To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Lease Agreement: Berkeley Rowing Club for the property at 2851 W. Bolivar Drive, Aquatic Park

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with the Berkeley Rowing Club for the use and management of the City’s property at 2851 W. Bolivar Drive in Aquatic Park for a term of fifteen years.

FISCAL IMPACTS OF RECOMMENDATION

The Berkeley Rowing Club will pay an annual rent of $300, escalating by $100 per year. In addition, they will be responsible for a) completing capital improvements and maintenance to the building over the 15 year period of their lease, which are valued at $211,284; and b) replacing the public dock, which is valued at $45,000. The list of capital improvements and maintenance requirements are described in Exhibit “B” of the lease. Lease revenue will be deposited in Budget Code 450-5801-363.10-02. CMS Number. P5D73.

CURRENT SITUATION AND ITS EFFECTS

The City’s lease with long-time tenant The Berkeley Rowing Club for the property at 2851 W. Bolivar Drive at Aquatic Park expired on December 31, 2015. The lease is now in holdover status (month-to-month). The City and the Rowing Club have negotiated a new lease. In exchange for a 15-year term and favorable rent of $300/year, escalating by $100/year, the Berkeley Rowing Club agrees to perform all improvements cited in the City’s recently commissioned Condition Assessment report, appended to the lease as Exhibit “B”. In addition, the Berkeley Rowing Club agrees to replace the public dock. The value of these improvements is estimated to be $256,284. This amounts to an annual cost of occupancy of $18,085, which is in line with other recent lease agreements at Aquatic Park.
BACKGROUND
The Berkeley Rowing Club has been at Aquatic Park since the 1960s. The Club currently has 190 members, with 42% comprised of Berkeley residents. The Club engages in several community service activities per year, including the cleanup of Aquatic Park, the public dock repair, and Learn-to-Row day.

On January 13, 2016, staff reviewed the lease terms with the Parks and Waterfront Commission.

RATIONALE FOR RECOMMENDATION
The Berkeley Rowing Club is a Berkeley-based non-profit 501(c)(3) which promotes the sports of amateur rowing and paddling. The Club maintains its buildings in Aquatic Park, including graffiti, removal in a timely manner. They are good neighbors to the public and other tenants at the Aquatic Park, and the Club provides people and activity at the Park that make it a more attractive place for other park users.

ENVIRONMENTAL SUSTAINABILITY
In keeping with Section 3.a. of the City’s Climate Action Plan regarding energy efficiency for City-owned commercial properties, all future repairs and renovations at the Berkeley Rowing Club will be required to incorporate energy saving measures whenever feasible.

CONTACT PERSON
Christina Erickson, Deputy Director, Parks, Recreation & Waterfront 510-981-6703

Attachments:
1: Ordinance
   Exhibit A: Lease Agreement
ORDINANCE NO. –N.S.

LEASE AGREEMENT WITH THE BERKELEY ROWING CLUB, FOR THE USE AND MANAGEMENT OF 2851 W. BOLIVAR DRIVE AT AQUATIC PARK

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or designee, is hereby authorized to execute a fifteen-year lease agreement and any amendments thereto with the Berkeley Rowing Club for the use and management of 2851 W. Bolivar Drive at Aquatic Park in Berkeley, CA. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be $300 per year, escalating by $100 per year. In exchange for favorable rent, the Berkeley Rowing Club will take over the responsibility for the building maintenance; will perform a list of capital improvements to the property as described in Exhibit B of the lease; and will replace the public dock. The rent will be deposited to the Budget Code 450-5801-363.10-02. CMS Number P5D73.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Attachment:

   Exhibit A: Lease Agreement
CITY OF BERKELEY

IMPROVED PROPERTY LEASE

Between

THE CITY OF BERKELEY, A CHARTER CITY
ORGANIZED AND EXISTING UNDER THE LAWS
OF THE STATE OF CALIFORNIA

as Landlord,

and

THE BERKELEY ROWING CLUB

as Tenant.

For the Properties at
2851 Bolivar Drive
Berkeley, CA
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2851 West Bolivar Drive Lease – Berkeley Rowing Club, Tenant
PROPERTY LEASE

BASIC LEASE INFORMATION

1. **Landlord:** City of Berkeley, a California municipal corporation
   2180 Milvia Street
   Berkeley, CA 94704
   Attention: Director, Parks, Recreation & Waterfront
   Telephone: (510) 981-6703
   Facsimile: (510) 981-6710

2. **Tenant:** Berkeley Rowing Club

3. **Tenant Trade Name:** Tenant shall operate under the trade name Berkeley Rowing Club

4. **Effective Date:** March 1, 2016

5. **Premises:** The Premises are located within Aquatic Park in the City of Berkeley, CA. The Premises consist of land lying adjacent to the western shoreline of Aquatic Park Lagoon (“Lagoon”) and includes one wood frame building whose address is 2851 West Bolivar Drive. The Premises do not include any portion of the Lagoon, or any docks or other appurtenances that extend into the lake.

   From a point 40 feet from the north side of the existing building located at 2851 West Bolivar Drive, the northern line of the Premises extends a distance of 130 feet in a straight line running west to West Bolivar Drive and east to the western shoreline of the Lagoon; from this point on the Lagoon, the eastern line of the Property runs south along the shoreline of the Lagoon a distance of 200 feet; then from this point, the Property extends to the west a distance of 130 feet to West Bolivar Drive; then the western line of the Property runs north along the eastern line of West Bolivar Drive a distance of 200 feet until it meets the northern property line of the Premises but excluding any portion of this measurement within the Aquatic Park Lagoon.

