions of any committee shall be governed by and held and taken in accordance with the provisions of this article concerning meetings of the Board of Governors with such changes in the context of those sections as are necessary to substitute the committee and its members for the Board of Governors and its members. The Board of Governors may adopt rules for the governance of any committee not inconsistent with these Bylaws.

# Article V: Officers

## Section 1: Officers

The officers of this Club shall be President, Vice-President, Recording Secretary, Membership Director, Treasurer, Boat Captain and House Captain. The officers of this Club shall also include all commissioners, all committee members, and shall also include such other persons as the

Board of Governors may from time-to-time specifically appoint as officers of the club by resolution. The provisions of Article IV Section 12 herein regarding standard of care shall apply to all club officers to the same extent as they apply to governors. No two or more elected offices may be held by the same person.

## Section 2: President

The President shall preside at all meetings of the Board of Governors and at all meetings of the members and shall perform all duties incident to that position. The President may sign on behalf of the Club all documents, contracts and other instruments, except when the Board or these Bylaws expressly reserve that power to the Board or to some other officer. The President shall be a member of all committees by virtue of holding that office, and the President shall appoint all commissioners.

## Section 3: Vice-President

The Vice-President shall perform all duties and exercise all powers of the President in the absence of or in the event of disability of the President. The Vice-President shall have such other powers and perform such other duties as may be delegated by the President to the Vice President or as prescribed by the Board of Governors.

## Section 4: Recording Secretary

The Recording Secretary shall oversee and be responsible for a complete and full record of the proceedings of the Board of Governors, shall serve such notices as may be proper or necessary, shall conduct all correspondence of the Club and, in the absence of the President or Vice-President, shall call the Board meeting to order until a temporary chairman is appointed. The Recording Secretary shall be custodian of all Club property other than the property for which the House Captain or Boat Captain is custodian. The Recording Secretary shall also note in the minutes the receipts and disbursements of each meeting, and shall have prepared by the evening upon which the Recording Secretary's term expires, a semi-annual report showing the number of members in good standing, the number of members elected, resigned, expelled, and on leave of absence together with dates. That report shall also contain a list of all boats and other Club property. Upon retirement or removal from office, the Recording Secretary shall deliver all property and papers to the duly elected successor

## Section 5: Membership Director

The Membership Director shall keep a correct account of the standing of all members, shall receive all money due the Club and keep a correct account of those funds which the Membership Director shall pay to the Treasurer at the close of each meeting, obtaining receipt for such amounts. The Membership Director shall make a monthly report of all delinquent members and shall notify members of fines imposed. The Membership Director shall process all new memberships prior to the Regular Meeting each month.

## Section 6: Treasurer

The Treasurer shall receive all monies of the Club, including monies from the Membership Director, giving receipt therefore and have charge and custody of all funds of the Club, and shall deposit all such funds in such depositories as the Board of Governors shall direct. The Treasurer shall keep a correct account of the finances of the Club and inform the Recording Secretary and the Membership Director of the amount of receipts and expenses of each meeting and render a statement in open meeting. The Treasurer shall keep and maintain adequate and correct accounts of the Club's finances and shall render reports and accountings as required. The Treasurer shall transfer all property in his possession to the successor. The Treasurer shall also take charge of and secure all critical documents.

## Section 7: Boat Captain

The Boat Captain shall have general supervision of the boats of the Club, subject to such rules as the Board of Governors may determine. The Boat Captain shall have the power to lay up Club boats which are not in condition to be used or when, in the Boat Captain's judgment, it is unsafe to use them. The Boat Captain shall recommend to the Board of Governors the imposition of fines for any violation of boat rules and may recommend assessments.

## Section 8: House Captain

The House Captain shall have general supervision of all facilities of the Club, subject to such rules as the Board of Governors may determine.

# Article VI: Administration

## Section 1: Flag

The flag shall be navy blue with white edge and the words DOLPHIN CLUB.

## Section 2: Fiscal Year

The fiscal year of the Club shall end on December 31.

## Section 3: Reports to Members

The Board of Governors shall prepare or cause to be prepared an annual report not later than by April 30 for the prior year. Such report shall contain in appropriate detail:

a. A balance sheet as of the end of the fiscal year and an income statement and statement of changes of financial position for such fiscal year.

b. Any transactions between the Board of Governors and a member of the Board of Governors in excess of Forty Thousand Dollars (\$40,000.00) and any indemnification to a member of the Board of Governors in excess of Ten Thousand Dollars (\$10,000.00).

The Board of Governors shall notify each member yearly of the member's right to receive an annual report. Upon written request of any member, the Board of Governors shall promptly cause the most recent annual report to be sent to the requesting member.

## Section 4: Order of Business

The following shall be the order of business for this Club:

i. Meeting Called to Order

ii. Roll Call of Officers

iii. Reading of Minutes

iv. Acceptance of Candidates for Membership

v. Correspondence

vi. Reports of Committees

vii. Reports of Officers

viii. Deferred Business

ix. Reading of Bills

x. New Business

xi. Adjournment

## Section 5: Robert's Rules of Order

Robert's Rules of Order shall be the authority to decide all questions of parliamentary procedure not provided for in these Bylaws.

## Section 6: Nonpartisan

The Club shall not engage in local, state or federal elections or legislative activities.

## Section 7: Amendments

These Bylaws may be amended only by the membership, voting by written ballot. All amendments shall require the approval of two-thirds (2/3) of the members who vote.



## Section 8: Depositories

One or more depositories for the funds of the Club shall be designated by the Board of Governors. Checks, drafts, and withdrawals against such funds shall be signed by two officers of the Club. Specifically, the President and Treasurer shall sign all checks, drafts and withdrawals unless either or both are absent or incapacitated, in which case the Vice-President and/or Recording Secretary are authorized to sign. However, the only instance in which the Recording Secretary shall sign is when two other authorized officers are either absent or incapacitated.

## Article VII: Dissolution Clause

Upon the liquidation, dissolution or abandonment of the Dolphin Swimming & Boating Club, all assets remaining after payment or provision of payment of all debts and liabilities shall be distributed to an organization that is organized and operated exclusively for charitable and educational purposes meeting the requirements of the Revenue and Taxation Code section 214.

## Article VIII: Irrevocable Dedication Clause

The contents of the property that is rented from the City of San Francisco by the Dolphin Swimming & Boating Club is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Club shall ever inure to the benefit of any director or officer.

# Application for Membership at the Dolphin Swimming and Boating Club

I want to join the Dolphin Swimming and Boating Club.

As a Dolphin, I agree to:

- read and abide by the by-laws, rules, regulations and resolutions adopted by the club's board of governors;
- respect the guidance and direction of the club's staff and sport commissioners;
- sign required waivers and meet insurance requirements for participating in specific club activities;
- be considerate of other members and staff.

I understand that to become a member I must:

- complete this form no later than 5 p.m. on the third Tuesday of the month
- attend the new member meeting at 6 p.m. on the third Wednesday of the month.
- be accepted by the Board at its monthly meeting beginning at at 7pm and following the new member meeting.

I understand that I will receive an invoice after the meeting and that dues are to be paid within 2 weeks, and my membership will begin when payment is received.

I certify that the following responses are true and I am at least 18 years of age.

NOTE: 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 the Dolphin Swimming and Boating Club, 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 (including pregnancy, sexual orientation, gender identity, or gender expression), political affiliation, disability (including mental or physical, including HIV/AIDS, AIDS related conditions, cancer, and genetic characteristics), physical handicap, marital status, military or veteran status, 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.

