

GOLDEN GATE YACHT CLUB LEASE

AT

MARINA YACHT HARBOR,  
SAN FRANCISCO, CALIFORNIA

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

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

1918T  
July 15, 1991

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#### Exhibits

A: Map of Demised Premises

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

C: Non-Discrimination Ordinances

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

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

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

WITNESSETH

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

1. EXTENT OF LEASEHOLD

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

2. USE OF PREMISES

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

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

Lessee shall, at all times during the term hereof, actively use the demised premises for the above purposes, and shall not at any time leave the demised premises without written consent of Lessor. Lessee shall not permit anything to be done in or about the demised premises, or bring or keep anything therein which will in any way conflict with any law, ordinance, rule, regulations or commit or suffer to be committed any waste upon the demised premises, or use, or allow the demised premises to be used for any improper, immoral or unlawful purpose, or place any load upon the floors, walls, ceiling or decking, moorings slips and docks which endanger the structures or obstruct the passageways in or about the demised premises.

### 3. OWNERSHIP OF PREMISES

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

### 4. POSSESSION OF PREMISES

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

### 5. TERM

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

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

### 6. RENTAL

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

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

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

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

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

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

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

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

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

#### 7. PERIODIC PAYMENTS

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

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

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

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

#### 8. DEFINITION OF GROSS RECEIPTS

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

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

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

#### 9. ACCOUNTING AND RECORDS

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

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

#### 10. AUDIT OF BOOKS

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



#### 11. SECURITY DEPOSIT

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

#### 12. TAXES, ASSESSMENTS AND LIENS

Lessee shall pay for and obtain all licenses and permits necessary for the operations hereunder and shall pay all fees, taxes, including possessory interest taxes, and charges lawfully assessed against it. Should Lessee desire to contest the legal validity thereof, the same may be paid under protest. Lessee agrees not to suffer any lien to be imposed upon said premises or upon any equipment or personal property located thereon without promptly discharging the same.

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

#### 13. UTILITIES

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

#### 14. DAYS AND HOURS OF OPERATION

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

#### 15. QUALITY OF SERVICE

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

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

#### 16. PUBLIC ACCESS

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

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

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

#### 17. RATES AND CHARGES

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

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

#### 18. USE OF GUEST BERTHS

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

#### 19. CONDITION OF PREMISES

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

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

20. PREMISES TO BE KEPT CLEAN/CLEANUP

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

21. REPAIRS BY LESSOR

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

22. LESSEE TO PAY FOR SERVICES AND DAMAGES

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

23. REPAIR, MAINTENANCE AND IMPROVEMENT BY LESSEE

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

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

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

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

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

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

#### 24. IMPROVEMENTS BECOME PROPERTY OF LESSOR

Any alterations, additions, improvements and repairs which may be affixed to the premises, shall become the property of the Lessor immediately upon the expiration or earlier termination hereof, and shall remain upon and be surrendered with the premises upon expiration or sooner termination of this Lease, except that Lessee shall retain ownership and shall have the right to remove all fixtures, furniture, furnishings and personal property used by Lessee in the operation of the premises which were purchased by or added to the premises of Lessee and which can be removed from the Premises without damage to the walls, floors or other appurtenances. Lessee shall obtain written approval of Lessor before making any alterations or improvements and repairs performed by Lessee shall meet all health and building codes and ordinances as well as applicable State and Federal regulations. Lessor agrees not to unreasonably withhold its consent to such requested alterations, additions, improvements and repairs.

#### 25. EQUIPMENT/TRADE FIXTURES/MATERIALS/SUPPLIES

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

#### 26. NOTICE TO PROCEED WITH IMPROVEMENTS

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

#### 27. CODE COMPLIANCE

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

## 28. HAZARDOUS MATERIALS/PESTICIDES

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

## 29. RIGHTS NOT TRANSFERABLE

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

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

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

## 30. INDEMNIFICATION

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

## 31. INSURANCE

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

1. Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.

2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations Coverages.
3. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.
4. Property insurance on building and fixtures insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in an amount equal to 100% of the replacement value. Any loss shall be appraised by a licensed appraiser. SBA shall be designated a Loss-Payee on the insurance policy insuring against the aforesaid perils.