6. **Permitted Uses:** The Premises shall be used by Tenant to promote the sports of amateur rowing and paddling. The Premises shall be used solely by members of the Berkeley Rowing Club or by other persons specifically authorized by the Club. The Rowing Club shall have non-exclusive use of the parking lot within the leased premises, which shall also be available for use by the general public.

7. **Initial Term:** Fifteen (15) year(s), commencing as of March 1, 2016 (“Commencement Date”).
8. **Base Rent:** $300 per year, increasing $100 per year thereafter.

9. **Security Deposit:** $300.00

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS ___________ TENANT’S INITIALS ___________
LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and THE BERKELEY ROWING CLUB, a non-profit organization doing business at 2851 West Bolivar Drive in Berkeley, CA ("Tenant or Club").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

1. DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Building" shall mean the building on the Premises as shown on Exhibit A.

C. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

D. "Aquatic Park" shall mean the Aquatic Park as defined in Chapter 6.04 of the Berkeley Municipal Code ("B.M.C.") (attached hereto as Exhibit "C"), as amended or succeeded, and any buildings and other improvements constructed or to be constructed therein. Without limiting the provisions of Paragraph 36 of this Lease, Tenant acknowledges it is not relying on any representations or warranties made by Landlord, Landlord's agents or anyone else in regard to the size or configuration of Aquatic Park or in regard to the nature, location, or appearance of any buildings, improvements, or unimproved property therein.

E. "Main Lagoon" or "Aquatic Park Lake" shall mean that body of water lying between West Bolivar Drive on the west, Addison Street on the north, the Southern Pacific railroad tracks on the east, and the service road on the south.

F. "Premises" shall mean the Building and surrounding property located at 2851 Bolivar Drive, Berkeley CA, as further depicted in Exhibit "A."

G. "Fence" shall mean the 8' high chain-link equipment storage fence to be assembled adjacent to the north wall of the Building, as proposed in Tenant's April 5, 2013 letter to City, Attention: Scott Ferris, Director, Parks, Recreation & Waterfront.

H. "Facilities Condition Assessments" shall mean the comprehensive review and report of maintenance and repair needs of City-owned buildings conducted by Kitchell Capital
Expenditure Managers, Inc., during 2013 and 2014 (dated 2/20/2015). The section of the report pertaining to Building (pages 45-48) is attached hereto as Exhibit "D", which lists the recommended capital improvements by building system class along with the estimated cost to repair or replace each specified building element or system (Table: CIP Cost Summary, page 45). This list of recommended capital improvements forms the basis of the List of Required Improvements set forth in Exhibit “B”.

I. "Public Dock" shall mean the public boat launching dock serving the Main Lagoon and located adjacent to the parking area of the Premises (as depicted in the aerial view of the Premises appearing in Exhibit "A").

2. TERM

A. Term. The Term is for a period of fifteen years. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant (“the Effective Date”). The Initial Lease Term will expire at midnight December 31, 2030 (“the Termination Date”).

B. At the expiration of the Term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the premises and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant’s occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord’s designated agent.

3. RENT

A. Minimum Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of THREE HUNDRED DOLLARS ($300) for the first year of the Lease. For purposes of determining Minimum Rent, the first year of the Lease is the period up to December 31, 2016 and will be pro-rated for a partial year. In each subsequent Lease Year during the Term, the Minimum Rent shall increase by ONE HUNDRED DOLLARS ($100) per year.

B. Percentage of Gross Income from Special Events.

1. In the event that Tenant operates a concession or a revenue-generating special event on the Premises or on the Main Lagoon, then Tenant agrees to pay Landlord, in addition to any fees levied by the City, an amount equal to FIVE PERCENT (5%) of the gross income realized by each such concession or special event during the term of the Lease. A special event is defined as any event in which the participants (groups or individuals) pay an entry fee to the Tenant. Tenant shall make this payment to the Landlord within thirty (30) calendar days from the last day of each special event, together with a financial statement of the gross income from said event. Tenant shall keep true and accurate books and records of each special event. Said books and records shall be retained for at least two (2) years after occurrence of the events to which they relate. Landlord, and/or its designee, shall have the right at reasonable periods and
at all reasonable times, and upon at least five (5) days' advance notice to Tenant to inspect such books and records. Income from special events does not include any grants or donations Tenant receives.

2. If any special event is likely to preclude some or all users of Aquatic Park from exercising a different use, and/or is a regatta, race, or pageant in Aquatic Park and/or on the Main Lagoon, Tenant shall first obtain a permit from the City, as required by Resolution No. 58,644-N.S. and Section 6.04.060 of the Berkeley Municipal Code. The fees for such permits shall be set by the City Council. Water use permits (by definition, for an event lasting no more than two weeks), may be issued by the Parks Recreation and Waterfront Department. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

C. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

D. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

E. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subparagraph D. 1. No endorsement or statement on any check or letter accompanying any such check or payment shall
be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Premises by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Premises by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Premises, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Premises, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Premises.
D. **Tenant's Right to Contest.** Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

5. **USE OF PROPERTY AND THE AQUATIC PARK MAIN LAGOON**

A. The Premises shall be used by Tenant to promote the sports of amateur rowing and paddling. The Premises shall be used solely by members of the Berkeley Rowing Club or by other persons specifically authorized by the Club.