\* Required

1. FIRST NAME? \*

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2. LAST NAME? \*

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3. Date of BIRTH? \*

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*Example: January 7, 2019*

4. MAILING ADDRESS - please include number, street, city, state and zip: \*

---

5. What is the best PHONE NUMBER to reach you? \*

---

6. Please list an EMERGENCY CONTACT with their PHONE number: \*

---

7. Please share an EMAIL address (we will respond to your application from [membership@dolphinclub.org](mailto:membership@dolphinclub.org)) \*

---

8. What are your preferred pronouns? e.g. she, he, they... \*

---

9. Would you like a current member to contact you during your first month to check in? \*

*Mark only one oval.*

Yes

No

10. Let us know if you prefer email or phone. \*

*Mark only one oval.*

Email

Phone

11. Which of the Club's offerings interest you? (check as many as you want)

*Check all that apply.*

Swimming

Rowing and Paddling

Handball

Other:  \_\_\_\_\_

12. How would you describe yourself as a swimmer (choose any that match)? \*

*Check all that apply.*

Experienced open water swimmer

Experienced pool swimmer, new to open water

Still getting comfortable swimming

Competitive swimmer, like to race

Swim mostly for pleasure and recreation

Not a swimmer or swim occasionally

13. Do you have experience swimming in cold water (50F-66F or 10C-19C)? \*

*Mark only one oval.*

Yes

No

14. Do you have previous rowing or paddling experience? \*

*Check all that apply.*

No, I am new to rowing

In simple fixed seat boats

Other craft (kayak, canoe)

I've rowed in singles and doubles

I was part of a rowing team

Other:  \_\_\_\_\_

15. Is there anything else you want us to know about you? (This might be a way you want to volunteer, or what would help you feel most welcome at the club, or another interest you hope to share...)

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16. Do you have questions for us?

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**EXHIBIT G**

**APPROVED RATES AND CHARGES**

<b>Day-Use Fee</b>	<b>Initiation Fee</b>	<b>Annual Locker Fee</b>	<b>Annual Membership Fee</b>
<b>\$10</b>	<b>\$127</b>	<b>\$100</b>	<b>\$522</b>

**EXHIBIT H**  
**FIRST SOURCE AGREEMENT**





CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT

**Business Name:** *Dolphin Swimming and Boating Club*  
**Contract ID: (If applicable)**  
**Phone:** *415-441-9329*  
*(pay phone)*  
**Name of authorized representative:** *Viviane Watson*  
**Main Contact:** *Membership Director*  
**Supplier ID: (If applicable)**  
**Email:** *dolphinclubsf@gmail.com*  
**Signature of authorized representative:** *[Signature]*  
**Date:** *10/23/2020*

\* By signing this form, the company agrees to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code

**Instructions:**

- This form must be submitted via email to the Office of Economic and Workforce Development, Workforce Development Division at [business.services@sfgov.org](mailto:business.services@sfgov.org) with the subject line First Source Non-Construction Hiring Projection Form
- If an entry level position becomes available at any time during the term of the lease and/or contract, the company must notify the First Source Hiring Administrator at [business.services@sfgov.org](mailto:business.services@sfgov.org)

**Section 1: Select your Industry**

- |  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> Admin/Support/Waste     | <input type="checkbox"/> Food Services       | <input type="checkbox"/> Mgmt/Enterprises   | <input type="checkbox"/> Transport/Warehouse                               |
| <input type="checkbox"/> Agri/Forestry/Fish/Hunt | <input type="checkbox"/> Government          | <input type="checkbox"/> Manufacturing      | <input type="checkbox"/> Utilities   |
| <input type="checkbox"/> Construction            | <input type="checkbox"/> Health Care         | <input type="checkbox"/> Real Estate/Rental | <input type="checkbox"/> Wholesale Trade                                   |
| <input type="checkbox"/> Educational Services    | <input type="checkbox"/> Info/Tech/Prof      | <input type="checkbox"/> Retail Trade       | <input checked="" type="checkbox"/> Other <i>Swimming and Boating Club</i> |
| <input type="checkbox"/> Finance/Insurance       | <input type="checkbox"/> Leisure/Hospitality | <input type="checkbox"/> Social Services    |  |

**Section 2: Indicate Industry NAICS code if known:** \_\_\_\_\_

**Section 3: Provide information on all Entry Level Positions**

Entry level Position Title	Job Description	Number of New Hires	Projected Hiring Date
<i>none available</i>		<i>[Redacted]</i>	

**FOR INTERNAL USE ONLY:**

**Section 3: Select the type of First Source Project:**

- |   |  |
|---|--|
| <input type="checkbox"/> Contractor                   | <input type="checkbox"/> Biotech Payroll Tax Exclusion Applicant |
| <input type="checkbox"/> Subcontractor                | <input type="checkbox"/> Scene in San Francisco Rebate Applicant |
| <input type="checkbox"/> City of San Francisco Tenant | <input type="checkbox"/> San Francisco Airport                   |
| <input type="checkbox"/> Subtenant                    | <input type="checkbox"/> Other _____                             |
| <input type="checkbox"/> Developer                    |  |

**EXHIBIT I**  
**GASB 87 CHECKLIST**

Checklist for Supplier Lease Contracts

<b>Lease Term and Provision</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
1. Is this an amendment of existing lease?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Confirm the lease agreement date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Confirm the lease commencement date and end date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Include payment frequency (such as one time, monthly, quarterly, annually or event based)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Identify the based amount per payment frequency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is lease payment rate adjustment applicable?  <i>Note: For example, reference index, specific rate or other calculation method.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Any variable payments by performance is applicable?  <i>Note: For examples, retail space rent includes calculation based on gross sales or copier charges for per-page fee.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is lease incentives applicable?  <i>Note: Lease incentives refer to incentives provided by lessor for lease improvements or moving expenses. For example, rent credits or free rent during constructions.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Any security deposit required? (Please include the amount)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the lease cancelable?  <i>Note: please include when and who can request to cancel the agreement. Also, identify any penalties.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Does this lease contain Renewal options?  <i>Note1: Please include terms, rent calculation, and any end of lease procedure of renewal</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Note2: Indicate the date that the lessor is required to be notified by in order to renew the lease.*

12. Does this lease contain a purchase option?

*Note: is the lessee reasonably certain to exercise this purchase option?*

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

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

Prerequisites  
to issuance  
of permits.

## CHAPTER 88.

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

[Approved May 2, 1923.]

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

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

Lands  
granted  
to San  
Francisco.

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

For aquatic  
park.

Use of  
land  
restricted.

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

Land not  
to be  
alienated.

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

#### CHAPTER 89.

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

[Approved May 2, 1923.]

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

Stats. 1921,  
p. 1446,  
amended.

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

Dolphin Club

LEASE AGREEMENT FOR  
DOLPHIN SWIMMING AND BOATING CLUB

AT

AQUATIC PARK

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

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

Commissioner Keith Eickman

Commissioner Luisa Ezquerro  
Commissioner Tommy Harris

Commissioner Frances McAteer  
Commissioner Amy Meyer

1979

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LEASE

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

WITNESSETH

That for and in consideration of the covenants, terms and conditions hereinafter contained on the part of the Lessee to be paid, kept and performed, Lessor does hereby lease to Lessee and Lessee does hereby lease, hire and take from Lessor the improved real property commonly known as 502 and 504 Jefferson Street at the Foot of Hyde Street as indicated on the attached map (hereinafter referred to as the "demised premises") situated at Aquatic Park in the City and County of San Francisco, State of California, subject to the following agreements, terms and conditions, to which the parties hereto agree.

1. EXTENT OF LEASEHOLD

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

2. USE OF PREMISES AND PURPOSE OF LEASE

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

3. CODE COMPLIANCE

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

4. PROHIBITED USES

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

5. PUBLIC ACCESS

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

6. VENDING MACHINES

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

7. TERM

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

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

8. RENTAL

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

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

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

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

9. GROSS REVENUE DEFINED

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

10. RATES AND CHARGES

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

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

11. ACCOUNTING AND RECORDS

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

12. AUDIT OF BOOKS

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

13. DAYS AND HOURS OF OPERATION

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

14. PREMISES TO BE KEPT CLEAN

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

15. EMPLOYEES OF LESSEE

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

16. RATES OF PAY FOR LESSEE'S EMPLOYEES

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

17. UTILITIES

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

18. LESSEE TO PAY FOR SERVICES AND DAMAGES

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

19. LESSEE TO MAINTAIN EQUIPMENT AND PREMISES

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

20. LESSEE TO PROVIDE FURNITURE AND FIXTURES

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

ion and maintenance of the demised premises.

