

RECREATION AND PARK DEPARTMENT
LEASE

THIS LEASE (this "Lease") is made as of _____, 2018, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Recreation and Park Commission ("City" or "Lessor") and GOLDEN GATE YACHT CLUB, a California corporation ("Golden Gate Yacht Club" or "Lessee").

RECITALS

A. City and Lessee entered into that certain Golden Gate Yacht Club Lease at Marina Yacht Harbor, San Francisco, dated as of July 25, 1991 (the "Original Lease"), as amended by that certain First Amendment to the Golden Gate Yacht Club Lease dated February 1, 1999 (the "First Amendment"). The Original Lease, as amended by the First Amendment, shall be referred to as the "1991 Lease".

B. Under the 1991 Lease, Lessee leased from City certain land and water in the San Francisco Marina Small Craft Harbor described as the "Demised Premises" in Section 1 of the Original Lease, for the purpose of operating and maintaining a first rate and complete non-profit recreational boating and racing oriented yacht club.

C. The term of the 1991 Lease expired on May 31, 2017, and Lessee has since remained at the Demised Premises with City's permission on a month to month holdover basis.

D. The Demised Premises is within the area sometimes known as the "West Harbor", which was transferred by the State of California to City under Chapter 437 of the Statutes of 1935, as amended by Chapter 670 of the Statutes of 1970 (as amended the "State Grant"). The State Grant requires the Demised Premises to be used solely for aquatic, recreational, boulevard, park, and playground purposes, and restricts any City lease of the Demised Premises to no more than forty (40) years.

E. City performed a major improvement project in the West Harbor (the "Harbor Renovation Project"), and as a result of such Harbor Renovation Project, certain berths in the Demised Premises have been reconfigured.

F. The parties presently desire to enter into this Lease to (i) terminate the 1991 Lease, (ii) have an eighteen (18) year term, (iii) modify the description of the premises, (iv) require Lessee to provide certain youth educational programs, (v) increase the annual minimum rent guarantee, (v) establish a maintenance fund for future maintenance and improvements to the premises, and (vi) update standard contractual provisions, all on the terms and conditions more particularly set forth below.

AGREEMENT

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

1. Premises.

(a) Lease. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City, the real property outlined and labeled "Premises" on the attached Exhibit A (the "Premises"), which is comprised of a total land and water area of approximately 22,000 square feet, a clubhouse, grounds, dock space, parking area, and nine (9) boat berths, and occupies 370 linear feet of berth.

(b) Condition of Premises. Sections 19 and 21 of the Original Lease are hereby incorporated by reference; provided, however, that all references to “premises” and “demised premises” shall be replaced with “Premises”.

(c) Unique Nature of Premises. Lessee acknowledges (a) the Premises are located along the waterfront and protected by a structure that is in a marine environment and was originally built approximately 100 years ago ("Seawall"), (b) there is a risk that all or a portion of the Premises and adjacent improvements and real property owned by City, including roads (collectively, the “Adjacent City Property”), will be inundated with water due to floods or sea level rise, (c) there is a risk that sea level rise will increase the cost of maintenance, repairs, and any alterations to the Premises, and (d) City does not guarantee the Seawall will adequately support the Premises, keep it above sea levels during the entire Term (as defined in Section 2), or support or keep the Adjacent City Property above sea levels.

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

Finally, Lessee acknowledges that according to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential liquefaction areas is at: <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.html>. Lessee assumes the risk of the Seawall failing, the Premises and Adjacent City Property being inundated by floods, and the Premises and Adjacent City Property being damaged by liquefaction and agrees City has no obligation under this Lease to protect the Premises or the Adjacent City Property from flooding or to repair any damage to the Premises or the Adjacent City Property caused by flooding or to maintain, repair, or replace the Seawall or any other Adjacent City Property.

