

LEASE AGREEMENT FOR
DOLPHIN SWIMMING AND BOATING CLUB

AT
AQUATIC PARK

CITY AND COUNTY OF SAN FRANCISCO
RECREATION AND PARK COMMISSION
McLAREN LODGE, GOLDEN GATE PARK
SAN FRANCISCO, CALIFORNIA

Commissioner Eugene L. Friend, President
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Commissioner Keith Eickman
Commissioner Luisa Izquierdo
Commissioner Tommy Harris
Commissioner Frances McAtcher
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1979.

6/30/2004

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THIS AGREEMENT, dated for convenience this 1st day of July, 1979 by and between the RECREATION AND PARK COMMISSION, for and on behalf of the City and County of San Francisco, State of California, hereinafter referred to as "Lessor" and the Dolphin Swimming and Boating Club, a California Non-Profit Corporation, hereinafter referred to as "Lessee".

WITNESSETH

That for and in consideration of the covenants, terms and conditions hereinafter contained on the part of the Lessee to be paid, kept and performed, Lessor does hereby lease to Lessee and Lessee does hereby lease, hire and take from Lessor the improved real property commonly known as 502 and 504 Jefferson Street at the Foot of Hyde Street as indicated on the attached map (hereinafter referred to as the "demised premises") situated at Aquatic Park in the City and County of San Francisco, State of California, subject to the following agreements, terms and conditions, to which the parties hereto agree.

1. EXTENT OF LEASEHOLD

The Lessor does hereby grant to Lessee the exclusive right to establish and operate a rowing and athletic club on the demised premises being under the jurisdiction of the Lessor. It is hereby understood and agreed that the exclusive right to establish and operate said club as hereinabove stated shall not embrace any other areas located adjacent to the demised premises nor to Aquatic Park or any part thereof, except the improved real property as indicated on the attached map. The property formerly called the San Francisco Rowing Club is intended to be a part of the grant of this lease.

2. USE OF PREMISES AND PURPOSE OF LEASE

Lessee agrees that the demised premises shall be operated on a non-profit basis as defined by and pursuant to prevailing Internal Revenue Service codes and regulations and shall be used only for the purpose of providing facilities for aquatic activities and for promoting and serving the public interest in the advancement of rowing, running, swimming, and other sports all to be available to and for the benefit of the general public and to be for a public purpose. Lessor may sub-rent the demised premises for a fee upon conditions stated in Paragraph 3 of this lease and as required by the General Manager, Recreation and Park Department, (hereafter referred to as "Manager"), regarding the time and duration of such sub-rentals and the types of events for which such sub-rentals may be entered into, said conditions to be kept on file with the Secretary, Recreation and Park Commission, and subject to change only upon 30 days prior written notice to Lessee from General Manager, Recreation and Park Department. No other use shall be made of the demised premises without the written consent of Lessor.

3. CODE COMPLIANCE

As a material consideration, Lessee agrees, at its sole cost and expense, to maintain the demised premises in compliance with all applicable health and safety, fire and building code requirements of the State of California and City and County of San Francisco, to the extent the same are not waived or excused by grand fathering or other operation of law or equity, in order to make said demised premises suitable for the purposes set forth in Section 2, hereinbefore stated.

4. PROHIBITED USES

Lessee shall not do or permit anything to be done in or about the demised premises, or bring or keep anything therein which will in any way conflict with any law, ordinance, rule or regulation which may now or hereafter be enacted or promulgated by any public authority, or create a nuisance, or commit or suffer to be committed any waste upon the demised premises or use, or allow the demised premises to be used, for any improper, immoral or unlawful or objectionable purpose, or place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk or passageways, stairways, in front of, within, or adjacent to the demised premises, or do or permit to be done anything in any way tending to injure the reputation or appearance of the building.

5. PUBLIC ACCESS

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

6. VENDING MACHINES

Subject to the written approval of the General Manager, Recreation and Park Department, and subject to the written revocation thereafter, Lessee may install and operate coin-operated machines within the demised premises, which dispense cigarettes, candy, hot and cold beverages, amusement devices (including, but not limited to, pin-ball machines, game tables and playing machines) and any and all other types of coin-operated devices furnished or installed for the entertainment of guests and visitors.