21. USE OF LESSOR'S EQUIPMENT

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

22. CONDITION OF PREMISES

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

23. IMPROVEMENTS BECOME PROPERTY OF LESSOR

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

24. DESTRUCTION OF PREMISES

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

25. WAIVER OF DAMAGE

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

26. TAXES, ASSESSMENTS AND LIENS

Lessee shall pay promptly all fees and taxes, including but <sup>NOT</sup> limited to, possessory interest taxes, excises, licenses,

ARL

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

27. SIGNS AND ADVERTISING

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

28. LOITERING

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

29. TRESPASS

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

30. COMPLIANCE WITH LAWS

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

31. INSURANCE

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

1. Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.
2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations Coverages. Liquor Liability coverage to be secured in the event Lessee is licensed to dispense alcoholic beverages.
3. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,00 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

4. Property insurance on buildings, fixtures, (and whatever other equipment, irrigation systems, etc.) insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in an amount equal to \$320,000.00 of the replacement value. Said value determined in 1979 and said value to be increased by an amount equal to or greater than the cost of living index or the consumer price index as determined by the United States Government annually.

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

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

ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

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

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

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

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

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

*MB*  
Lessee agrees to indemnify and hold the City harmless from all claims that arise from <sup>LESSEE'S</sup> Contractor's activities.

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

32. UNEMPLOYMENT COMPENSATION

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



33. PERFORMANCE BOND WAIVED

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

34. CONFLICT OF INTEREST

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

35. RIGHTS OF COMMISSION AND CITY

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

36. REMEDIES ON DEFAULT BY LESSEE

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

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

The exercise of the remedies provided for in this section shall be cumulative and shall in nowise affect the remedies available to Lessor.

37. INSOLVENCY: RECEIVER

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

38. CONDEMNATION

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

39. DELIVERY OF POSSESSIONS

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

40. FORCE MAJEURE

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

41. LEASE NOT ASSIGNABLE

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

42. LESSOR'S RIGHTS CUMULATIVE

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

43. HOLDING OVER

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

44. AUTHORITY OF AGENTS OF LESSOR

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

45. NOTICES

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

Dolphin Swimming and Boating Club  
500 Jefferson Street  
San Francisco, CA 94109.

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

46. NON-DISCRIMINATION CLAUSE

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

47. TIME

Time is of the essence of this lease.

48. EACH PROVISION A MATERIAL CONDITION

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

49. STRICT PERFORMANCE

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

50. WAIVER OF BREACH BY LESSOR

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

51. HEADINGS

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

52. APPLICATION OF PROVISIONS OF CHARTER

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

53. LEASE MADE IN CALIFORNIA

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

54. CONTRACTS AND COUNTERPARTS

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

FILE NO. 62-79-7

ORDINANCE NO. 495-79

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

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

5 Section 1. Findings.

6 The Dolphin Swimming and Boating Club has operated since 1888,  
7 a club devoted to aquatic activities at Aquatic Park, and in and around  
8 San Francisco Bay, and at all times the Dolphin Swimming and Boating  
9 Club has been a non-profit organization. The club has provided unique  
10 and individual leadership and guidance in the areas of boating, rowing,  
11 swimming and other sports to the people of San Francisco at Aquatic  
12 Park, on a non-profit basis; the club, with the exception of the South  
13 End Rowing Club, is the only known organization in Northern California  
14 providing such a diverse program of sporting activities catering to  
15 cold water swimming, rowing, boating, handball, running and weight  
16 lifting.

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

24 Section 2. That certain lease between the Recreation and Park  
25 Commission for and on behalf of the City and County of San Francisco,  
26 and the Dolphin Swimming and Boating Club for establishing and operat-  
27 ing a rowing and athletic club at Aquatic Park in San Francisco, a copy  
28 of which lease is on file in the office of the Clerk of the Board of  
29 Supervisors and to which reference is hereby made, is hereby approved.

30 (SEE FILE FOR SIGNATURES)

31

APPROVED AS TO FORM  
BY GEORGE ARMOUR  
CITY ATTORNEY  
BY ROBERT CITY CLERK

Passed for Second Reading  
Board of Supervisors, San Francisco  
OCT 1 1979

Ayes: Supervisors Phil. Dolson, Douglas, Horan-  
sy, Hitch, Kopp, Lee, Swanson, Fried, Hwang,  
Silver

.....

.....

Absent: Supervisors ROSE, SYVER

.....

.....  
Clerk

62-79-7

OCT 12 1979

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

OCT 9 1979

Ayes: Supervisors Phil. Dolson, Douglas, Horan-  
sy, Hitch, Kopp, Lee, Swanson, Fried, Hwang,  
Silver

.....

.....

Absent: Supervisors DOLSON, HOLMAN

.....

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

.....  
Clerk

(H. A. C.)

55. APPROVAL BY BOARD OF SUPL ISORS

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

56. RENEGOTIATION CLAUSE

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

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

CITY AND COUNTY OF SAN FRANCISCO  
RECREATION AND PARK COMMISSION

LESSOR:

BY Thomas W. Malley  
Katherine Colzani, Secretary

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

APPROVED AS TO FORM:

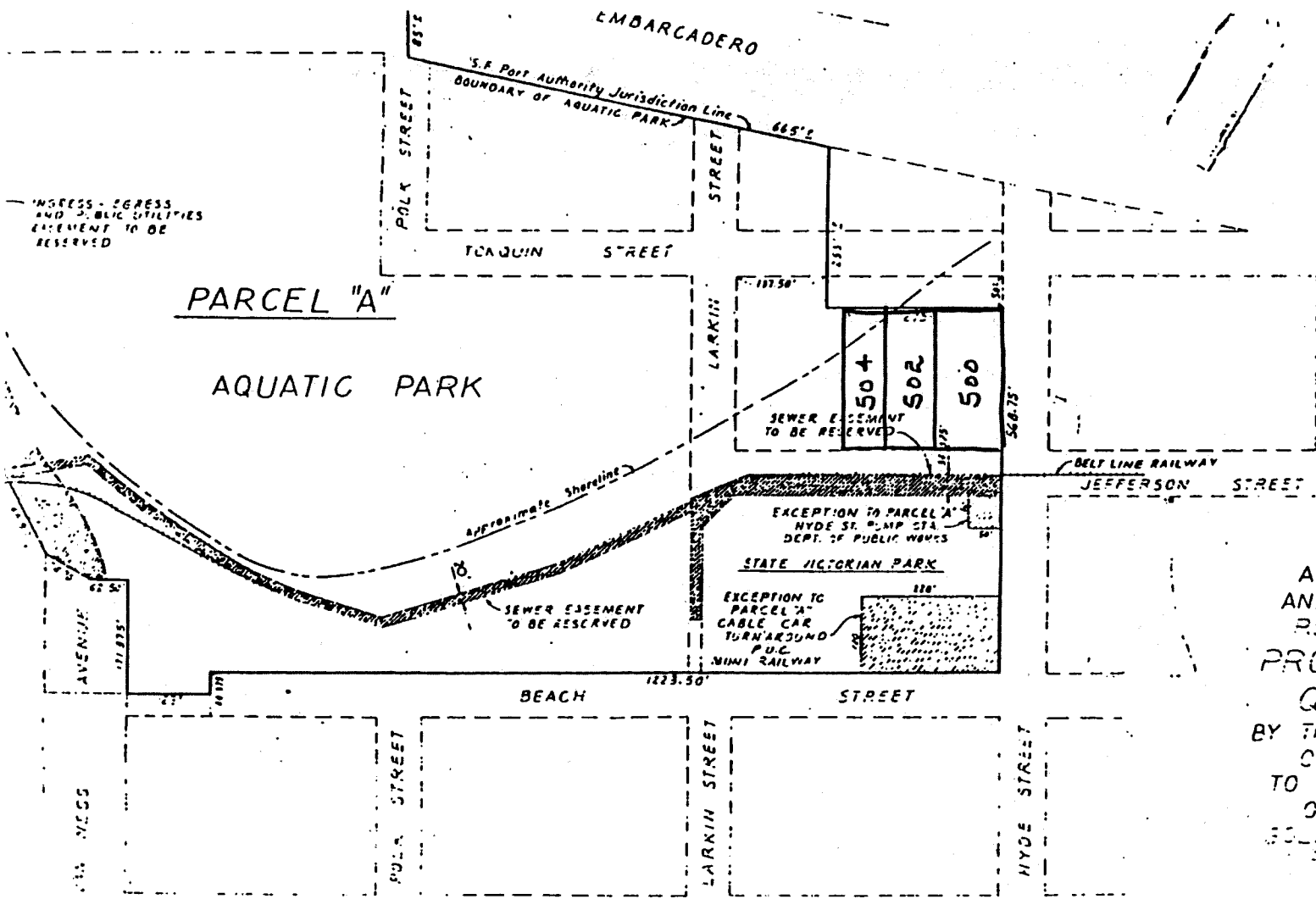
GEORGE AGNOST  
CITY ATTORNEY

John G. Brown  
Deputy City Attorney

LESSEE:

BY Frank C. Krumm  
President

BY David Hunter  
Secretary



1170

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

SCALE: 1" = 100'

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

W I T N E S S E T H

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

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

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

A. TIMETABLE OF REPAIRS

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

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

B. TERM

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

C. RATES AND CHARGES

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

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

APPROVED AS TO FORM:

GEORGE AGNOST  
CITY ATTORNEY

By Paula Weston  
Deputy City Attorney

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

By Katherine Colzani, Secretary

By John J. Spring, General Manager

By Frank C. Dawson  
President



RESOLUTION APPROVING MANNER OF OPERATING

DOLPHIN SWIMMING AND BOATING CLUB  
AND  
SOUTH END ROWING CLUB

Approved  
7/26  
F. J.

WHEREAS, the manner in which the Dolphin Swimming and Boating Club and the South End Rowing Club (hereafter "the Clubs") operate for public benefit, its hours of operation, the means by which nonmembers gain access, and the fees charged for use of the facilities by members and nonmembers, among other things, are subject to approval of this Commission; and

WHEREAS, membership in the Clubs must, in order to conform to the requirements of the Fourteenth Amendment of the U.S. Constitution and of the San Francisco Charter, be open to all interested persons who are presumptively entitled to join absent good cause for exclusion; and

WHEREAS, because of the duty of the Clubs to provide public recreation, initiation fees charged new applicants must be reasonable and not excessive in relation to the amounts charged new members in clubs of a similar nature; and

WHEREAS, the Clubs shall be allowed to charge a reasonable initiation fee, as long as such amount will not erect a financial barrier to persons wanting to use the Clubs' facilities as members, thereby effectively denying public access; and

WHEREAS, the Clubs have operated since 1938 in such a manner that members only have had access to the Clubs' facilities; and

WHEREAS, opening the Clubs' facilities to nonmembers is a new manner of operating the facilities which may expose the Clubs to problems and expenses not encountered before, such as increased security problems, including danger to persons and property, and increased operating expenses generated by the costs incurred in keeping the facilities open to the public and the impossibility of recouping from the possibly small number of non-member patrons the full costs incurred in opening the facilities to nonmembers; and

WHEREAS, providing an opportunity for the Clubs to try different methods of admitting nonmembers to their facilities will allow the Clubs the flexibility necessary to discover the most efficient manner in which these facilities can be utilized on behalf of members and nonmembers alike; and

WHEREAS, the Dolphin Club charges its members \$156.00 per year as dues and the South End Club charges its members \$140.00 per year as dues; and

WHEREAS, the financial statements of the Clubs reveal that the monthly dues charged members are reasonable and necessary in order to meet the operating expenses of the Clubs; and

WHEREAS, the Clubs plan to be open to non-members from 9:00 A.M. to 5:00 P.M., five days a week, every Monday, Wednesday, Friday, Saturday and Sunday; and

WHEREAS, the Clubs' members have access to the Clubs' facilities 24 hours a day; and

WHEREAS, the demand for and use of the facilities by nonmembers is likely to be greater during the day than at night; and

WHEREAS, security problems are greater at night; and

WHEREAS, it is desirable to allow the Clubs (for a period of time) to operate during the day only in order to gauge interest by nonmembers in the use of the Clubs' facilities before imposing on the Clubs the problems inherent in opening the facilities to nonmembers 24 hours a day; and

WHEREAS, the Clubs propose to charge nonmembers \$3.00 for access to the facilities; and

WHEREAS, this fee will allow nonmembers the use for the day of the Clubs' facilities, including sundeck, sauna, shower, handball court, gymnasium equipment and all areas open to members of the Clubs; and

WHEREAS, use of one of the Clubs' boats will not be permitted upon payment of this \$3.00 fee but only by prior appointment, upon payment of an additional amount of money, and only upon satisfactory proof that the nonmember is capable of using the boat safely; and

WHEREAS, the Clubs will pay a person an hourly salary to be available to let in nonmembers to the facilities; and

WHEREAS, the cost of using the YMCA facility on Golden Gate Avenue in San Francisco, including pool, sundeck, running track, gymnasium equipment, and handball court is \$4.00 for the day; and

WHEREAS, until the Clubs have been open to the nonmembers for a period of time it will be impossible to know whether the number of nonmembers using the facilities will be sufficient to reimburse the Clubs for the costs of providing access to them; and

WHEREAS, the Clubs have advertised in eight (8) publications geared toward persons interested in the sports of rowing and boating that the Clubs will be open to nonmembers and the times the Clubs will be open; and

number of nonmembers using the Clubs' facilities and the dates and approximate times of such use; and

WHEREAS, the Clubs are hereby required to post a sign on the exterior of their facilities stating the hours of operation, telephone number to call for more information regarding the Clubs and their activities, and a telephone number for persons to call on the Recreation and Park Department, and the hours to call such number, if they have trouble gaining access to the Club facilities, the wording of such sign to receive the prior approval of the Recreation and Park Department staff; and

WHEREAS, the Clubs are hereby required to return to this Commission in six months, or sooner, upon 21 days written advance notice from this Commission, or upon request of the Clubs, for review of the use of the facilities by nonmembers, including the fees charged nonmembers for such use, for the purpose of determining whether the number of nonmembers seeking to use the Clubs' facilities and the days and hours during which they seek to do so justify increasing or decreasing the hours during which the Clubs facilities must be made available to nonmembers in order to strike an equitable balance between the burden on the Clubs in keeping the facilities open to nonmembers and the obligation of the Commission and the Clubs to maximize the public use of the City's recreational facilities; and

WHEREAS, identification shall be required only of those persons whom the Clubs' attendants reasonably suspect are under 18 years of age and are attempting to gain access to the Clubs' facilities unescorted by an adult; and

WHEREAS, no other identification shall be required or request of nonmembers in order to gain access to the Clubs' facilities, provided, however, that the Clubs shall, unless directed otherwise by the Recreation and Park Department, require nonmembers to sign a statement informing such persons of the dangers of swimming in the bay and stating that such persons assume the risk of swimming in the bay.

MEMORANDUM, BE IT RECORDED that the Commission does hereby approve:

1. The annual membership fees of \$156.00 (Dolphin) and \$140.00 (South End) on their members, payable quarterly;
2. The Clubs' plan to open their facilities to non-members from 9:00 A. M. to 9:00 P.M. every Monday, Wednesday, Friday, Saturday and Sunday;
3. The charge to a member for use of the Clubs' facilities of \$3.00 for the day; and
4. The charge to new members of an initial fee not to exceed \$50.00, said amount payable in quarterly installments in the first year of membership of not less than \$12.50 per quarter.

FILE NO 242-81

ORDINANCE NO. 328-81

1 AMENDING ARTICLE XIII, CHAPTER 10 OF THE SAN FRANCISCO ADMINISTRATIVE  
2 CODE, BY ADDING SECTION 10.117-23 THERETO, ESTABLISHING A SPECIAL  
3 FUND OF THE DOLPHIN SWIMMING AND BOATING CLUB LOCATED AT  
4 AQUATIC PARK AND SPECIFYING PURPOSES FOR WHICH SAID FUND MAY BE USED.