(d) Dredging. Lessee acknowledges City shall have no obligation to dredge the Premises or any other portion of the San Francisco Marina Small Craft Harbor, comprised of the East and West Harbors (collectively, the “Harbor”), under this Lease. Lessee shall not perform any dredging or dredging-related activities of the Harbor ("Dredging Work") without the prior written consent of the General Manager, which shall not be unreasonably withheld as long as the proposed Dredging Work is within the “Permitted Dredge Area” depicted in the attached Exhibit _____. Lessee shall also obtain the prior written consent of the San Francisco Harbor Master to the proposed Dredging Work schedule so City can provide appropriate notice to its tenants in the area and coordinate safe water travel during the performance of the proposed Dredging Work. If the General Manager consents in writing to any proposed Dredging Work, Lessee shall be solely responsible performing such proposed Dredging Work in compliance with all applicable laws and shall bear all costs associated with the Dredging Work, including hydrographic surveys, pre-dredge testing, sampling, chemical analyses, bioassays permitting, obtaining all necessary regulatory approvals and permits, and all consultant and dredging contracts. Lessee, at its sole cost, shall promptly provide copies to City of all pre-dredge and post-dredge surveys, submittals to all regulatory agencies with jurisdiction over the Dredging Work, soundings, reports, data, and any other information obtained in connection with the Dredging Work. Lessee shall be responsible for testing, sampling, removing, and disposing of the sediment, debris, and other materials dredged from the Marina Harbor all in accordance with this Lease. Dredging Work shall be performed in accordance with the requirements of the permit issued to Lessee by the Dredged Material Management Office.

2. Term; Termination of 1991 Lease. The term of this Lease (the "Term") will commence on January 1, 2019 (the "Commencement Date"), and shall terminate on December 31, 2037; provided, however, that if Lessee is in default under the 1991 Lease and fails to cure such default by December 31, 2018, City shall have the right to terminate this Lease by delivering written notice of such termination to Lessee on or before January 1, 2019. Provided City does not terminate this Lease pursuant to the foregoing sentence, the 1991 Lease shall terminate at 11:59 pm on December 31, 2018, provided, however, that the parties' indemnification obligations under the 1991 Lease shall survive such termination with respect to all claims, injuries, losses, damages, costs and expenses, including attorneys' fees, arising from or connected with circumstances, actions or omissions that occurred prior to such time.
3. 2018 Improvements. Lessee represents and warrants it has made the clubhouse improvements and alterations detailed in the attached Exhibit B (the "2018 Improvements") in compliance with all applicable laws and the terms set forth in Section 23 of the Original Lease.
4. Use of the Premises. Lessee is granted the exclusive right to occupy and use the Premises to operate and maintain a first rate and complete non profit recreational boating and racing oriented yacht club. In addition, the requirements of the second and third paragraphs of Section 2 of the Original Lease are hereby incorporated by reference; provided, however, that all references to "demised premises" shall be replaced with "Premises". Notwithstanding Lessee's permitted use of the Premises, Lessee acknowledges and agrees that City reserves the right to conduct construction projects in the vicinity of the Premises that may impact Lessee's use of the Premises. Lessee waives all claims against City with respect to any such City construction-related impacts. City will use reasonable efforts to conduct its construction in a manner that minimizes impacts on Lessee's use of the Premises to the extent such efforts will not increase City's costs or cause it to incur construction delays.
5. Educational Activities. Commencing not later than 30 days after the Commencement Date, Lessee shall implement the youth educational program(s) described in the attached Exhibit C.
6. Ownership and Possession of Premises. Sections 3 and 4 of the Original Lease are hereby incorporated by reference; provided, however, that all references to "demised premises" shall be replaced with "Premises".
7. Rent; Annual Minimum Rent Guarantee; Adjustment to Annual Minimum Rent Guarantee.
 - (a) Percentage Rent; Rent. Commencing on the Commencement Date, Lessee shall make monthly payments of ten percent (10%) of all its Gross Receipts (as defined in Section 8 of the Original Lease) to City ("Percentage Rent"). "Rent" shall mean Percentage Rent and all other payments to be made by Lessee to City under this Lease, whether or not any such amounts are specifically characterized as rent.
 - (b) Annual Minimum Rent Guarantee. Each year during the Term, Lessee shall pay Percentage Rent monthly as set forth above, but in no event shall the total Percentage Rent paid for any calendar year be less than less than \$85,000 per year (the "Annual Minimum Rent Guarantee"), adjusted as specified herein. On or before the date which is ninety (90) days following the close of each calendar year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to Lessor a statement (the "Annual Gross Receipts Statement"), certified as correct by an officer of Lessee and otherwise in form satisfactory to Lessor. The Annual Gross Receipts Statement shall set forth the Gross Receipts as shown on Lessee's books, for the calendar year just concluded broken down by category, and the Percentage Rent paid during such calendar year, and at the time Lessee delivers the Annual Gross Receipts Statement, Lessee shall pay Lessor any deficiency necessary to make up the Annual Minimum Rent Guarantee for the year covered by such statement.