B. The Rowing Club shall have non-exclusive use of the parking lot within the leased premises, which shall also be available for use by the general public. Landlord alone shall be responsible for all claims for injury, death, property damage or theft related to public use of the parking lot, unless the claim arises out of an intentional or negligent act of Tenant, Tenant’s members or guests of Tenant’s members, and with respect to any such claim, Landlord shall hold Tenant harmless and shall indemnify and defend Tenant in accordance with all terms and conditions of paragraph 14 - Indemnification of this Lease, which provisions (save for the reversed roles of the indemnity parties) shall be incorporated in and made a part of this subparagraph.

C. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

D. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon.Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant acknowledges that the City may alter the permitted scope of usage of the Main Lagoon and Aquatic Park in its sole discretion, and the City’s regulations shall take precedence over any agreements between Lagoon users.

E. Prior to entering and using the Main Lagoon, Tenant shall have complied with Paragraph 15 – Insurance of this Lease. In addition, Tenant, and any of its members or guests or guests of its members entering and using the Main Lagoon shall sign a waiver and release form to be provided by the Tenant that holds the City of Berkeley harmless in case of any accidents or loss of any type. Such release shall include, but not be limited to, the following:

“Participant releases and forever discharges the City of Berkeley, its divisions, subsidiaries, affiliates, officers, agents, employees, and the heirs, executors or assigns of any of the foregoing, from any and all claims, demands, and causes of action of every kind, known or unknown, whether based in tort, contract, breach of warranty, strict liability, negligence or any other legal theory of recovery, and whether for general, special, compensatory or punitive damages, arising out of or in any way related to use of the Main Lagoon at Aquatic Park.”
In the event Tenant fails to obtain a signed waiver and release form from any member or guest of its members who uses the Main Lagoon or is in any way connected to the use of the Main Lagoon, Tenant at all times will still be bound by Paragraph 14 of this Agreement.

F. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its members and guests of its members are properly supervised and trained to prevent injury to themselves and others. Tenant will provide adequate supervision and training of its members and guests of in their use of the Premises and/or Main Lagoon.

G. Landlord shall have no responsibility for Tenant’s equipment, vehicles or personal property that may be lost, stolen, or damaged.

H. With the exception of Tenant's equipment stored within the Fence, no items will be allowed to be stored in the exterior Premises without written approval by Landlord. In no circumstances shall items not related to the Tenant’s programs be allowed to be stored on the Premises, either inside or outside.

I. Tenant agrees to require its members and guests of members who use the Premises and/or Main Lagoon to respect other Aquatic Park lessees, licensees and visitors and to abide by standards of behavior common to the sport of rowing, bike riding, and general park use.

J. Business may be conducted with the public on the Premises at any time on any day that Aquatic Park is open, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to Aquatic Park.

K. Tenant agrees to cooperate with the City in promoting community participation in Tenant’s programs and activities held on the Premises.

L. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within Aquatic Park any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;

2. place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).

3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;

4. store, display or sell goods or merchandise on the Premises or place or permit portable signs or other devices to be stored or to remain on the Premises;

5. use or permit any portion of the Premises to be used as living or sleeping
quarters; and

6. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of Aquatic Park.

M. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering Aquatic Park or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon Aquatic Park or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises or the Aquatic Park which increases the existing rate of such insurance upon Aquatic Park or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Aquatic Park, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

N. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

O. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises and/or Aquatic Park; or (v) violate any of Tenant's other obligations under this Lease.

P. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

Q. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Aquatic Park or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and
eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

R. Tenant acknowledges that West Bolivar Drive is closed to vehicular traffic and that Landlord has installed a gate to prohibit such traffic. Landlord agrees that Tenant and its Affiliates may use West Bolivar Drive to access the Premises, provided that Tenant and its Affiliates shall close the gate after each entry and exit.

S. Tenant agrees to submit to the Landlord, by February 15th of each Lease Year, an annual report that describes the Tenant’s community activities in the prior year, including:

1. List tenant’s community activities in the previous year, with the number of members volunteering and the total hours at each day of community activity.
2. List number of members, number of members from Berkeley, number of members who are under 18 or other member subgroups the club believes is appropriate to mention.
3. Tenant shall identify the fee structure utilized during the previous year, including dues for Berkeley residents, non-Berkeley residents, and different sub-groups if applicable.
4. Approximate level of usage, such as number of people per day, number of person-hours per day, or comparable information. If there is variation from one time of year to another, then this information shall be reported by season.
5. Tenant shall discuss any Aquatic Park lagoon use scheduling or issues with other park users. If there are no issues, a statement to that effect is required.

T. Tenant agrees to post on the Premises references to Club’s website for information concerning the Club’s programs and goals, events, and contacts to discuss and facilitate membership.

6. USE OF AQUATIC PARK PROPERTY

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use Aquatic Park, including the Main Lagoon.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Premises or Aquatic Park, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to Aquatic Park (other than to the Premises) from time to time which in its sole opinion are
deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning Aquatic Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

D. Landlord at all times shall have the sole and exclusive management and control of Aquatic Park, including without limitation, the right to lease, license or permit the use of space within Aquatic Park to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of its members and guests using the Premises and/or the Main Lagoon pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for Aquatic Park or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of Aquatic Park and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the sensitive environment of Aquatic Park. Landlord has the right at any time to revise the traffic flow on Bolivar Drive, provided Tenant continues to have vehicular access to the Premises.