7. TERM

The term of this lease shall be for a period of Twenty Five (25) years commencing on the first day of July, 1979 or retroactive thereto if approved by the Board of Supervisors and the Mayor of the

City and County of San Francisco after July 1, 1979. Subject to the approval by the Recreation and Park Commission, this lease may be extended for one (1) additional Twenty Five (25) year period provided, however, that Lessee shall request such extensions not less than ninety (90) days prior to the expiration date of the initial Twenty Five (25) year period. Failure of Lessee to request said extensions or failure of the Recreation and Park Commission to approve said request for extension more than thirty (30) days prior to said expiration date of the first Twenty Five (25) year period of this lease shall cause this lease to operate on a month to month basis or terminate without extension, whichever the Commission shall choose.

8. RENTAL

Lessee shall pay as rent to Lessor a semi-annual payment equal to ten (10) percent (10%) of all gross revenues, dues, initiation fees, sub-rentals, dividends, trust income or any other income received during the term of this lease. Said rental shall not include as income gifts or bequests made in the name of the Lessee but shall include any dividends, interest or other income subsequently received from said gifts or bequests, provided that dividends, interest or other income committed by resolution to capital improvements prior to January, 1980, shall be specifically exempt from rent.

Any assessments made by Lessee, general, special or otherwise, shall only be allowed with the prior written permission of the Manager and the Commission and only for the purpose(s) set forth in said grant of permission. Said consent shall not be unreasonably withheld by Lessor.

Said rental shall be paid to Lessor on or before the fifteenth (15th) day of July and January of each year and shall cover the six (6) months ending each June 30 and December 31 respectively.

Said payments shall be made to the Business Manager, Recreation and Park Commission, McLaren Lodge, Fell & Stanyan Streets, San Francisco, California 94117.

9. GROSS REVENUE DEFINED

The term "Gross Revenue" as herein used is defined to mean the total gross revenue derived from any income derived from the use and occupation of the demised premises as described in Paragraph 8. (above).

10. RATES AND CHARGES

Lessee hereby agrees that the rates and charges for all services, including, but not limited to sub-rental fees, membership application fees, initiation fees, membership dues, daily access fees, sub-rentals, coin-operated amusement devices, and the sale of vended cigarettes, candy, hot and cold beverages shall not exceed the rates and charges approved by the Lessor. Should conditions warrant and justification be made to the satisfaction of the Lessor said rates and charges may be adjusted, provided, however that said adjustment shall be first requested by Lessee in writing and said adjustment or

adjustments shall not become effective until approved in writing by said Lessor. The rates or charges for any new service to be offered to the general public or any new item or items to be offered for sale shall not be offered to the general public without the written approval of said Lessor first had and obtained. Lessor agrees not to unreasonably withhold its consent to requested charges and adjustments.

11. ACCOUNTING AND RECORDS

Lessee shall install and maintain such bookkeeping and accounting records, and methods of collection of monies, as shall permit Lessor to compute accurately the gross revenue, disbursements and all other expenditures and expenses for the operation of activities herein and any and all such records shall be made reasonably available to Lessor in San Francisco upon request. Lessee shall provide Lessor any reasonable accounting report or record on request by Lessor. The books of account shall indicate and distinguish funds received from sub-rentals and coin-operated machines from funds received from other sources such as gifts, bequests, memberships, or daily access fees from non-members. Lessee agrees to furnish detailed financial statements for operations hereunder and said statements shall be delivered to Lessor on or before the fifteenth (15th) day of each and every July and January for operations of the preceding six (6) months.

12. AUDIT OF BOOKS

The books of accounts and records of Lessee covering the operations of Lessee under this lease shall, at the cost and expense of Lessee, be audited annually by a certified public accountant firm (approved by Lessor). A certified copy of the report of such audit for the fiscal year shall be furnished to the Commission within 90 days of the end of said fiscal year of Lessee.

13. DAYS AND HOURS OF OPERATION

Lessee shall actively operate the demised premises for the purpose described herein and use its best efforts to further the operations thereof. The days and hours of operation of Lessee shall be subject to mutual arrangement between Lessee and the General Manager, Recreation and Park Department, and shall be embodied in written form and kept on file with the Secretary, Recreation and Park Commission.