On each anniversary of the Commencement Date (each such date an "Adjustment Date"), the Minimum Rent Guarantee shall be adjusted as follows:

The Consumer Price Index All Urban Consumers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") published most immediately preceding the Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date (the "Beginning Index").

If the Adjustment Index has increased over the Beginning Index, the Annual Minimum Rent Guarantee on and after the Adjustment Date shall be set by multiplying the Annual Minimum Rent Guarantee by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the Annual Minimum Rent Guarantee on or after the Adjustment Date be less than Annual Minimum Rent Guarantee in effect immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(c) Harbor Maintenance Surcharge Fee. In addition to the Percentage Rent and Annual Minimum Rent Guarantee, commencing on the Commencement Date, Lessee shall make monthly payments to City equal to ten percent (10%) of the membership fees and dock fees collected by Lessee for the month immediately preceding such payment (collectively, the "Maintenance Fee"). The Maintenance Fee shall be City's property, provided that City agrees to only use the Maintenance Fees for its costs in maintaining the Harbor. Such maintenance includes, but is not limited to, dredging. Notwithstanding City's agreement to use Maintenance Fees for Harbor maintenance, Lessee agrees City has no obligation to perform any Harbor maintenance under the Lease.

(d) Payments; Gross Receipts Statements. Section 7 of the Original Lease and Section 1.6(a) of the First Amendment are hereby incorporated by reference. In addition, Section 1.6(b)(i), (iii), and (v) of the First Amendment are hereby incorporated by reference, provided that the clause "As of the date of this First Amendment" shall be deleted and all references to "demised premises" shall be replaced with "Premises".

(e) Definition of Gross Receipts. Section 8 of the Original Lease is hereby incorporated by reference; provided, however, that the exclusion described in number 2 of such Section 8 shall only mean the monthly payments of \$1,944.00 made by Lessee to the Small Business Administration ("SBA") through the August 1, 2022 maturity date of the SBA Loan (as defined in subsection (e) below).

(f) SBA Loan. The "SBA Loan" shall mean Loan No. 41326230-08 in the original principal amount of \$368,900 made by the SBA to Lessee, as evidenced by a Loan Authorization and Agreement between Lessee and the SBA dated as of June 12, 1990, and a Note in the original principal amount of \$368,900 made by Lessee to the SBA, dated as of July 31, 1991, amended on the terms described in a letter from the SBA to Lessee dated as of August 31, 1992, and countersigned by Lessee as of September 16, 1992, which among other things, increased the original principal amount of such loan to \$406,300. As of August ____, 2018, the outstanding principal amount of the SBA Loan is \$_____, with a maturity date of August 1, 2022 and monthly payments of _____ that are fully amortizing over the remainder of the SBA Loan term.

(g) Accounting and Records. Sections 9 and 10 of the Original Lease are hereby incorporated by reference.

8. Maintenance Fund. On or before the first anniversary of the Commencement Date, Lessee shall establish a segregated interest-bearing depository account for use for the purposes set forth in this Section, with a depository institution reasonably approved by City in writing (the "Maintenance Account"). In addition to Rent, on each anniversary of the Commencement Date, Lessee shall deposit