G. Tenant shall not interfere with the free and unobstructed access by the public to Aquatic Park. Tenant shall not preclude other users of Aquatic Park from exercising a different use without first obtaining any and all appropriate permits. Tenant shall be obligated to permit such access to Aquatic Park as required for consistency with applicable laws of the State of California, and/or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive
utility easements over, under, through, across, in or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

7. **SERVICES**

A. Landlord shall provide and maintain water and sewer service to the Premises. Tenant shall maintain the water and sewer lines within the Building. Landlord shall pay the costs of the water and sewer service. Tenant shall pay for and be responsible for all other utilities and services, including electric, gas, garbage and telephone, and all fees and periodic charges related thereto.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Premises or Aquatic Park; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

8. **OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY**

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

9. **ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty (other than as set forth in the Facilities Condition Assessments) concerning (i) the physical condition of
the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Upon the execution of this Lease, Landlord approves the Fence and approves and requires the improvements to the Premises listed on Exhibit “B” that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit “B” (Tenant’s Work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of $5,000 for any single instance or $15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord’s prior written consent except for the Fence and the improvements listed in Exhibit “B”. All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds $5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiberglass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings or docks, or construction of any new buildings or docks, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of the Fence and the Exhibit “B” Improvements) and all improvements (including the Fence and Exhibit “B” Improvements) are subject to the environmental review and permit regulations and approvals of
same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures (other than the Fence or Exhibit “B” Improvements) that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. Except for the Fence and Exhibit “B” Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed $50,000, including any applicable Exhibit “B” Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men’s or other lien against the Premises or Landlord’s interest therein.

All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

G. 1. Tenant hereby agrees in accordance with the schedule set forth in Exhibit "B" to undertake and complete all of the recommended capital improvements specified in the Facilities Condition Assessments (see Exhibit D).

2. As of the date of this Lease, the Premises has not been inspected by a Certified Access Specialist (CASp). City makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee’s use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Lessee agrees to make any such necessary modifications and/or additions at Lessee’s expense.

3. Tenant further agrees, at its sole expense, to replace the Public Dock, which Landlord and Tenant both acknowledge has reached the end of its useful life. Landlord and Tenant also agree that:

(i) The Dock shall remain public property owned by the City, and Landlord alone shall have all future obligations of ownership except for routine maintenance which will be performed by Tenant in accordance with subparagraphs 11.A. and 11.E. of this Lease.
(ii) Tenant's obligation to replace the Public Dock is limited to the single initial replacement of the Dock in accordance with Exhibit B and City is under no obligation to repair or replace the dock in the future.

(iii) For as long as the Dock remains safe and adequately maintained, Landlord shall not remove it or relocate it to a different site.

(iv) Use by persons other than members or guests of members of Tenant: Landlord alone shall be responsible for all claims for injury or death related to public use of the Dock, unless the claim arises out of an intentional or negligent act of Tenant, Tenant’s members, or guests of Tenant’s members, and with respect to any such claim, Landlord shall hold Tenant harmless and shall indemnify and defend Tenant in accordance with all terms and conditions of paragraph 14 - Indemnification of this Lease, which provisions (save for the reversed roles of the indemnity parties) shall be incorporated in and made a part of this subparagraph.

4. The parties acknowledge and agree that one of the principles underlying the terms and conditions of this Lease is Tenant's agreement to perform specified capital improvements on the Premises in exchange for abated rent and a 15-year term of occupancy. The parties have thoroughly inspected the Building and Premises and have entered into this Lease on the assumption that the capital improvements listed in the Facilities Condition Assessments and set forth in Exhibit B represents a reasonable estimate of the improvements necessary to preserve, enhance and improve the condition of the Building through the term of this Lease. However, the parties also acknowledge and agree that certain events (for example, latent or unanticipated defects or damage to the Premises, accessibility requirements, etc.) may give rise to substantial, unavoidable expenses that materially and adversely affect Tenant's ability to perform its obligations under this Lease. In such event, upon Tenant's written notice to Landlord, Landlord shall temporarily defer declaring default pursuant to paragraph 19 of this Lease, and the parties, in good faith, shall employ their best efforts to negotiate amendments to the Lease that recognize Tenant's financial hardship while preserving to the extent possible the original terms and intent of the Lease. In the event the parties are unable to reach agreement on such amendments, either party may terminate this lease upon 30 days’ written notice to the other. Upon such termination, Tenant shall vacate the Premises in accordance with paragraph 2.B. and shall be relieved of all other obligations under this Lease.

H. 1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars ($25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each
calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subparagraph H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars ($25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subparagraph, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subparagraph H.

10. LIENS

Tenant shall keep the Premises, the Building, and Aquatic Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

11. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building on the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building, Public Dock, or other area in the Premises, whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof or building
structure.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within Aquatic Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. Tenant shall maintain or cause to be maintained, at Tenant’s expense, the Public Dock adjacent to the Premises.

F. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant’s only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

G. Nothing in this Paragraph 11 shall be deemed to affect or impair Landlord’s rights under Paragraph 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Other than as set forth in the Facilities Condition Assessments, Landlord has made no representations respecting the condition of the Building, the Premises, or Aquatic Park, except as specifically set forth in this Lease.

12. ENVIRONMENTAL

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City’s Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City’s Zero Waste Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City’s Zero Waste Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

13. **DAMAGE OR DESTRUCTION**

   A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Paragraph 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

   B. Anything in subparagraph A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

   C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

14. **INDEMNIFICATION**

   A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

   B. The duty to defend is a separate and distinct obligation from the Tenant’s duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation
includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys’ fees and defense costs.

C. The review, acceptance or approval of any of Tenant’s work or work product by any indemnified party shall not affect, relieve or reduce the Tenant’s indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant’s officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

15. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, the Building, Aquatic Park or the Main Lagoon, with a combined single limit of not less than $2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord’s reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or Aquatic Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with
with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Paragraph 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Paragraph 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such
loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront
City of Berkeley
2180 Milvia St., 3rd Floor
Berkeley, CA 94704

16. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.
B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for the Fence and items listed on Exhibit “B”. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises or Aquatic Park. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises or Aquatic Park. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

17. ASSIGNMENT AND SUBLEASE
A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord’s written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

18. INSPECTION

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or Aquatic Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.
19. **DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. **Failure to Use Premises.** Failure to use the Premises as specified in Paragraphs 5 and 6.

B. **Nonpayment of Rent.** Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. **Other Obligations.** Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. **General Assignment.** A general assignment by Tenant for the benefit of creditors.

E. **Bankruptcy.** The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. **Receivership.** The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. **Insolvency.** The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief
under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises and/or Aquatic Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of Aquatic Park and/or the Main Lagoon caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease term. Failure to perform any of the obligations and improvements listed on Exhibit ”B”, such failure continuing for 30 days after notice from the landlord of said default.

20. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation after Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subparagraph A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages upon Termination. Should Landlord terminate this Lease pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent
which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

21. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be
granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Paragraph 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or Aquatic Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or Aquatic Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be
unreasonably withheld so long as such actions could not potentially have any material adverse
effect upon the Premises. Tenant's obligations under this Paragraph 21.C. shall survive the
expiration or termination of this Lease.

22.  **LANDLORD'S RIGHT TO CURE**

    All covenants to be performed by Tenant shall be performed at Tenant's sole cost and
expense and without abatement of rent. Without limiting Landlord's rights under any other
 provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any
other act and such failure shall have become an event of default under Paragraph 19, Landlord,
without waiving or releasing Tenant from any of its obligations, may make (but shall not be
obligated to make) any such payment or perform any such other act. All sums so paid by
Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable
to Landlord immediately upon Landlord's written demand.

23.  **EMINENT DOMAIN**

    A.  If all or any part of the Premises shall be taken as a result of the exercise of the
power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the
dates that title vests in the condemning authority or such authority takes possession of the
Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to
terminate this Lease as to the balance of the Premises by written notice to the other party within
thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to
terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as
substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any
such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards
and interest that may be paid or made in connection with such taking. Tenant shall have no claim
against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with
Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for
damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall
belong to Tenant.

    B.  If any part of the Premises shall be so taken and this Lease shall not be
terminated, then this Lease shall continue in full force and effect, except that the Rent shall be
reduced in the same proportion that the rentable area of the Premises taken bears to the original
rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary
repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal
Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as
near its former condition as the circumstances will permit and to restore the Building to the
extent necessary to constitute the portion of the Building not so taken a complete architectural
unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an
amount in excess of the amount received by Landlord as damages for the taking of such part of
the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary
repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal
Premises, decorations, signs and contents.
C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

24. **SUBORDINATION**

   A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Aquatic Park, all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

   B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

25. **NO MERGER**

   The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

26. **TRANSFER BY LANDLORD**

   In the event the original Landlord or any successor owner of Aquatic Park shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

27. **ESTOPPEL CERTIFICATES**

   From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such
failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

28. **HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord’s consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days’ notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

29. **CHANGES BY LANDLORD**

A. The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of Aquatic Park, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

30. **GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

31. **SECURITY DEPOSIT**

As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of THREE HUNDRED DOLLARS ($300), unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or
any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

32. **SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Paragraph 32. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall
comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in Aquatic Park.

33. **NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

34. **NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

35. **NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:**
Berkeley Rowing Club
PO Box 99285
Emeryville, CA 94662

**To Landlord:**
Parks, Recreation & Waterfront
City of Berkeley
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

**With copies to:**
City Manager
City of Berkeley
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

Parks Superintendent
City of Berkeley
1325 Bancroft Way
Berkeley, CA 94702

Notices to Landlord regarding Hazardous Substances required by Paragraph 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the
36. **COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

37. **REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

38. **INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

39. **SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

40. **AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

41. **UNAVOIDABLE DELAYS**
A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Paragraph 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

42. **TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

43. **BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

44. **CITY NON-DISCRIMINATION ORDINANCE**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.
B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S. This resolution, as may be amended from time, stipulates that Tenant's membership policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

45. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

   A. If Tenant provides any aid, service or benefit to others on the Landlord’s behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord.