5  
6  
7  
8 Be it ordained by the People of the City and County of San Francisco:  
9 Section 1. Article XIII, Chapter 10 of the San Francisco  
10 Administrative Code is hereby amended by adding Section 10.117-23  
11 thereto, reading as follows:

12 SEC. 10.117-23. Dolphin Club Special Fund; Establishment;  
13 Expenditures.

14 There is hereby established a special fund in the Treasury of  
15 the City and County of San Francisco to be known and designated as  
16 the Dolphin Club Special Fund, into which shall be deposited all  
17 gifts, donations and contributions which may be offered to  
18 the City for the purposes of constructing, reconstructing, restoring,  
19 repairing, or improving the grounds, buildings and/or facilities of  
20 the Dolphin Swimming and Boating Club located at Aquatic Park. All  
21 expenditures from such fund shall be made by the Controller to the  
22 Recreation and Park Department upon request by that Department,  
23 provided that such request is accompanied by a written statement that  
24 the expenditures are solely for the purposes described above. The  
25 Recreation and Park Department shall, upon approval of the Recreation  
26 and Park Commission, authorize the expenditures of such funds solely  
27 for the purposes set forth above.

28  
29 APPROVED AS TO FORM:  
30 GEORGE ACHOST, CITY ATTORNEY

BY Paul J. [Signature]  
Deputy City Attorney

Passed for Second Reading  
Board of Supervisors, San Francisco

JUN 8 1981

Ayes: Supervisors Britt, Dabson, Kennedy, Kopp, ~~Walters~~ Nelder, Heune, Silver, ~~Walker, Ward.~~

Absent: Supervisors NONISTO, MOUNAY,

WALKER

[Signature] Clerk

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

JUN 15 1981

Ayes: Supervisors Britt, Dabson, Kennedy, Kopp, Molinari, Nelder, Heune, Silver, Walker, Ward.

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

[Signature] Clerk



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

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**MEMORANDUM OF UNDERSTANDING**

**MOU M-16811**

**BY AND BETWEEN**

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

**AND**

**THE SAN FRANCISCO RECREATION AND PARK COMMISSION**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
JOHN BURTON, COMMISSIONER  
GAIL GILMAN, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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**EXHIBITS AND SCHEDULES**

**EXHIBIT A MAP OF PREMISES**

**SCHEDULE 1 FEMA NOTICE**

**SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated September 20, 2021, for reference purposes only, by and between the Recreation and Park Department ("RPD"), a department of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City.

### RECITALS

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

**B.** RPD, which has the jurisdiction over certain real property in Aquatic Park commonly known as 502 and 504 Jefferson Street, leases the building (the "Clubhouse") and the associated launching dock within its jurisdiction at such property to the Dolphin Swimming and Boating Club ("Dolphin Club") to provide access to the waters of San Francisco Bay to their club members, and during certain hours to the public, as a public benefit.

**C.** The Clubhouse launching dock extends into Port's jurisdictional area.

**D.** The Dolphin Club keeps the Clubhouse and associated dock open to and visited by the general public for access to the bay for a reasonable daily use fee and the Dolphin Club also hosts internationally known swimming and rowing events both of which provide a valuable public benefit.

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

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

### AGREEMENT

#### 1. RECITALS

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

#### 2. PREMISES.

The "Premises" consists approximately of 1,459 square feet of submerged lands within Port's jurisdiction near the intersection of Tonquin Street and Jefferson Street as more particularly described on Exhibit A attached hereto.

RPD acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and possession. RPD acknowledges that it has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. RPD acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for RPD's intended use. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations



or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for RPD's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed subtenant.

**3. EFFECTIVE DATE**

The "Effective Date" of this MOU shall be the later date to occur of the full execution of (i) this MOU and (ii) a lease between RPD and Dolphin Club that grants Dolphin Club a sublease for the Premises.

**4. TERM**

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

**5. NO USE FEE**

Use of the Premises by RPD will enliven the waterfront by attracting people to the waterfront and raising awareness of the waterfront and its benefits and amenities at no cost to Port. Given the existing RPD lease with Dolphin Club, there is no other practical user of the Premises. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, RPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the RPD lease with Dolphin Club.

**6. PERMITTED USE**

RPD shall have the right to sublease the Premises to Dolphin Club for the provision of member and public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose (collectively, the "Permitted Use").

**7. RESTRICTIONS ON USE; COMPLIANCE WITH LAW**

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

RPD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof. RPD, at RPD's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, which shall impose any duty

upon Port or RPD necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to RPD's use of the Premises.

## **8. MAINTENANCE; SURRENDER OF PREMISES**

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

Nothing contained herein shall require either RPD or the Port to repair or replace the Premises as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that if the Premises are damaged by fire or other casualty, then RPD shall require its tenant at the Premises to repair the same provided that (i) funds for such repairs are available for such purpose and (ii) such repairs can be made within 210 days after the date of such damage.

## **9. INSURANCE**

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

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

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

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

Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iv) Personal Property Insurance. An Operator, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements and alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Operator's sole discretion, for the replacement of Operator's personal property and improvements and alterations. The proceeds from any such policy shall be used by the Operator for the replacement of its personal property. Port shall have no responsibility or obligation to maintain insurance or replace such property or any improvements regardless of cause of loss.

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

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

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

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

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

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

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

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

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

(f) **General Insurance Matters.**

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

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

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

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

## 10. CLAIMS AND DAMAGES

Because Port will not be receiving any fees for the use of the Premises and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or on connection with

RPD's use of the Premises. Therefore, RPD agrees to be responsible or cause its tenants, subtenants, or licensees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by RPD, its agents, contractors, tenants, subtenants, licensees, or invitees and (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises from any cause, which arise as a result of RPD's acts or omissions or its tenants, subtenants, or licensees. The foregoing obligation of RPD shall survive the expiration or termination of this MOU.

#### **11. PRESENCE OF HAZARDOUS MATERIALS**

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, RPD is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports listed in *Schedule 2* are present on the property, copies of which have been delivered to or made available to RPD. By execution of this MOU, RPD acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. RPD must disclose the information contained in this Section 12 to any subtenant, licensee, transferee, or assignee of RPD's interest in this MOU. RPD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

#### **12. DEFAULT BY RPD**

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

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

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

#### **13. PORT'S REMEDIES**

Upon the occurrence of default by RPD with respect to the Premises, Port may at its option, without further notice or demand of any kind to RPD or to any other person, terminate RPD's right to possession of the Premises.

#### **14. ENTRY BY PORT**

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

## 15. NOTICE

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

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

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

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

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

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

## 16. MINERAL RESERVATION

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

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

## 17. UTILITIES

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

## 18. ASSIGNMENT AND SUBLEASING

Port hereby consents to the anticipated sublease between RPD and Dolphin Club for the Premises subject to all of the terms and conditions of this MOU, including without limitation the

disclosures, insurance provisions and waiver of claims. If RPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld.

**19. ENTIRE AGREEMENT**

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

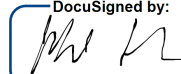
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IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date written below.