14. PREMISES TO BE KEPT CLEAN

Lessee agrees to keep the demised premises and all fixtures and equipment clean, neat, safe, sanitary and in good order at all times. Lessee agrees to remove all waste, trash, rubbish, papers, cartons, and refuse from said demised premises all other areas used solely for and by said Lessee in containers provided for that purpose by Lessor. Lessee hereby agrees to clean, inside and out, all windows in the demised premises at the cost and expense of Lessee. Janitorial and window washing services required within the demised premises shall be supplied and paid for by Lessee.

15. EMPLOYEES OF LESSEE

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

16. RATES OF PAY FOR LESSEE'S EMPLOYEES

Lessee hereby agrees to pay all employees of Lessee the rate of pay and benefits and to observe other working conditions generally paid and allowed persons engaged in substantially the same activity in private employment in the City and County of San Francisco. Nothing herein shall be construed to prohibit Lessee from collectively bargaining with union representatives of employees in order to establish rates of pay, benefits and working conditions.

17. UTILITIES

Lessee hereby understands and agrees to pay all costs of utility services including, but not limited to water, gas, electricity, telephone service and any and all other services necessary and required for the occupancy and use of the demised premises under the terms of this lease, including the costs of bringing the utilities to the locations where needed or received.

18. LESSEE TO PAY FOR SERVICES AND DAMAGES

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

19. LESSEE TO MAINTAIN EQUIPMENT AND PREMISES

Lessee hereby agrees that Lessee will, at Lessee's own cost and expense, keep and maintain the equipment and demised premises, and any improvements made under the terms and conditions of this lease, including but not limited to plumbing fixtures, electrical conduits, electrical fixtures, glazing, water lines, sewer lines, telephone lines, power lines, and related underground systems, fencing and all other areas and appurtenances used solely for and by Lessee in good sanitary order, condition and repair, and as required by law and hereby waives all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code.

20. LESSEE TO PROVIDE FURNITURE AND FIXTURES

Lessee hereby agrees that Lessee will, at Lessee's own cost and expense, furnish and install any and all furniture, furnishings, equipment, utilities, as well as any and all other items and services necessary and required for the proper opera-

tion and maintenance of the demised premises.

21. USE OF LESSOR'S EQUIPMENT

Lessee shall have the right and privilege to use and operate any equipment of Lessor presently located in the demised premises and agrees to maintain and repair all said equipment and to return said equipment to Lessor upon expiration or sooner termination of this lease, reasonable wear and tear excepted.

22. CONDITION OF PREMISES

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

23. IMPROVEMENTS BECOME PROPERTY OF LESSOR

Any alterations, additions, improvements and repairs which may be affixed to the demised premises shall be the property of the Lessor, and shall remain upon and be surrendered with the demised premises upon expiration or sooner termination of this lease, except that Lessee shall retain ownership and shall have the right to remove all trade fixtures, furnishings, furnishing and personal property used by Lessee in the operation of the demised premises which were purchased by or added to the premises by Lessee. Lessee shall obtain the written approval of Lessor before making any alterations or improvements on the demised premises. Any alterations, improvements and repairs performed by Lessee shall meet all health and building codes and ordinances as well as applicable State and Federal Regulations. Lessor agrees not to unreasonably withhold its consent to such requested alterations, improvements and repairs.

24. DESTRUCTION OF PREMISES

In the event of the destruction of the demised premises, or any part thereof, which prevents Lessee from operating according to the provisions of this agreement, the rights and privileges granted hereunder may be terminated by the Lessor and Lessor shall be under no legal obligation to Lessee by reason of said termination, and Lessee shall be relieved of all obligations to make payments as provided in Section 8 of this lease for the period following destruction of said premises.

25. WAIVER OF DAMAGE

Lessee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure or impairment of any services to or in the demised premises, and Lessee hereby expressly releases and discharges Lessor, its officers, agents and employees, from any and all demands, claims judgments, actions and causes of action arising from any of the causes aforesaid.