   B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

46. **CONFLICT OF INTEREST PROHIBITED**

   A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a board, a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

   B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

   C. Interpretation of this paragraph shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.
47. **NUCLEAR FREE BERKELEY**

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

48. **OPPRESSIVE STATES**

A. In accordance with Resolution No. 59,853 – N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Lease, the Tibet Autonomous Region and the provinces of Ado, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant’s failure to comply with this paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Paragraph 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

49. **BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates $350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Paragraph shall be
made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 19 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 19.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of $50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

50. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Paragraph 19 of this lease.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant’s failure to comply with this Paragraph shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 20.

In addition, at City’s sole discretion, Tenant may be responsible for liquidated damages
in the amount of $50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant’s failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant’s breach.

51. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

52. **CITY BUSINESS LEASE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

53. **SURVIVAL**

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

54. **EXHIBITS**

Exhibits A, B, C, and D and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

**LANDLORD:**

CITY OF BERKELEY
A municipal corporation

By: ____________________  ____________________
TENANT:
BERKELEY ROWING CLUB
A non-profit organization

By: ______________________________  ______________________________
    Ellen Braithwaite, President  Date

**TENANT INFORMATION**

Tax Identification No.
Incorporated: Yes  No
Certified Woman Business Enterprise: Yes____  No X
Certified Minority Business Enterprise: Yes ____  No X
**Certified Disadvantaged Business Enterprise: Yes  No**
City Business License No. ____________, or Exempt pursuant to B.M.C. Section _________
Exhibit “A”: Premises Description

The Premises are located within Aquatic Park in the City of Berkeley, CA. The Premises consist of land lying adjacent to the western shoreline of Aquatic Park Lagoon (“Lagoon”) and includes one wood frame building whose address is 2851 West Bolivar Drive. The Premises do not include any portion of the Lagoon, or any docks or other appurtenances that extend into the lake.

From a point 40 feet from the north side of the existing building located at 2851 West Bolivar Drive, the northern line of the Premises extends a distance of 130 feet in a straight line running west to West Bolivar Drive and east to the western shoreline of the Lagoon; from this point on the Lagoon, the eastern line of the Property runs south along the shoreline of the Lagoon a distance of 200 feet; then from this point, the Property extends to the west a distance of 130 feet to West Bolivar Drive; then the western line of the Property runs north along the eastern line of West Bolivar Drive a distance of 200 feet until it meets the northern property line of the Premises but excluding any portion of this measurement within the Aquatic Park Lagoon.
## Exhibit “B”: List of Required Improvements and Maintenance

<table>
<thead>
<tr>
<th>REQUIRED IMPROVEMENTS</th>
<th>COMPLETION DATE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Public Dock: Replace existing boat launching dock.</td>
<td>12/31/16</td>
</tr>
<tr>
<td>2. Paint building exterior. Includes any required preparation.</td>
<td>12/31/16</td>
</tr>
<tr>
<td>3. Roof coverings: Replace splitting roof fascia boards and paint to match existing; install gutters, downspouts, splashpads.</td>
<td>12/31/16</td>
</tr>
<tr>
<td>4. Exterior doors: Replace oversized doors and hardware.</td>
<td>12/31/18</td>
</tr>
<tr>
<td>5. Floor finishes: Refinish boathouse floor.</td>
<td>12/31/19</td>
</tr>
<tr>
<td>6. Floor and wall finishes: Clean, prep and apply epoxy coating on shower room floors and walls; install new rubber floor bases.</td>
<td>12/31/20</td>
</tr>
<tr>
<td>7. Replace domestic water heater.</td>
<td>12/31/20</td>
</tr>
<tr>
<td>8. Lighting &amp; branch wiring: Replace receptacles, switches, lighting fixtures; install interior automatic lighting control system.</td>
<td>12/31/22</td>
</tr>
<tr>
<td>9. Electrical service &amp; distribution: Replace electrical feeders, conductors; replace load center, transformer.</td>
<td>12/31/24</td>
</tr>
<tr>
<td>10. Exterior walls: Replace exterior wall siding with cement board.</td>
<td>12/31/27</td>
</tr>
</tbody>
</table>

## REQUIRED MAINTENANCE

1. Maintain exterior and park area: remove graffiti within 7 days; ongoing litter pick-up from the area around the property; report to the City Illegal Dumping hotline when large amounts of furniture, mattresses, and construction debris are dumped in the park; maintain vegetation included in lease area; conduct tree debris cleanup in lease area; alert City officials about homeless encampments and dangerous or unsafe activities in the surrounding park area; ensure that surrounding storm drains are raked and free of debris before and during storms; maintain a direct line of communication with City officials during and before winter storms if there are signs of high water level or park and street flooding. Ongoing

2. Maintain structure and interior: perform general building maintenance including cleaning, painting, and basic interior repairs; Ongoing
ensure the foundation remains properly vented and the vents do not become obstructed by weeds; ensure that dirt and earth do not rise above the level of the foundation and affect the siding; repair or replace any interior elements that are damaged as a result of use over time; clean out gutters; maintain water and sewer lines in lease area.

3. **Maintain dock:** conduct routine maintenance to keep the public dock in good repair.  

4. **Perform a termite inspection, and perform treatment as needed.**  

   Ongoing

   6/30/18
Section 6.04.010 Definitions.

Chapter 6.04 BERKELEY AQUATIC PARK*

Section 6.04.010 Definitions.

For the purpose of this chapter certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that a different meaning is intended.