All insurance policies shall be endorsed to provide the following:

1. Name as Additional Insureds the City and County of San Francisco, Recreation and Park Department, its officers, agents and employees.
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
3. Said policy or policies shall provide that with respect to the City and County of San Francisco, the insurance will operate as primary insurance and no other insurance effected by said City and County of San Francisco will be called on to contribute to a loss covered by said policy or policies. If such policy or policies also provides insurance for Lessee or anyone other than said City and County of San Francisco, then such policy or policies shall also contain a standard cross liability endorsement. Said policy or policies shall be effected in insurance company or companies having a policy holder's surplus of at least \$10,000,000.

All policies shall be endorsed to provide:

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

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

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

32. WAIVER OF DAMAGE

Lessee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure or impairment of any services to, in or about the premises and against the City and County of San Francisco and further releases and discharges the Lessor, the City and County of San Francisco, its commissioners, officers, servants, agents and employees from any and all demands, claims, judgements, actions and causes arising from any of the causes aforesaid, excepting matters caused by Lessor's willful act, or from Lessor's failure to keep the surrounding area in good condition.

33. WAIVER OF BREACH

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

34. RIGHT TO AMEND

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

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

35. RENT CREDIT

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

36. DESTRUCTION OF PREMISES

In the event of the destruction of the premises, or any part thereof, in which the operation is situated so as to make the service untenable and which destruction Lessee elects not to repair, the rights and privileges granted hereunder may be terminated by the Lessor and Lessor shall be under no legal obligation to Lessee by reason of said termination, and Lessee shall be relieved of all obligations to make payments as provided in Section 6 ("Rental") of this Lease or to continue with repairs and improvements as provided for in this Lease for the period following the date of destruction of the premises.

37. FORCE MAJEURE

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

38. CONDEMNATION

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

39. BANKRUPTCY OR REORGANIZATION PROCEEDINGS

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

40. DEFAULT

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

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



- g. Lessee breaches any of the other agreements, terms, covenants or conditions which this Lease requires Lessee to perform, and such breach continues for a period of ten (10) days after written notice from Lessor to Lessee; or if such breach cannot be cured reasonably within such ten (10) day period and Lessee fails to commence and proceed diligently to cure such breach within a reasonable time period.
- h. Lessee defaults in payment of its debt to the SBA, or violates any of the terms and conditions of the loan agreement.

Upon the occurrence of any of said events constituting a default, Lessor may terminate this Lease as provided in Section 41 ("Termination") hereof.

#### 41. TERMINATION

Other than in cases where there is a default in the payment of rent, the Lessor may elect to terminate this Lease if the Lessee fails to timely perform his obligations under this Lease or if the Lessee violates any of the terms, conditions, stipulations, or covenants of this Lease, and the Lessee fails to remedy the same within ten days after written demand from Lessor to do so, or if the breach is considered by Lessor to be both material and irremediable, then this Lease shall terminate immediately upon a date certain as set by Lessor following Lessee's receipt of Lessor's notice of termination.

If the Lessee fails to timely pay the rent due hereunder and fails to cure said default within three days after written demand from Lessor to do so, the Lessor may elect to terminate this Lease.

In the event the Lessee defaults on the Lease, Lessor shall so notify the SBA immediately in writing at 211 Main Street, 4th Floor, San Francisco, CA 94105-1988. Lessor and SBA shall immediately commence joint negotiations regarding the satisfactory disposition of the leasehold. Lessee agrees to execute an "Assignment of Real Estate Lease and Agreement" in favor of SBA which provides that in the event of default under the Lease or the Loan Agreement, SBA may transfer and assign the Lease to such persons who are qualified to assume the SBA loan and who meet the Lessor's qualifications. Alternatively, Lessor may terminate the Lease and Lessor may enter into a new lease with a qualified candidate. Lessor agrees that any such candidate will be required to assume Lessee's obligation to the SBA either by assuming installment of the loan or by lump sum payment of the then outstanding loan balance. Under no circumstances shall the City or Commission be liable for any payment whatsoever to the SBA.