into the Maintenance Account the lesser of 3% of Gross Receipts for the prior calendar year or Forty Five Thousand Dollars (\$45,000), subject to a credit for Qualifying In-Kind Contributions (as defined below) actually received in the previous twelve (12) month period, as described below. The funds in the Maintenance Account (the "Maintenance Funds") shall be used solely for the payment of Qualifying Non-Routine Work (as defined below). Commencing on June 1, 2019, Lessee shall annually submit to City a maintenance plan, reasonably detailing anticipated non-routine improvement, repair, replacement and maintenance work to be performed to the Premises and an estimated budget for such work, and the General Manager of the San Francisco Recreation and Park Department (the "General Manager") shall confirm in writing whether the proposed work would qualify as appropriate non-routine improvement, repair, replacement or maintenance of the Premises (which confirmation shall not be unreasonably withheld or delayed). Lessee may update the maintenance plan and estimated budget from time to time during the year by written notice to City. As used in this Section "Qualifying Non-Routine Work" means the non-routine improvement, repair, replacement or maintenance of the Premises that has been proposed by Lessee and confirmed as appropriate in advance by the General Manager in writing as provided above. If part or all of the materials or labor required to perform Qualifying Non-Routine Work is donated to Lessee, Lessee shall provide City with reasonable written documentation of the donation (such as signed and dated time sheets or signed and dated receipts for materials) and value thereof, based on standard objective sources reasonably approved by the General Manager, and provided that the General Manager approves the documentation and the valuation (which approval shall not be unreasonably withheld), the approved value of the donated materials or labor (the "Qualifying In-Kind Contributions") shall be credited against the next deposit into the Maintenance Account due hereunder. If the Qualifying Non-Routine Work (including, if applicable, the portion thereof provided through Qualifying In-Kind Contributions) exceeds the minimum annual deposit into the Maintenance Fund required by this Section for any particular year or years, then the amount of such overage shall be credited to the deposit requirements for subsequent years.

Lessee shall keep accurate books and records of all costs incurred in connection with the Qualifying Non-Routine Work in accordance with accounting principles generally accepted in the construction industry and retain copies of the deposit slips (or other documentation of the deposits required hereunder) and documentation of the Qualifying In-Kind Contributions as permanent records, and City may at City's election review any such records from time to time and upon reasonable notice. Commencing on June 1, 2020, and on each June 1 thereafter, Lessee shall deliver to City an itemized statement of the payments made by Lessee from the Maintenance Account during the preceding twelve month period, accompanied by reasonable documentation substantiating such expenditures and the applicable dates such expenditures were made.

The insufficiency of the balance in the Maintenance Account shall not abrogate Lessee's obligation to fulfill the preservation and maintenance covenants in this Lease. Upon termination of this Lease, any unexpended monies within the Maintenance Account shall become the property of the City.

9. Security Deposit. At Lessee's direction, City retained the \$5,000 security deposit made by Lessee under the 1991 Lease as a security deposit to guarantee Lessee's payment of Rent and faithful performance of all of the terms and conditions of this Lease. The third and fourth sentences of Section 11 of the Original Lease are hereby incorporated by reference.

10. Taxes, Assessments and Liens. Section 12 of the Original Lease is hereby incorporated by reference.

11. Utilities. Section 13 of the Original Lease is hereby incorporated by reference; provided, however, that all references to "premises" shall be replaced with "Premises".

12. Days and Hours of Operation. Section 14 of the Original Lease is hereby incorporated by reference; provided, however, that all references to "premises" shall be replaced with "Premises".

- 13. Quality of Service.** Section 15 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.
- 14. Public Access.** Section 16 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “demised premises” shall be replaced with “Premises”.
- 15. Rates and Charges.** Section 17 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises” and the \$5 day use fee described in such Section shall be changed to \$10.
- 16. Use of Guest Berths.** Section 18 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “Club” shall be replaced with “Lessee”.
- 17. Premises to be Kept Clean/Cleanup.** Section 20 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.
- 18. Lessee to Pay for Services and Damages.** Section 22 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.
- 19. Repair, Maintenance and Improvement by Lessee.** The first sentence of Section 23 of the Original Lease, the third and fourth paragraphs of Section 23 of the Original Lease, and Section 26 Section 23 of the Original Lease are hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”. Lessee shall not construct, install or otherwise place any improvements or make or permit any alterations in, to or about the Premises without the prior written consent of the General Manager in each instance, which the General Manager may give or withhold in his or her sole and absolute discretion with respect to any improvements or alterations visible from the exterior of the buildings and in his or her reasonable discretion with regard to any interior improvements or alterations not visible from the exterior of the buildings.

Subject to the General Manager’s consent as provided above, any permitted improvements or alterations shall be done at Lessee's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manger in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the San Francisco Recreation and Park Commission may reasonably impose, including, without limitation, provision of such completion security as is reasonably acceptable to City.

In no event shall the construction or installation of any such improvements or the making of any alterations impair the use or operation of Recreation and Park Department (“Department”) facilities, or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the premises to construct any permitted improvements or make any permitted alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City’s prior written consent. City and its agents, employees, officers, contractors and representatives (“Agents”) shall have the right to inspect the course of such construction at all reasonable times upon reasonable notice. Upon completion of such improvements or alterations, upon City’s request, Lessee shall furnish City with a complete set of final as-built plans and specifications. Lessee shall require from each contractor and subcontractor performing any work on or about the premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than Two Million Dollars (\$2,000,000) combined single limit.