A. "Berkeley Aquatic Park" means that area owned or controlled by the City of Berkeley, bounded by the Eastshore Highway on the west, Third Street on the east, University Avenue on the north and Ashby Avenue on the south, which is used as an aquatic park.

B. "Concessionaire" means the lessee of the boating and other facilities at the Berkeley Aquatic Park.

C. "Lake" means the Berkeley Aquatic Park lake.

D. "Motorboat" means any and all types of motor-driven craft. (Ord. 3650-NS §§ 1, 1.1, 1.2, 1.3, 1.4, 1958)
Exhibit “D”: Facility Condition Assessment
Berkeley Paddling and Rowing Club

Introduction

Located at 2851 Bolivar Drive, the Berkeley Paddling and Rowing Club occupy a building assembled from a number of vintage buildings moved to the site about 1974. Comprising 2,950 square feet in area, the building is of wood frame construction. The boat storage room has a suspended wood floor bearing on foundation wall of concrete masonry blocks, and the exterior walls of the weight training and shower rooms bears on the slab on grade. Overall, the building is in poor condition, with a facility grade of C+ and an FCI of 14%.

Anticipated Capital Renewal

As a result of the visual inspection, capital improvement recommendations are provided below along with the total cost to repair and/or replace the building’s elements or systems. The following tables summarize the recommendations by the building system class and priority period.

### CIP Cost Summary

<table>
<thead>
<tr>
<th>Uniformat II Code</th>
<th>Building System Class</th>
<th>Total (Priority 1-4)</th>
<th>Priority 1</th>
<th>Priority 2</th>
<th>Priority 3</th>
<th>Priority 4</th>
<th>Priority 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>B2010</td>
<td>Exterior Walls</td>
<td>$31,934</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$31,934</td>
<td>-</td>
</tr>
<tr>
<td>B2030</td>
<td>Exterior Doors</td>
<td>$24,864</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$24,864</td>
<td>-</td>
</tr>
<tr>
<td>B3010</td>
<td>Roof Coverings</td>
<td>$9,355</td>
<td>-</td>
<td>$9,355</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>C3010</td>
<td>Wall Finishes</td>
<td>$6,048</td>
<td>-</td>
<td>$6,048</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>C3020</td>
<td>Floor Finishes</td>
<td>$48,741</td>
<td>-</td>
<td>$34,998</td>
<td>$13,743</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>D2020</td>
<td>Domestic Water Distribution</td>
<td>$3,360</td>
<td>-</td>
<td>-</td>
<td>$3,360</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>D5010</td>
<td>Electrical Service &amp; Distribution</td>
<td>$36,624</td>
<td>-</td>
<td>-</td>
<td>$36,624</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>D5020</td>
<td>Lighting &amp; Branch Wiring</td>
<td>$27,258</td>
<td>-</td>
<td>-</td>
<td>$27,258</td>
<td>$23,100</td>
<td>-</td>
</tr>
<tr>
<td><strong>Current</strong></td>
<td></td>
<td><strong>$212,284</strong></td>
<td><strong>$50,401</strong></td>
<td><strong>$80,985</strong></td>
<td><strong>79,898</strong></td>
<td><strong>-</strong></td>
<td><strong>-</strong></td>
</tr>
</tbody>
</table>

Notes:
1. All costs are in 2013 dollars.
2. The Estimated Useful Life of the deficient equipment in this table was determined using two independent industry sources: Whitestone Research and American Society of Heating, and Air conditioning Engineers (ASHRAE). Formula: Estimated Useful Life = (2013 Year Installed) + Recommended Useful Life Remaining.
3. Priority 5 items are discretionary and include cyclical maintenance, physical or cosmetic improvements, and change of use or square footage additions that trigger code-driven requirements. Priority 5 costs are kept separate from Priority 1-4 dollar totals.
A. Architectural
   1. Life Safety
      a. There are no issues to report.
   2. Accessibility (informational use only – costs are not included in Summary Table)
      a. The building does not have accessible parking, path or entry to the building.
      b. There is an inaccessible step in the floor between the boat storage and weight room.
      c. Fixtures in shower, toilet, and locker rooms are not accessible. Accessible shower stalls or
         shower seats, toilet, and lavatories is not provided.
   3. Exteriors (including fenestrations)
      a. All exterior wood siding is in poor condition with worn paint finish. Many coats of paint
         have been chipped off and intact in some areas which contributes to an uneven finish. Wood
         rot visible on siding above finish grade around the building. Wood siding has poor joints on
         east and south side of east wing.
      b. Service door on the south end of west wing is in fair condition. Operation of door is
         acceptable.
      c. Service door in east wing weight room is in fair condition.
   4. Roofing:
      a. Asphalt shingles on the roof were replaced approximately 2004. End of useful life of roof
         will be about 2024.
      b. Gutter and rainwater leaders are absent from the building. Control of water off the roof
         would prolong life of the wood building siding and supporting framing.
      c. Wood roof fascia board finish is poor with peeling paint.
   5. Interiors (Walls, Doors, Flooring, Finishes, Painting):
      a. Finish of the walls in the Men’s shower room is peeling.
      b. Wood floor boards and finish in the boat storage room is poor.
      c. Floor finish in locker/shower rooms is poor.
      d. Base missing on one wall in weight room.
      e. Paint on rubber bases in the Women’s locker room.
B. Mechanical (heating, ventilating, and air conditioning)
   1. Mechanical heating, ventilating and air conditioning system was not present at the facility. Ventilation grille is included at the exterior wall.