Lessor further agrees that, if Lessee's rights in the Lease are terminated, no successor Lessee, under this or any successive lease will occupy the leased property unless the successor Lessee and SBA have agreed that the successor Lessee will assume installment payment of the SBA loan or the SBA loan is paid in full. It is the intention of the parties that the SBA is a third party beneficiary of this Lease or any successive lease and that the leasehold estate will remain as collateral for the SBA loan until the loan is paid in full. Under no circumstances shall SBA be liable to the City of payment of rent or reasonable rental value or for the performance of any other covenant or condition of the Lease.

42. DELIVERY OF POSSESSION BY LESSEE

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

43. STRICT PERFORMANCE

Failure of Lessor to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

It is expressly agreed that each term stipulation, condition and covenant herein to be performed or kept by Lessee is material and is a material consideration to Lessor for the award of this Lease, and Lessee agrees that the breach by it of any one of the within terms, stipulation, rent, payment, conditions or covenants shall be a ground for the termination by Lessor, at its election, of the entire Lease as provided in Section 41 ("Termination") hereof.

44. LESSOR'S RIGHTS CUMULATIVE

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

45. NOTICES

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

46. AUTHORITY OF AGENTS OF LESSOR

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

47. EACH PROVISION A MATERIAL CONDITION

It is expressly agreed that each term, condition and covenant herein to be performed or kept by Lessee is material and is a material consideration to Lessor for the award of this Lease and Lessee agrees that the breach by Lessee of any one of the within terms, conditions or covenants shall be a material breach of the whole and entire Lease and shall be grounds for the termination by Lessor, at its election, of the entire Lease, except that there shall be no termination until Lessor has given the Lessee notice in writing as required by law.

48. HEADINGS

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

49. NON DISCRIMINATION

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

50. SIGNS AND ADVERTISING

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

51. LEASE MADE IN CALIFORNIA

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

52. CONTRACTS AND COUNTERPARTS

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

53. TIME

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

54. INDEPENDENT CONTRACTOR

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

55. CONFLICT OF INTEREST

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

56. EMPLOYEES OF LESSEE

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

57. LOITERING

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

58. TRESPASS

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

59. INSPECTION AND USE OF PREMISES BY LESSOR

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

60. APPLICATION OF PROVISION OF CHARTER

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

61. APPROVAL BY BOARD OF SUPERVISORS

This Lease shall not be effective for any purpose whatsoever until approved by ordinance of the Board of Supervisors of the City and County of San Francisco and executed by the Mayor of San Francisco.

62. HOLDING OVER

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

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

LESSOR

LESSEE

Approved as to Form:  
Louis Renne, City Attorney

Golden Gate Yacht Club,  
a non profit corporation

By: *Mara Rosales*  
Mara Rosales  
Deputy City Attorney

By: *KAREN A McHANNES*  
KAREN A McHANNES Commodore

City and County of San Francisco  
Recreation and Park Commission

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

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

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

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

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

10 RECOMMENDED: APPROVED  
11 Mary E. Burns Sharon Marie Rose  
12 Mary E. Burns, General Manager Sharon Marie Rose, Secretary  
13 Recreation and Park Department Recreation and Park Commission

14 APPROVED AS TO FORM:  
15 Louise H. Reina, City Attorney  
16 Mara E. Rosales  
17 Mara E. Rosales, Deputy City Attorney

BOARD OF SUPERVISORS

Board of Supervisors, San Francisco

Passed for Second Reading	§	Finally Passed
April 20, 1992	§	April 27, 1992
Ayes: Supervisors Rohtenberg Alioto	§	Ayes: Supervisors Rohtenberg Alioto
Britt Conroy Gonzalez Hallinan	§	Britt Conroy Gonzalez Hallinan
Kennedy Maher Higden Shelley	§	Kennedy Maher Higden Shelley
Noes: Supervisor Haish	§	
	§	Absent: Supervisors Haish Maher