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

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

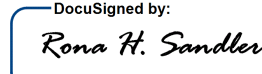
By:    
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ELAINE FORBES  
Executive Director  
Port of San Francisco

By:    
AF27F6596709494...  
PHIL GINSBURG  
General Manager  
San Francisco Recreation and Park Department

Date Signed: 9/24/2021

Date Signed: 9/23/2021

REVIEWED:  
**DENNIS J. HERRERA, City Attorney**

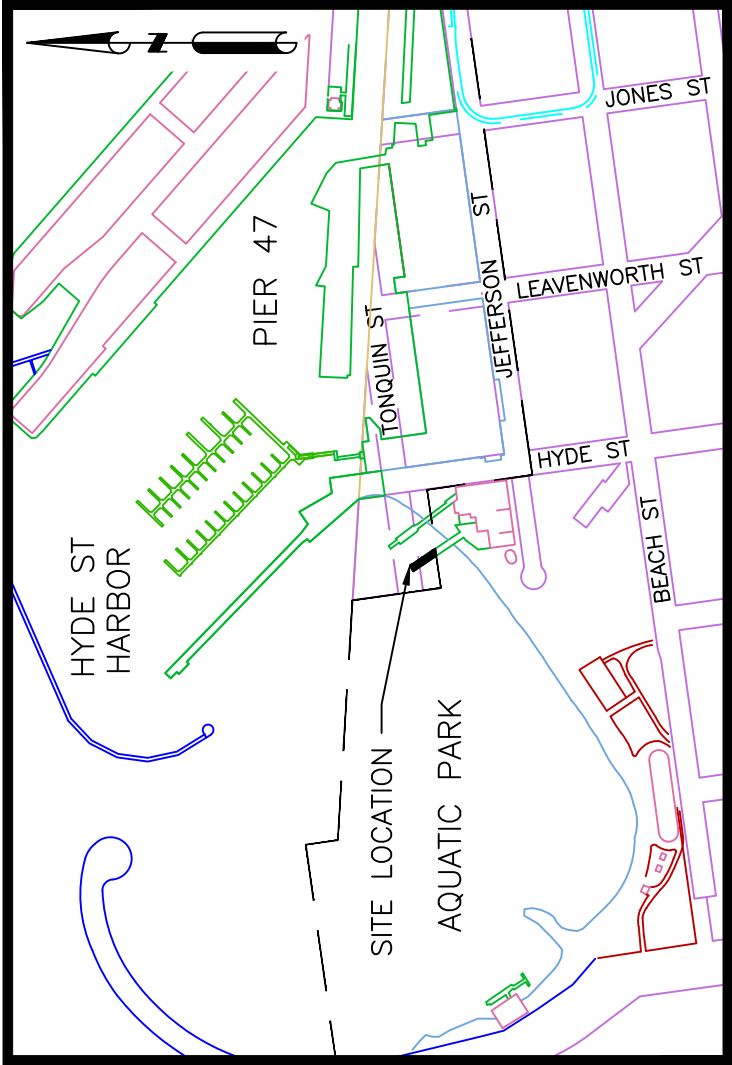
By:    
EFB2EA772764B4...  
Rona H. Sandler  
Deputy City Attorney

Recreation and Park Commission Resolution No. 2016-006  
Port Commission Resolution No. 21-37

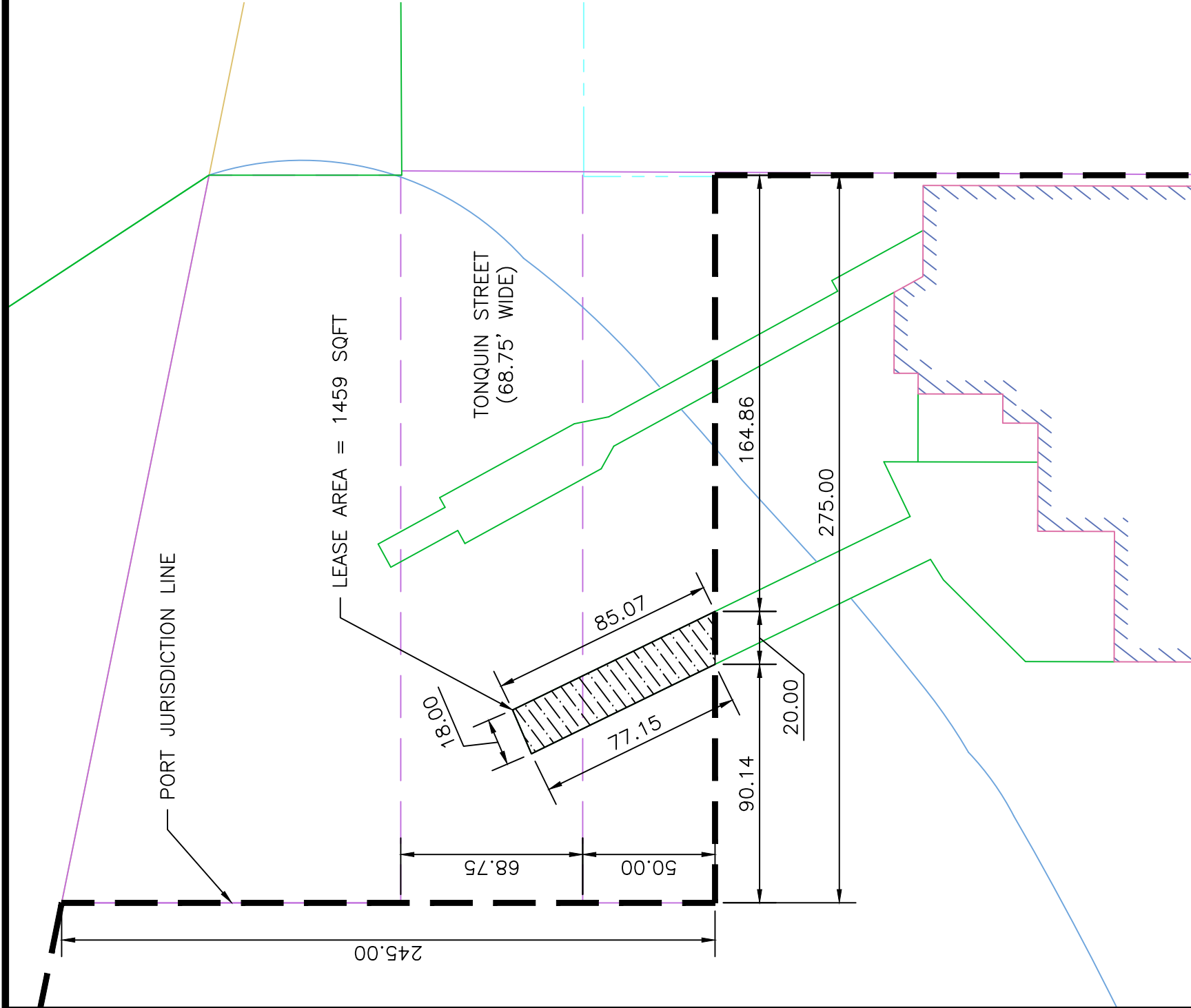
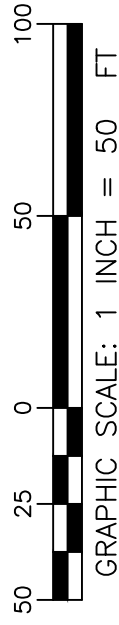
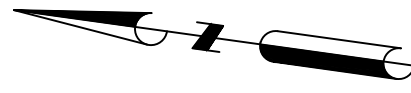
MOU Prepared By: Kimberley Beal, Port Senior Property Manager    
(initial)



**EXHIBIT A**  
**Map of Premises**

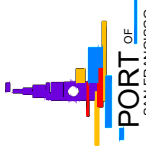


SITE LOCATION  
NOT TO SCALE



TENANT

**SAN FRANCISCO PORT COMMISSION**  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING



**SF RECREATION  
AND PARK DEPARTMENT**

PREPARED BY: JTM	CHECKED BY: JTM
DRAWN BY: KMK	DATE: 3/21/2020
CONTRACT NO.	SCALE: 1" = 50'
DRAWING NO.	SHEET NO. 1
	OF 1 SHEETS

**M-16811**

EXHIBIT

INITIALS: PORT: DS  
KB

TENANT: DS  
*[Signature]*

DATE: 9/23/2021

**SCHEDULE 1**  
**FEMA Notice**

04/12/21

### **FEMA-National Flood Insurance Program Disclosure Notice**

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as "Special Flood Hazard Areas" (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter "A" or "V" on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:  
<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:  
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:  
[www.FloodSmart.gov](http://www.FloodSmart.gov).

Initial :   
Port: \_\_\_\_\_

Tenant:   
\_\_\_\_\_

**SCHEDULE 2**  
**Hazardous Materials Disclosure**

## **Environmental Reports and Documents Regarding Hazardous Materials**

**September 2, 2021**

### **Aquatic Park**

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

### **Fisherman's Wharf Harbor**

Final Environmental Risk Assessment, Former Mobil Bulk Terminal, 440 Jefferson St.(Wharf J10), Acton Mickelson Environmental, 5/30/14.

Fisherman's Wharf Hydrodynamic Circulation Study, PWA - Philip Williams & Associates, June 2004.