20. Improvements Become Property of Lessor. Section 24 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.

21. Equipment/Trade Fixtures/Materials/Supplies. Section 25 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “demised premises” shall be replaced with “Premises”.

22. Code Compliance. Section 27 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.

23. Hazardous Materials.

(a) **No Hazardous Materials.** Lessee covenants and agrees that neither Lessee nor any of its Agents or clients, customers, invitees, guests, members, licensees, vendors, assignees and sublessees (“Invitees”) shall cause or permit any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any improvements thereon (“Improvements”) or transported to or from the Premises or any Improvements, other than typical cleaning products, typical material used for office work at the Premises, and fuel and oil stored within vessels parked in the boat slips, all in compliance with applicable laws. Notwithstanding the foregoing, Lessee shall not be responsible for any handling of Hazardous Materials by members of the public outside of Lessee’s control outside of the interior of buildings on the Premises or the handling of Hazardous Materials by City, except to the extent such handling is caused by, arises from, or is exacerbated by the negligence or willful misconduct of Lessee or any Agent or Invitee of Lessee.

Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release (as defined in the following subsection) of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions (“Environmental Laws”), and Lessee shall promptly provide all such information. Without limiting City’s right to access the Premises pursuant to the terms and conditions of this Lease or as provided by applicable law, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

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

(b) Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in the foregoing subsection (a), or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release (as defined below) of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general indemnity contained in this Lease, Lessee, on behalf of itself and its successors and assigns, shall indemnify, protect, defend and hold harmless City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them (collectively, the "Indemnified Parties") from and against all Hazardous Materials claims arising during or after the Term of this Lease to the extent relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation (as such terms are defined below) of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property to the extent relating to such Release. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

As used in this Lease, (i) "Release" means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any improvements, or in, on, under or about the Premises or Recreation and Park Department facilities or any portion thereof, (ii) "Investigation" means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment, including, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any improvements, and (iii) "Remediation" means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Recreation and Park Department facilities or which have been, are being, or threaten to be Released into the environment, and includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

(c) Hazardous Substance Disclosure. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Lessee is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, cleaning fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Lessee further acknowledges it has been in sole possession of the Premises since _____. By execution of this Lease, Lessee acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(d) Restrictions on Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Lessee shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM

plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the term of this Lease, (ii) describes the steps Lessee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. Lessee shall comply, and shall require all of Lessee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Lessee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Lessee to keep certain records and to report to City all pesticide use at the Premises by Lessee's staff or contractors. If Lessee or Lessee's contractor will apply pesticides to outdoor areas at the Premises, Lessee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website.

24. No Assignment. Section 29 of the Original Lease is hereby incorporated by reference; provided, however, that all references to "premises" shall be replaced with "Premises".

25. Indemnification.

(a) **Waiver of Claims.** Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability to the extent caused by the gross negligence or willful misconduct of City or its Agents or bar Lessee from enforcing the terms and conditions of this Lease, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

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

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

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

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

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

26. Insurance. Section 31 of the Original Lease is hereby incorporated by reference; provided, however, that the commercial general liability policy described in such Section shall have limits of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

27. Waiver of Damage and Breach. Sections 32 and 33 of the Original Lease are hereby incorporated by reference; provided, however, that all references to "premises" shall be replaced with "Premises" and all references to "rent" shall be replaced with "Rent".

- 28. Right to Amend.** The first paragraph of Section 34 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”. Until the SBA Loan is repaid in full, this Lease shall not be amended without the SBA’s written consent.
- 29. Rent Credit.** Section 35 of the Original Lease is hereby incorporated by reference.
- 30. Destruction of Premises.** Section 36 of the Original Lease is hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises” and the reference to “Section 6 (“Rental”)” in such section shall be replaced with Section 7 of this Lease.
- 31. Additional General Provisions.** Sections 37 through 48 and Sections 50 through 60 of the Original Lease are hereby incorporated by reference; provided, however, that all references to “premises” shall be replaced with “Premises”.
- 32. Conflicts of Interest.** Through its execution of this Lease, Lessee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.
- 33. First Source Hiring Ordinance.** Lessee and City are parties to the First Source Agreement attached to this Lease as Exhibit D pursuant to San Francisco Administrative Code, Chapter 83 (the “First Source Agreement”). Any default by Lessee under the First Source Agreement shall be a default under this Lease.
- 34. Notification of Limitations on Contributions.** Through its execution of this Lease, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, and Lessee’s chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.
- 35. Preservative-Treated Wood Containing Arsenic.** Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Lessee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Lessee from purchasing

preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

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

39. Sustainable Foods. Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of

these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones. Lessee shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Lessee to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims. Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties. At City's request made not more frequently than annually, Lessee shall provide an report outlining how Lessee incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Lessee informed customers and the youth employed by the Lessee, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

40. Wages and Working Conditions.

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

Lessee shall include, and shall require its sublessees and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Lessee's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse/prevailingwages or call the City's Office of Labor Standards Enforcement at 415-554-6235.

(b) Prevailing Wages for Theatrical Workers, Trade Shows and Special Event Work, and Off-Street Parking Lot, Garage or Automobile Storage Facility. Lessee shall pay, and shall require its

sublessees, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Trade Show or Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

If Lessee, or its sublessees, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Lessee shall provide to City (and to require any sublessee, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

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

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

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

42. Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights.

43. Supervision of Minors.

(a) **Records Request.** If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) **Restriction on Hires for Recreational Sites.** If Lessee, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) **Notice Required for Sites Other Than Recreational Sites.** If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) **General Requirements.** Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy."

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

45. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, and subject to the provisions of Section 73 above, Lessee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Lessee who would be or are performing work at the Premises.

(b) Lessee shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all sublessees to comply with such provisions, subject to the provisions of Section 73 above. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Lessee and sublessees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

46. Vending Machines; Nutritional Standards. Lessee shall not install or permit any vending machine on the Premises without the prior written consent of the General Manager. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Lessee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 76 shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that

at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

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

48. Possessory Interest Taxes.

(a) Lessee recognizes and understands that the Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(b) Lessee agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Lessee's usage of the Premises that may be imposed upon Lessee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Lessee agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Lessee, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of the Lease to the County Assessor within sixty (60) days after any such transaction, and that Lessee report certain information relating to such matters to City within thirty (30) days after the applicable transaction. Lessee agrees to provide such information as may be requested by City to enable it to comply with this requirement.

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

50. Non-Discrimination in City Contracts and Benefits Ordinance.

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

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

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

(d) Condition to Lease. As a condition to this Lease, Lessee shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

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

51. Tropical Hardwood and Virgin Redwood Ban. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Lessee shall not provide or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of any alterations or improvements in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee’s net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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

53. Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Lessee is hereby advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Lessee from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Lessee if requested by Lessee. City and Lessee shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

- 54.** No Joint Venture. This Lease or any activity by City hereunder does not create a partnership or joint venture between City and Lessee relating to the Lease or otherwise. This Lease does not constitute authorization or approval by City of any activity conducted by Lessee, and City shall in no way be responsible for the acts or omissions of Lessee on the Premises or otherwise.
- 55.** Attorneys Fees. In the event a dispute arises concerning this Lease, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.
- 56.** Cooperative Drafting. This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.
- 57.** No Third Party Beneficiaries. This Lease shall not be deemed to confer any rights or benefits on any party other than the parties hereto; provided, however, that the SBA shall be a third party beneficiary with respect to Section 25 and Section 29 until the SBA Loan is paid in full.
- 58.** Applicable Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of California.
- 59.** Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Lease.
- 60.** Effective Date. This Lease shall become effective as on the date on which (i) the Board of Supervisors passes a resolution approving this Lease, and the Mayor signs such resolution, and (ii) this Lease is duly executed and exchanged by the parties hereto.
- 61.** Miscellaneous. The Lease is the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Lease shall not constitute a waiver or relinquishment of any rights or remedies that City may have relating to the 1991 Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT August 15, 2018

In witness whereof, the parties hereto have executed this Lease as of the date written above.

LESSEE: GOLDEN GATE YACHT CLUB,
a California corporation

By: _____
Its: _____

By: _____
Its: _____

LESSOR: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
RECREATION AND PARK COMMISSION

By: _____
PHILIP GINSBURG, General Manager,
Recreation and Park Department

APPROVED BY:

RECREATION AND PARK COMMISSION

PURSUANT TO RESOLUTION NO.