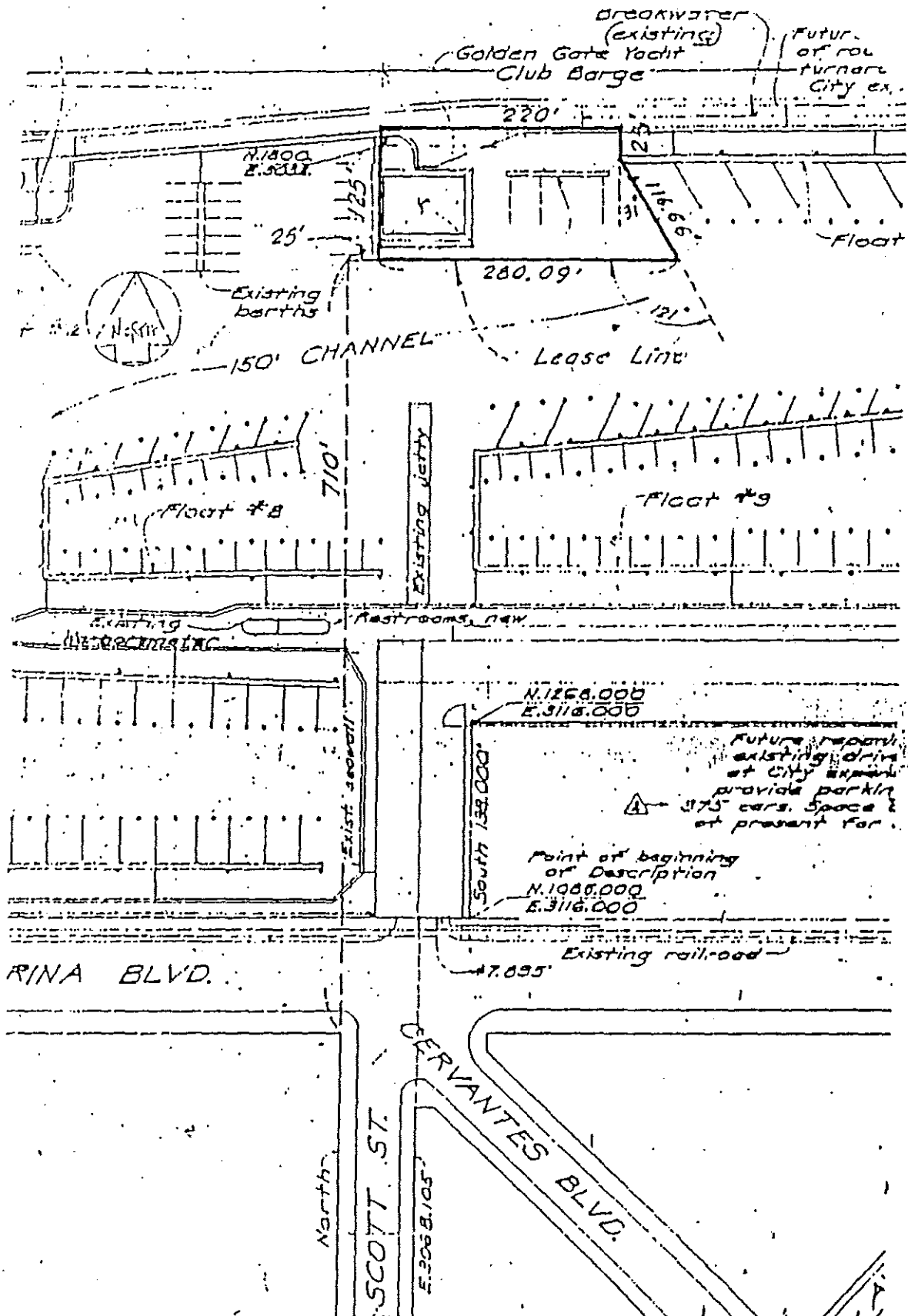
I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco

File No.  
65-92-6

MAY 6 1992  
Date Approved

John L. Taylor  
Clerk  
Frank M. Jordan  
Mayor

Golden Gate Yacht Club Lease  
**EXHIBIT A**



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

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

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



COMMISSION RESOLUTION #11189

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

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

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

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

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

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

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

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

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



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

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

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

2. Applicants for membership to the organization shall not be discriminated against on the basis of race, color, religion, age, ancestry, national origin, sex, political affiliation, sexual orientation, disability, or any other grounds prohibited by law. Each membership applicant shall be given a copy of these bylaws at the time he or she receives the application form.