Groundwater investigation for proposed joint operations security JOS building project; Hyde Street Pier, Baseline Environmental Consulting, September 2009.

Hazardous Materials Survey Report; JOS building demolition project; At the Hyde Street Pier, Millennium Consulting Associates, July 2009.

Hyde Street Harbor Hydrocarbon Seep - Sampling and Analysis Plan, CDIM Engineering, Inc., 12/11/2020.

Hyde Street Harbor Hydrocarbon Seep - Work Plan, CDIM Engineering, Inc., 9/21/2020.

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Results of Chemical, Physical and Bioassay Testing of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 10/24/98.

Results of Chemical, Physical and Bioassay Testing of Sediments from Hyde Street Harbor, MEC Analytical Systems, Inc, August 1998.

Results of PAH Reanalysis of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 4/21/99.

Revised Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, July 1998.

Risk Management Plan, 440 Jefferson St. (Wharf J10 area), Acton Mickelson Environmental, 10/23/15.

Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, June 1998.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kellco Services, January 9, 1998.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kinnetic Laboratories Inc., October 22, 1997.

Underground Storage Tank Closure Documentation, Port of San Francisco, 3/21/1996.

### **Hyde Street Pier**

Groundwater investigation for proposed joint operations security JOS building project; Hyde Street Pier, Baseline Environmental Consulting, September 2009.

Hazardous Materials Survey Report; JOS building demolition project; At the Hyde Street Pier, Millennium Consulting Associates, July 2009.

Hyde Street Harbor Hydrocarbon Seep - Sampling and Analysis Plan, CDIM Engineering, Inc., 12/11/2020.

Hyde Street Harbor Hydrocarbon Seep - Work Plan, CDIM Engineering, Inc., 9/21/2020.

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2012/2013, Port of San Francisco, 2012/2013.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2013/2014, Port of San Francisco, June 16, 2014.

### **Seawall Lot 302**

Lead Paint inspection report; Lous fish shack; 300 Jefferson street, California Environmental Consulting Services, February 4, 2011.

Limited Lead and Asbestos Sampling, 360 Jefferson St, North Tower environmental, 11/25/2008.

Limited Roofing Asbestos Survey and Evaluation, 340 Jefferson St, ProTech Consulting and Engineering, 12/2006.

Pre-renovation asbestos survey; Lous fish shack fishermen's wharf; 300 Jefferson Street, California Environmental Consulting Services, February 9, 2011.

### **Seawall Lot 303**

Final Environmental Risk Assessment, Former Mobil Bulk Terminal, 440 Jefferson St.(Wharf J10), Acton Mickelson Environmental, 5/30/14.



Final Site History Report and Subsurface Investigation Workplan, Hyde Street Harbor, Tetra Tech, Inc., February 1999.

Proposal for Contamination Mitigation, San Francisco Marine, Former Mobil Oil Marine Bulk Plant, 440 Jefferson Street, Accutite, April 23, 1990.

Quarterly Progress Report, First Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, April 19, 2000.

Quarterly Progress Report, First Quarter 2001, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, April 12, 2001.

Quarterly Progress Report, Fourth Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, January 15, 2000.

Quarterly Progress Report, Fourth Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, January 15, 2001.

Quarterly Progress Report, Fourth Quarter 2002, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 1/8/02.

Quarterly Progress Report, Second Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, July 15, 1999.

Quarterly Progress Report, Second Quarter 2000, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, TRC Alton Geoscience, July 13, 2000.

Quarterly Progress Report, Third Quarter 1999, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 10/15/99.

Remedial Action Work Plan, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, September 8, 1994.

Remedial Excavation and Recovery Well Installation Report, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, September 17, 1996.

Risk Management Plan, 440 Jefferson St. (Wharf J10 area), Acton Mickelson Environmental, 10/23/15.


Site Investigation / Characterization Report at Former Mobil Oil Bulk Plant, 440 Jefferson Street Project, Alton Geoscience, September 20, 1990.

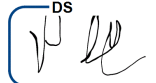
Site Summary Report, Former Mobil Bulk Plant, 440 Jefferson Street, TRC Alton Geoscience, 1/21/01.

Subsurface Investigation Report, Hyde Street Harbor, Tetra Tech, Inc., July 1999.

Waste Classification Application for Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, Alton Geoscience, May 27, 1994.

Wharf j-10, SCA Environmental, Inc., .

Initial :   
Port: \_\_\_\_\_

Tenant:   
\_\_\_\_\_

**RECREATION AND PARK COMMISSION**  
**City and County of San Francisco**  
**Resolution Number 2106-005**

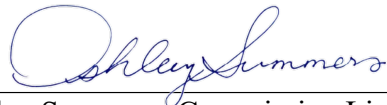
**DOLPHIN SWIMMING AND BOATING CLUB – LEASE AGREEMENT**

**RESOLVED**, This Commission does recommend that the Board of Supervisors approve a lease agreement with the Dolphin Swimming and Boating Club for an initial term of 25 years with a 24-year extension option, substantially in the same form as the draft agreement dated May 21, 2021.

Adopted by the following vote

Ayes	6
Noes	0
Absent	1

I hereby certify that the foregoing resolution was adopted at the Recreation and Park Commission meeting held on June 17, 2021.



---

Ashley Summers, Commission Liaison

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

November 8, 2021

File No. 211133

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On October 26, 2021, Supervisor Catherine Stefani introduced the following legislation:

**File No. 211133**

**Ordinance approving a lease between the City and County of San Francisco and Dolphin Swimming and Boating Club, a California non-profit corporation, for City property located at 502 and 504 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from its annual Dolphin Day and 4% of all gross receipts that are derived from its annual Dolphin Day, for a term of 25 years with an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this lease; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*Brent Jalipa*

By: Brent Jalipa, Assistant Clerk  
Budget and Finance Committee

Attachment

c: Devyani Jain, Environmental Planning  
Joy Navarrete, Environmental Planning  
Don Lewis, Environmental Planning

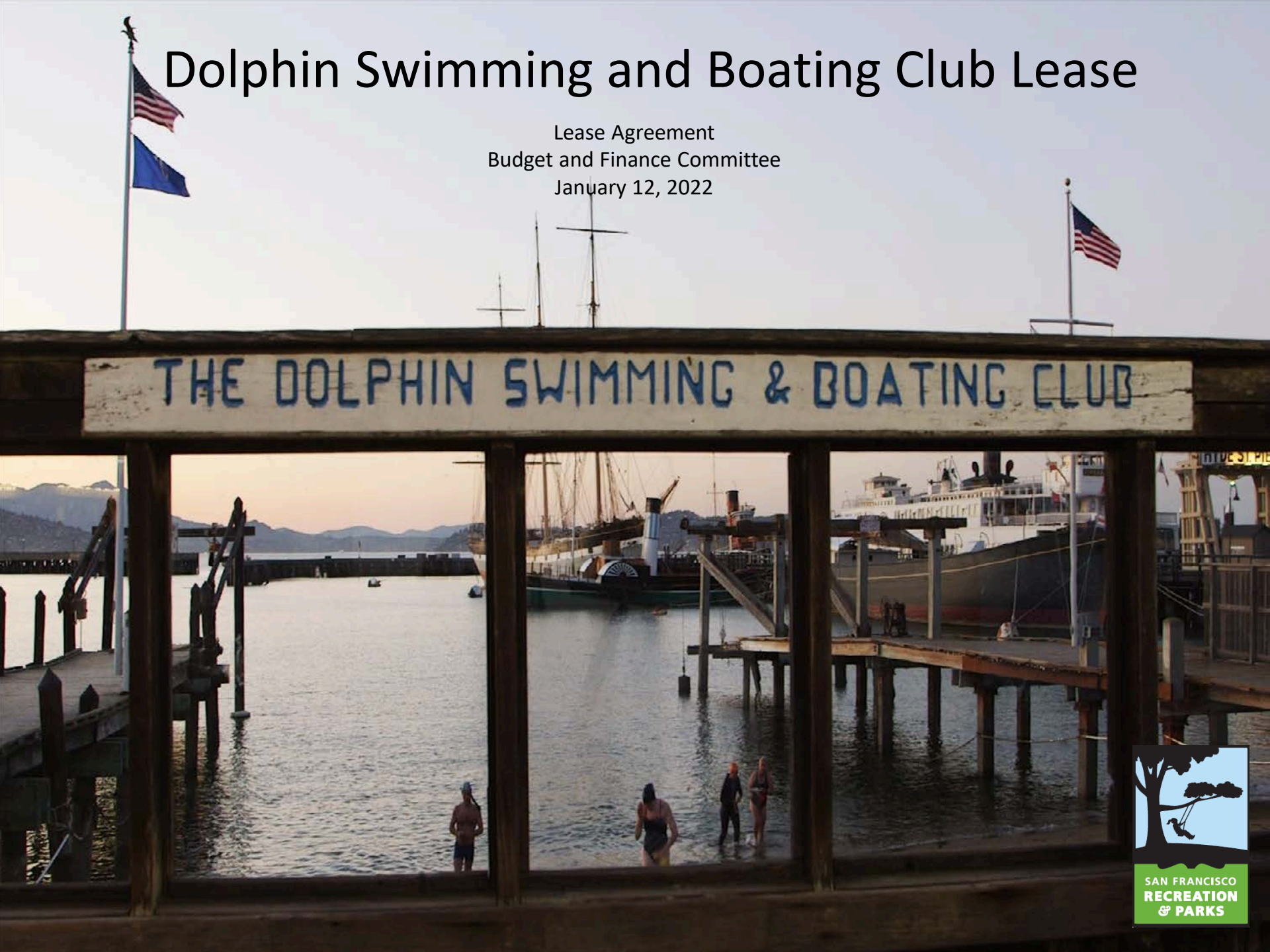
Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