_____ DATED: _____

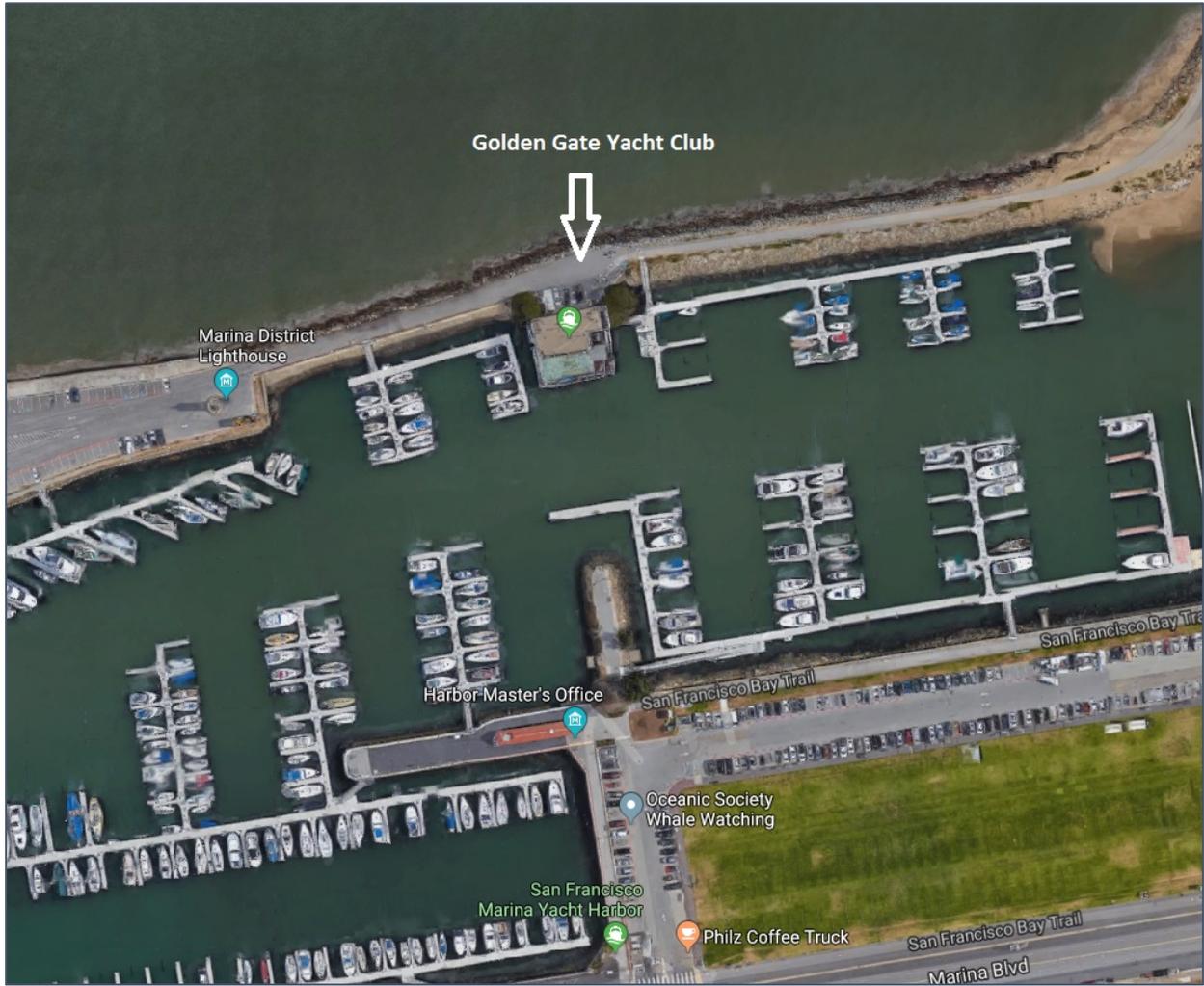
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong
Deputy City Attorney