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

This is a public park facility operated and maintained on behalf of the City and County of San Francisco for the benefit of the public desiring to use these public recreation facilities by (name of organization), a non-profit organization. It is unlawful for any such organization to discriminate in its membership application or acceptance procedures on the basis of race, color, religion, age, ancestry, national origin, sex, political affiliation, sexual orientation, disability, or any other grounds prohibited by law. Any complaint concerning allegations of discrimination shall be reported to the Recreation and Park Department of the City and County of San Francisco, McLaren Lodge, Golden Gate Park.

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

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

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

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

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

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

This resolution shall apply to clubs or private organizations using or having access to park property on a daily basis for a period exceeding 29 days within a calendar year. It does not apply to:

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

Recreation and Park Commission Minutes - July 18, 1991

\* \* \* \* \*

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

**RESOLUTION #16169a**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recreation and Park Commission Minutes - July 18, 1991

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

This resolution shall apply to clubs or private organizations using or having access to park property on a daily basis for a period exceeding 29 days within a calendar year. It does not apply to:

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

EXHIBIT D

WHEN RECORDED MAIL TO:

U.S. Small Business Administration

P.O. Box 13795

Sacramento, CA 95853-4795

Attn: Legal Dept.

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

ASSIGNMENT OF REAL ESTATE LEASE AND AGREEMENT

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

WITNESSETH:

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

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

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

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

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

A. Borrower and Lessor further Covenant and Agree:

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



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

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

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

Dated \_\_\_\_\_, 19\_\_\_\_.

The Golden Gate Yacht Club  
Lessee

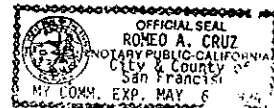
By: Karen McManus  
Karen McManus, Commodore  
By: Femie King  
Femie King, Secretary

State of California )  
County of SAN FRANCISCO )

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

WITNESS my hand and official seal.

Signature Romeo Cruz



City and County of San Francisco  
Recreation and Park Commission

APPROVED AS TO FORM:  
Louise Renne, City Attorney  
By: Urra E. Linder  
Deputy City Attorney

Lessor  
By: Shauna Marie Rose  
Shauna Marie Rose, Secretary  
Date 7/25/91  
Resolution No. 16175  
By: Mary Burns (for)  
Mary Burns, General Manager,  
Recreation and Park Department

for Second Reading  
of Supervisors, San Francisco  
MAR 26 1984

Supervisors Britt, Hingst, Kennedy,  
Molinar, Nelder, Reuss, Silver,  
Ward  
Supervisor ADEN

Clerk

*L. Taylor*

4/11/84  
Approved

53

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

APR 2 1984

Ayes: Supervisors Britt, Hingst, Kennedy,  
Molinar, Nelder, Reuss, Silver,  
Walker, Ward.

None Supervisor *MPC*

Absent: Supervisor *HONIGSTO*

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

*L. Taylor*

Clerk

*M. Quinn*  
Mayor

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

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

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

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

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

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

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

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

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

Sec 12D.15. Review.

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

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

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

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

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

1. The contract awarding agency shall solicit bids or

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

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

3. During the term of the contract any failure to comply with the levels of MBE and WBE participation identified in the bid or proposal shall be deemed a material breach of contract.

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

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

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and in an amount of \$30,000 or greater for Architects and  
engineers shall contain the following clause:

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

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

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

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CITY ATTORNEY  
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SAN FRANCISCO 94102  
415 376 2100

goals.

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

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

(A) The City Purchaser shall solicit and obtain bids and  
quotations from MBEs and WBEs certified by the Commission to  
supply the required materials, equipment, supplies or services.