11/08/2021

*Joy Navarrete*

# Dolphin Swimming and Boating Club Lease

Lease Agreement  
Budget and Finance Committee  
January 12, 2022



# Located at Aquatic Park



# Background

- Dolphin Swimming and Boating Club (Dolphin Club) established in 1877 and moved to current location in 1938
- This is 1 of 4 Department properties that provide direct access to recreation in the San Francisco Bay
- Dolphin Club's programs include rowing, swimming, handball, running, and cycling
- The club is managed by volunteers
- Terms of the Lease were modeled on the South End Rowing Club lease that was approved by the Board on July 30, 2019



# Recreation in the Bay





# Public Access

- The clubhouse was open to the public 3 days per week on Mondays, Wednesdays, and Fridays for a \$10 day-use fee
- Day-use visitors can use the clubhouse facilities to change and shower after a swim in the SF Bay
- The public access days alternate with the South End Rowing Club next door with the exception of Sunday



# Weight Room



# Proposed Lease Terms

- Term – 25 years with 24 year option to extend if both sides agree
- Rent – 10% of gross receipts with the exception of a proposed new annual Dolphin Day that will be 4% of gross receipts. Dolphin Day will be a similar fundraiser to the Alcatraz Invitational at SERC.
- Premises – Will include the entire boat launch dock through a Department MOU with the SF Port
- Maintenance – Dolphin Club is responsible for all maintenance of the premises and the Department has no maintenance obligations or liability for impacts created by rising tides



BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
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TDD/TTY No. (415) 554-5227

November 8, 2021

**File No. 211133**

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On October 26, 2021, Supervisor Catherine Stefani introduced the following legislation:

**File No. 211133**

**Ordinance approving a lease between the City and County of San Francisco and Dolphin Swimming and Boating Club, a California non-profit corporation, for City property located at 502 and 504 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from its annual Dolphin Day and 4% of all gross receipts that are derived from its annual Dolphin Day, for a term of 25 years with an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this lease; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*Brent Jalipa*

By: Brent Jalipa, Assistant Clerk  
Budget and Finance Committee

Attachment

c: Devyani Jain, Environmental Planning  
Joy Navarrete, Environmental Planning  
Don Lewis, Environmental Planning

DOLPHIN CLUB  
502 JEFFERSON STREET SAN FRANCISCO CA 94109

**January 12, 2022**

**Comments to SF Board of Supervisors Budget and Finance Committee  
from Ward Bushee, President on File 211133, Dolphin Club lease**

Thank you for giving me the opportunity to talk briefly about the Dolphin Club.

- Run by volunteers, the historic club has been in San Francisco for 145 years. To give you some idea of our long history, two of our active wooden boats were in our boat house before the last pandemic in 1918. Dolphins were swimming the Golden Gate well before the bridge was built.
- In the bigger picture of recreation in San Francisco, the Dolphin Club and neighboring South End Rowing Club are unique and special places. Aquatic Park originally was envisioned by city leaders as the seashore for all San Franciscans.
- The club offers everybody a place to enjoy the Bay with access to locker rooms, showers and saunas. Our club house includes a galley, small gym and a big panoramic space that gives our community a living room with world-class views of Alcatraz, the Golden Gate, Marin and beyond.
- We have swim, boating and fitness programs, social events and we coordinate closely with the South End Club for competitions and joint gatherings. As always, we are committed to working with our neighbor on issues that affect both clubs.
- Six days a week our clubs are open to the public to swim and use their facilities. I was a day-user who became a member like many others. Members can also bring in guests.
- The Dolphin Club now has over 1800 members and we've had a spurt of growth during the pandemic for people looking for the unique healthy, outdoor exercise we provide.
- The Dolphin Youth Swim Fund, founded in 1996, is currently planning to fund Presidio YMCA afterschool swim lessons for underserved youth and lifeguard training for teens transitioning out of Foster care, and the Boys and Girls Clubs of SF as they ramp up with their Learn to Swim, Transitional and Swim Team programs
- The club is currently in the planning and fund-raising stage of repairing and upgrading the clubhouse, a \$2.75 million project.

- In reopening, we met the requirements for the Department of Health Covid Order. Those who use our indoor facilities are 100 percent fully vaccinated and most of them boosted.
- COVID also had an economic impact on our members; the Dolphin Club has had a financial aid program since the early 2010s that provides up to 2 quarters aid over a two year period for members of 2 years standing or longer who are experiencing financial hardship. During the pandemic, because some members experienced increased financial difficulty for a longer period due to highly-impacted work sectors, we increased the allowance to 4 quarters over 2 years, and increased the allocation in the budget accordingly. We will sustain this higher level until we see a reduction in need among applicants and recognize that the pandemic may require further augmentation to our program. In 2021, we awarded aid to 33 members.

In 2021, we also adjusted our membership billing to reduce the initial cost of becoming a member by making quarterly payment available upon entry. This allows easier access to the club to determine whether it is a good fit with less financial commitment up front.

- This lease is very similar to the South End lease that was passed by the Board of Supervisors in 2019.

From all of us at the Dolphin Club, again, thank you for the new lease and new term. I will be joined on this call by past president Diane Walton, and member and attorney Clint Callan who have guided the club through the lease process. We would be glad to answer any questions you might have.



File 211133  
Dolphin Club  
lease

Rec & Park and  
Sup. Stefani  
know all, but  
I'm glad to  
answer any  
questions!

Diane Walton

502 Jefferson Street, San Francisco, CA 94109  
dolphinclub.org | communications@dolphinclub.org

July 17

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SAN FRANCISCO

2021 DEC -1 AM 10:21

BY

Brent Julison  
City Hall

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Stefani

Subject:

Lease of City Property – Dolphin Swimming and Boating Club – 502 and 504 Jefferson Street – Gross Receipts Rent

The text is listed:

Ordinance approving a lease between the City and County of San Francisco and Dolphin Swimming and Boating Club, a California non-profit corporation, for City property at 502 and 504 Jefferson Street, with an annual rent of 10% of all gross receipts that are not derived from its annual Dolphin Day and 4% of all gross receipts that are derived from its annual Dolphin Day, a term of 25 years, an option to extend for 24 years, and general public access requirements; waiving the Administrative Code's market rent determination requirement that otherwise would apply to this lease; and affirming the Planning Department's determination under the California Environmental Quality.

Signature of Sponsoring Supervisor: /s/ Catherine Stefani