EXHIBIT A

Depiction of Premises



Berth Descriptions

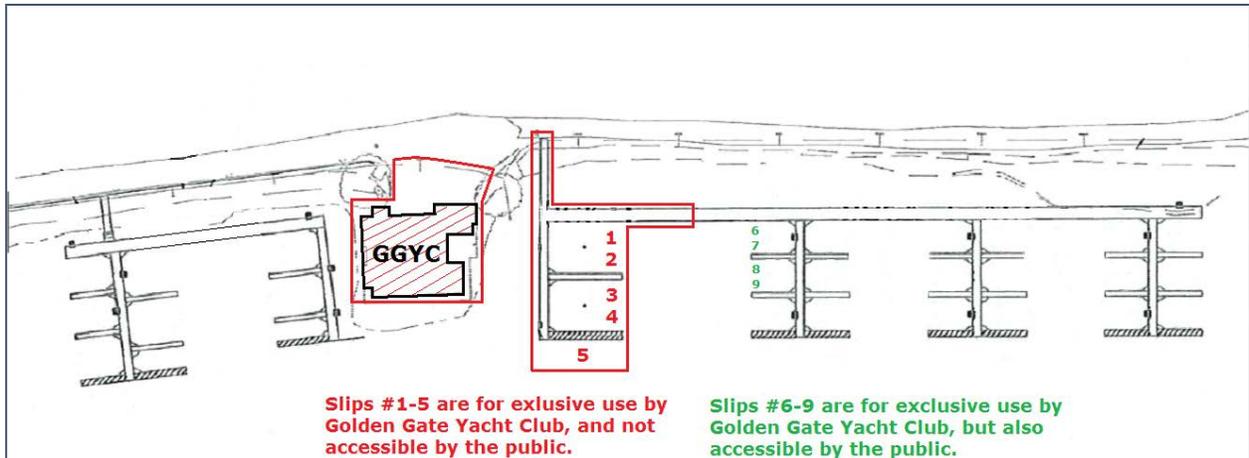


EXHIBIT B

Description of the 2018 Improvements

- (1) Installation of new floors.
- (2) Installation of new windows.
- (3) Installation of new upgraded electronics.
- (4) Renovation of all bathrooms, including installation of ADA access.
- (5) Installation of ADA compliant elevator lift to provide access to all floors of the clubhouse.
- (6) Exterior and interior waterproofing
- (7) Exterior and interior painting

EXHIBIT C

Description of Youth Educational Program(s)

MAIN POINTS:

- A. GGYC has the only youth sailing program that promotes San Francisco public high school team sailing.
- B. GGYC offers low cost of entry to sailing for San Francisco students.
- C. GGYC youth sailors come from mixed schools and socioeconomic backgrounds and traditionally form long term bonds.
- D. GGYC Youth Sailing Foundation provides scholarships to students who request them.
- E. The goal of our Foundation is to provide sailing lessons to the children of our community with emphasis on safety, team interaction, and environmental respect for our waters.

DETAILS:

GGYC will offer a school term program over three separate sessions. Students will pay nominal fee for approximately nine (9) weeks of professional instruction. The use of boats is included at no additional cost. GGYC's youth program seeks to offer affordability and accessibility without sacrifice to quality.

GGYC Youth Sailing Foundation will also provide sailing scholarships to any San Francisco student who wants to learn to sail but does not have the funds or access to do so. GGYC strives to provide scholarships to every student who requests one. The scholarship program is comprised of a mixed group of students from various schools, economic backgrounds and varying degrees of sailing experience from zero to race-ready.

GGYC is one of the smaller Bay Area programs, yet we typically take three teams to each regatta venue from San Francisco locations to as far away as Long Beach, CA. Typically, the GGYC program will receive 20-25 students each fall which practice two-three afternoon sessions per week. In addition, GGYC will occasionally offer private weekend sessions for larger groups. Some students simply come out for the fun of sailing and don't have time to compete. GGYC encourages competition whenever possible.

Aside from developing competent sailors, the most beneficial outcome of the GGYC program is the cross-cultural bonding. Students from various schools and different backgrounds learn to trust each other and create long-term relationships with group members.

Sharmaine Ramasamy is the Program Manager for the GGYC Youth Sailing Program. GGYC has five coaches for the Youth Sailing Program: Mills Forni, Alberto Ricera, Brett Davis, Sarah Davis, Chris Johnson, Natasha Jarett, and Brett Bastien.

DRAFT August 15, 2018

EXHIBIT D

First Source Agreement – to be attached