(B) For purchases upon quotations of five thousand dollars  
(\$5,000) or less, the Purchasing Department shall grant  
preference to MBEs and WBEs pursuant to the City Purchaser's  
authority under Section 21.5 of the Administrative Code to accept  
other than the lowest quotations if the City Purchaser believes  
that the public interest would best be served.

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

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

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

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

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

- 10 (a) fulfill the MBE and WBE participation commitments  
11 submitted with their bid or proposal;
- 12 (b) continue to make efforts to utilize MBEs and WBEs;
- 13 (c) require that their subcontractors make every effort  
14 to utilize MBEs and WBEs; and,
- 15 (d) maintain records reasonably necessary for  
16 monitoring their compliance with the provisions of this Ordinance.

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

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

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

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

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

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

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

25 (B) Contracts for construction, the estimated cost of

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1 annual goals, consistent with Section 120.7. These goals shall  
2 be expressed in terms of a percentage of the total dollar value  
3 of all prime contracts to be awarded by the City and County.

4 With the concurrence of the Commission, the Director may  
5 establish goals separately for categories of contracts, such as  
6 public works construction, architects and engineers, leases,  
7 franchises and concessions, professional services and purchasing  
8 contracts. Goals shall be reasonably achievable, and shall be  
9 based upon, but are not limited to, the following factors:

10 1. the degree to which such annual goals will  
11 contribute to the achievement of the ultimate goal of eliminating  
12 the effects of historic discrimination and increasing the  
13 participation of MBEs and WBEs in City contracts as set forth in  
14 Section 120.4 of this Ordinance (Declaration of Policy).

15 2. the level of participation of MBEs and WBEs in  
16 contracts awarded by other governmental agencies in the San  
17 Francisco Bay Area which have utilized MBE and WBE requirements;

18 3. the availability of MBEs and WBEs which are capable  
19 of providing goods and services to the City and County while  
20 actively encouraging the development of Minority and Women  
21 Business Enterprises;

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

26 Sec. 120.8. Utilization Requirements -- General.

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

3 1. take action, within the limitations of state and  
4 federal law, to assist MBEs and WBEs to meet bonding, insurance  
5 and other fee-related requirements; such action could include the  
6 creation of a special revolving fund;

7 2. establish a central office where all bids, requests  
8 for proposals and solicitations will be listed and kept current;

9 3. provide technical assistance to MBEs and WBEs to  
10 increase their ability to compete effectively for the award of  
11 City and County contracts.

12 (B) Contract awarding authorities shall:

13 1. solicit and obtain bids and proposals from MBEs and  
14 WBEs on all solicitations, or document their unavailability;

15 2. set aside ten percent (10%) of the total dollar  
16 value of all contracts to be awarded by each contract awarding  
17 agency for MBEs and set aside two percent (2%) for WBEs for the  
18 fiscal year with the provision that a joint venture can be  
19 credited to the extent of Minority or Women Business Enterprise  
20 participation in the joint venture;

21 3. extend a five percent (5%) preference for a local  
22 business (except where prohibited by State or Federal law or  
23 regulation) and a five percent (5%) preference for a minority or  
24 women bidder or proposer in the award of all bids and contracts  
25 and in the composition of rating scales; however, local minority  
26 or women bidders shall receive a ten percent (10%) preference;

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

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

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

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

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

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

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1 the required ownership interest percentage; and  
2 2. Contribute capital, equipment and expertise  
to the business equal to at least the required  
ownership percentage.

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

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

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

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

24 Sec. 12D.6. Powers and Duties.

25 (A) In addition to the duties and powers given to the  
26

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1 in this area and that can erode trust in government  
2 and detrimentally affect the peace and harmony that  
3 must exist among the richly diverse population of  
4 the City and County of San Francisco; and

5 The Board further finds it is necessary, in complying  
6 with the intent of this Ordinance, that within one hundred and  
7 twenty (120) days of its enactment, appropriate rules,  
8 regulations and procedures be developed, adopted, and publicly  
9 promulgated by the Human Rights Commission; and that the public  
10 and affected agencies have the opportunity to provide input to  
11 and comment on the regulations prior to their formal adoption.

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

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

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

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

22 Sec. 12D.4. Scope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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