26. TAXES, ASSESSMENTS AND FEES

Lessee shall pay promptly all fees and taxes, including but not limited to, property interest taxes, excises, licenses,

permit fees, and charges lawfully assessed against Lessee of whatever nature applicable to the operations under the terms of this lease. Should Lessee desire to contest the legal validity thereof the same may be paid under protest. Lessee agrees not to suffer any lien to be imposed upon the demised premises or facilities or upon any equipment or personal property located therein without promptly discharging same.

27. SIGNS AND ADVERTISING

Lessee agrees that it will not erect or maintain, nor permit to be erected or maintained, upon the demised premises or areas adjacent thereto, any signs without obtaining in advance the written consent and approval of the General Manager to the Recreation and Park Department.

28. LOITERING

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

29. TRESPASS

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

30. COMPLIANCE WITH LAWS

Lessee agrees that the operations conducted hereunder will be operated in strict compliance with all laws of the United States, the State of California, applicable laws of the City and County of San Francisco, or any legal authority having jurisdiction over same, and all rules and regulations issued pursuant to the laws of the sovereignties or agencies hereinabove mentioned.

31. INSURANCE

The Lessee shall procure and maintain during the term of this contract the following insurance:

1. Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident,
2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations Coverages, Liquor Liability coverage to be secured in the event Lessee is licensed to dispense alcoholic beverages,
3. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,00 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

4. Property insurance on buildings, fixtures, (and whatever other equipment, irrigation systems, etc.) insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in an amount equal to \$320,000.00 of the replacement value. Said value determined in 1979 and said value to be increased by an amount equal to or greater than the cost of living index or the consumer price index as determined by the United States Government annually.

Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:

1. Name as ADDITIONAL INSUREDS the City and County of San Francisco, its Officers, Agents and Employees.
2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
3. That the proceeds of the above referenced Fire policy is dedicated to the reconstruction of clubhouse facilities on the subject site(s). Lessee agrees and covenants that upon the completion of said reconstruction, quit-claim deeds to said improvements will be executed by the Lessee in favor of the City and County of San Francisco and the Recreation and Park Commission on the condition Lessor will extend Lessee's term for the reconstructed clubhouses under similar terms and conditions for the balance of the term hereunder and will negotiate in good faith for another long-term leasehold.

ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

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

Business Manager
Recreation and Park Commission
McLaren Lodge, 201 and 21st Street
San Francisco, California 94117

All questions arising with respect to insurance policies should be directed to:

Risk Manager
City and County of San Francisco
150 Hayes Street, Sixth Floor
San Francisco, CA 94102

Certificates of insurance evidencing all coverages above shall be furnished to the City before commencing any operations under this Contract.

412K Lessee agrees to indemnify and hold the City harmless from all claims that arise from Contractor's activities.

The terms of these Insurance requirements may be reviewed and revised every five (5) years by the Commission to bring required limits up to date.

32. UNEMPLOYMENT COMPENSATION

Lessee will, upon request, furnish Lessor adequate evidence of provision for Social Security and Unemployment Compensation to the extent that such are applicable to Lessee's operations upon the demised premises.

33. PERFORMANCE BOND WAIVED

Lessor agrees that as a condition to Lessee's continued status as a non-profit entity, Lessor waives any requirement to post a performance bond.

34. CONFLICT OF INTEREST

Lessee hereby states it is familiar with the provisions of Section 8.105 and Section 8.106 of the Charter of the City and County of San Francisco and certifies that Lessee knows of no facts which constitute a violation of said Sections. Lessee further certifies that Lessee has made a complete disclosure to the Lessor of all facts bearing upon any possible interests, direct or indirect, which Lessor believes any member of the Lessor, or any other officer or employee of the City and County of San Francisco presently has or will have in this lease or in the performance thereof or in any portion of the profits thereof. Willful failure to make such disclosure, if any, shall constitute ground for Lessor's termination and cancellation of this lease.