C. Plumbing (Supply and Waste Systems)
   1. The domestic hot water system for the facility is served by an electric water heater (EWH) located in the Men’s restroom. The EWH installation was unknown; however, the EWH is in good operating condition.
   2. Plumbing fixtures at the Men’s and Women’s restrooms includes Showers, urinals, lavatories and water closets. These plumbing fixtures are in operable conditions.
   3. Other plumbing system components consist of domestic hot and cold water piping, sanitary waste piping, and vent piping. The plumbing system is original to the building and no related issues have been reported.

D. Fire / Life Safety Protection Systems
   1. Fire Sprinkler System
      a. The building does not have a fire sprinkler system.
      b. The building includes fire extinguishers. These fire extinguishers are easily accessible and of right application.
   2. Fire Alarm
      a. The building is not equipped with a fire alarm system.
E. Electrical (Supply and Distribution, Lighting and Low-Voltage)

1. Electrical Supply and Distribution
   a. The building’s electrical service is provided by PG&E. A small transformer interior to the building drops the voltage from 480V to feed a small 120/240V, 1-phase, load center. This equipment is operating beyond its expected useful life and is due for replacement. It is assumed that much of the conduit, wiring, and wiring devices (receptacles and switches) in the building are also in need of replacement.

2. Lighting
   a. Interior lighting primarily consists of surface-mounted compact fluorescent fixtures. The interior appeared dim and poorly lit, and the fixtures are approaching the end of their useful lives. Switching is achieved with local manual wall switches.
   b. Exterior lighting consists of aging halogen floodlights and HID wall-packs controlled by a time clock. It appears as though the tenant has added supplemental solar-powered LED lighting in several areas for security purposes.

3. Low Voltage
   a. There is a tenant-maintained CCTV security system.

### Mechanical and Plumbing Statement of Probable Cost

<table>
<thead>
<tr>
<th>System</th>
<th>Item Number</th>
<th>Deficiency Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Cost</th>
<th>Soft Costs</th>
<th>Extended</th>
<th>Estimated Usesful Life</th>
<th>Year Installed</th>
<th>Useful Life Remaining</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Distribution Systems</td>
<td>0203.002</td>
<td>Domestic Water Heater is at or approaching end of its life.</td>
<td>1</td>
<td>EA</td>
<td>$2,000</td>
<td>1.68</td>
<td>$3,360</td>
<td>15</td>
<td>N/A</td>
<td>N/A</td>
<td>3</td>
</tr>
</tbody>
</table>

### Electrical Statement of Probable Cost

<table>
<thead>
<tr>
<th>System</th>
<th>Item Number</th>
<th>Deficiency Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Cost</th>
<th>Soft Costs</th>
<th>Extended</th>
<th>Estimated Usesful Life</th>
<th>Year Installed</th>
<th>Useful Life Remaining</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Service &amp; Distribution</td>
<td>05010.056</td>
<td>Existing electrical feeders and conductors are beyond their expected useful life.</td>
<td>2,950</td>
<td>SF</td>
<td>$6</td>
<td>1.68</td>
<td>$29,756</td>
<td>30</td>
<td>1974</td>
<td>-10</td>
<td>3</td>
</tr>
<tr>
<td>Electrical Service &amp; Distribution</td>
<td>05010.065</td>
<td>Existing load center is beyond its expected useful life.</td>
<td>1</td>
<td>EA</td>
<td>$1,400</td>
<td>1.68</td>
<td>$2,352</td>
<td>30</td>
<td>1974</td>
<td>-10</td>
<td>3</td>
</tr>
<tr>
<td>Electrical Service &amp; Distribution</td>
<td>05010.066</td>
<td>Transformer (dry-type, 15kVA, 480-120/240V) is beyond its expected useful life.</td>
<td>1</td>
<td>EA</td>
<td>$2,700</td>
<td>1.68</td>
<td>$4,536</td>
<td>30</td>
<td>1974</td>
<td>-10</td>
<td>3</td>
</tr>
<tr>
<td>Lighting and Branch Wiring</td>
<td>05020.011</td>
<td>Existing receptacles and switches are beyond their expected useful lives.</td>
<td>2,950</td>
<td>SF</td>
<td>$6</td>
<td>1.68</td>
<td>$27,258</td>
<td>20</td>
<td>1974</td>
<td>-20</td>
<td>3</td>
</tr>
<tr>
<td>Lighting and Branch Wiring</td>
<td>05020.004</td>
<td>Existing surface mounted interior and exterior lighting fixtures are approaching the end of their expected useful lives.</td>
<td>27</td>
<td>EA</td>
<td>$400</td>
<td>1.68</td>
<td>$18,144</td>
<td>20</td>
<td>Unk</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Lighting and Branch Wiring</td>
<td>05020.017</td>
<td>Interior lighting system lacking automatic control system.</td>
<td>2,950</td>
<td>SF</td>
<td>$1</td>
<td>1.68</td>
<td>$4,956</td>
<td>20</td>
<td>N/A</td>
<td>N/A</td>
<td>4</td>
</tr>
</tbody>
</table>

F. Specialties (Kitchen, Laundry and other Specific-use Capital Equipment)

1. There is no specialty equipment in the building.