35. RIGHTS OF COMMISSION AND CITY

Commission and City reserve the right to construct and maintain on the demised premises or beneath the surface of the ground thereof flumes, conduits, pipes and any structures necessary or convenient in connection with its municipal water supply system, or other municipal purposes, but any such structures on the surface of the ground shall be only at reasonable places, and in the case of structures beneath the surface City or Commission shall replace the ground and restore the surface to as nearly as possible the same condition as it was in when first disturbed. Commission also reserves the right to grant rights of way during the term hereof to power or telephone companies or other public utilities to cross the demised premises with underground lines and conduits; provided, however, that such rights of way shall interfere as little as possible with Lessee's use of the demised premises. No claim shall be made by Lessee on account of its inability to use the demised premises during the period of construction, maintenance, repair or removal of any such structures unless the same shall interfere with such use for a longer period than fifteen (15) days at any one time.

36. REMEDIES ON DEFAULT BY LESSEE

This lease of the demised premises as herein described is granted upon the express condition that in the event the Lessor deems objectionable or improper any conduct on the part of Lessee, its employees or agents, which shall not have been remedied and corrected for a period of ten (10) days after written notice by Lessor to Lessee, or if default be made by Lessee in any of the covenants herein contained, other than for the payment of rental or percentage payments, and Lessee shall continue in such default for a period of ten (10) days after written notice in writing from Lessor of such default and specifying same; or if Lessee is

in default in payment of rental or percentage payments or should any attachment, garnishment or execution be levied against Lessee or Lessor's property and not removed within ten (10) days after notice from Lessor; or if Lessee shall cease its operations under this lease for causes other than destruction of the premises as herein provided and shall not have resumed said operations after twenty (20) days from date of written notice by Lessor to Lessee, said Lessor shall have full license and authority to re-enter and have full possession of said demised premises, either with or without legal process, on giving three (3) days' previous notice of intention to do so, and upon the expiration of said notice, Lessor, or its officers, agents or employees, shall be entitled to the immediate possession thereof; and Lessee consents that Lessor shall not be liable to prosecution or damage for so resuming possession of said demised premises.

The exercise of the remedies provided for in this section shall be cumulative and shall in no wise affect the remedies available to Lessor.

37. INSOLVENCY; RECEIVER

In the event that Lessee files a proceeding under federal laws for financial relief, or that bankruptcy or like proceedings shall be instituted by or against Lessee and Lessee is thereafter adjudicated a bankrupt, this lease shall terminate as of the time of institution of such proceedings, if the same be voluntary upon the part of the Lessee, or on the date of adjudication of bankruptcy, if such proceedings be involuntary. In any event, Lessee agrees that the interest of Lessee herein shall not pass as an asset for administrative or other judicial control of said proceedings.

38. CONDEMNATION

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

39. DELIVERY OF POSSESSIONS

Lessee agrees to yield and deliver to Lessor possession of the demised premises at the termination of this lease in good condition and in accordance with the express obligation hereunder, except for reasonable wear and tear or Act of God or the elements.

40. FORCE MAJEURE

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

41. LEASE NOT ASSIGNABLE

The rights and privileges granted herein shall not be assignable by Lessee, directly or indirectly, without the written consent of Lessor first had and obtained, nor shall the same be assignable by operation of law, sub-lease or otherwise and should Lessee make any attempt to assign the rights and privileges herein granted, Lessor may cancel all of said rights and privileges and all said rights and privileges of Lessee shall, at the option of Lessor, cease and terminate. Should Lessee make any assignment for the benefit of creditors, or be declared a bankrupt, either by voluntary or involuntary proceedings, no right or privilege granted herein shall pass to any assignee in Bankruptcy, or become a part of the estate of said bankrupt, and in the event of any assignment for the benefit of creditors or the bankruptcy of said Lessee, the Lessor may cancel all rights and privileges herein granted.

42. LESSOR'S RIGHTS CUMULATIVE

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

43. HOLDING OVER

Any holding over of the term created shall be a tenancy from month to month only, at a rental as set forth in Section 8 hereof, and otherwise be on the same terms and conditions herein specified.

44. AUTHORITY OF AGENTS OF LESSOR

No agent or representative of Lessor has any authority to vary the terms of this lease or to extend the rights and privileges as herein set forth, except such as may be endorsed hereon in writing, and then only after approval of Lessor.

45. NOTICES

All notices required to be given to Lessee hereunder or by law shall be deemed given to Lessee by depositing the same in the United States mail, postage prepaid, and addressed to

Dolphin Swimming and Boating Club
500 Jefferson Street
San Francisco, CA 94109.

All notices required to be given Lessor hereunder or by law shall be deemed given to Lessor by depositing same in the United States mail, postage prepaid, and addressed to the Recreation and Park Commission, McLaren Lodge, Golden Gate Park, Fell and Stanyan Streets, San Francisco, California 94117.

46. NON-DISCRIMINATION CLAUSE

Provisions of 12B.1, 12B.2, 12B.r, 12C.1, 12C.2, and 12C.3 of the San Francisco Administrative Code are incorporated herein and by reference made a part of this lease as though fully set forth. A copy of these provisions are attached hereto.

47. TIME

Time is of the essence of this lease.

48. BREACH PROVISION A MATERIAL CONDITION
It is expressly agreed that each term, condition and covenant herein to be performed or kept by Lessee is material and is a material consideration to Lessor for the award of this lease and Lessee agrees that the breach by Lessee of any one of the within terms, conditions or covenants shall be a material breach of the whole and entire lease and shall be grounds for the termination by Lessor, at its election, of the entire lease, except that there shall be no termination until Lessor has given the Lessee notice in writing of any alleged breach and Lessee shall have been given a reasonable opportunity to cure the alleged breach all as provided in Section 37 hereof.

49. STRICT PERFORMANCE

Failure of Lessor to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. The acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of rent.

50. WAIVER OF BREACH BY LESSOR

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

51. HEADINGS

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

52. APPLICATION OF PROVISIONS OF CHARTER

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

53. LEASE MADE IN CALIFORNIA

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

54. CONTRACTS AND COUNTERPARTS

This lease is executed in counterparts, each of which shall be deemed an original.

55. APPROVAL BY BOARD OF SUPERVISORS

This lease shall not be effective for any purpose whatsoever until approved by Ordinance of the Board of Supervisors of the City and County of San Francisco.

56. RENEGOTIATION CLAUSE

Lessor agrees that, in the event it is mutually determined in good faith by Lessee's Board of Directors and Lessor that continued occupancy of the demised premises under the terms and conditions imposed herein constitutes a threat to the continued existence or vitality of Lessee club, then Lessee may, upon ninety (90) days written notice vacate and surrender the demised premises without further liability hereunder. In the event Lessee and Lessor are unable to mutually agree then Lessor and Lessee agree to submit the dispute to binding arbitration pursuant to the rules of the American Arbitration Society.

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

CITY AND COUNTY OF SAN FRANCISCO
RECREATION AND PARK COMMISSION

LESSOR:

BY Katherine W. Malley
Katherine Colzani, Secretary

BY John J. Spring
John J. Spring, General Manager

APPROVED AS TO FORM:

GEORGE AGOST
CITY ATTORNEY

George Agost
Deputy City Attorney

LESSEE:

BY Frank C. Fournier
President

BY David Hunter
Secretary



AQUATIC PARK
 AND THE LANDS
 BEING OFFERED
 PROPERTY TO BE
 OFFERED
 BY THE CITY AND COUNTY
 OF SAN FRANCISCO
 TO THE U.S. DEPARTMENT
 OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 FOR THE NATIONAL SYSTEM
 OF PUBLIC LANDS
 11/1

THIS FIRST AMENDMENT, dated for convenience July 1, 1979, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the RECREATION AND PARK COMMISSION, hereinafter referred to as "Lessor" and the DOLPHIN SWIMMING AND BOATING CLUB, a California Non-Profit Corporation, hereinafter referred to as "Lessee",

W I T N E S S E T H

WHEREAS, Lessee and Lessor entered into a lease dated for convenience July 1, 1979; and

WHEREAS, Lessee and Lessor are desirous to further clarify the rights and liabilities of each of them granted in said lease;

NOW, THEREFORE, the following paragraphs shall be added to the original agreement as follows:

A. TIMETABLE OF REPAIRS

The Club agrees that it will establish a full timetable to remedy health, safety, fire and building deficiencies existing in the demised premises at the execution of this lease and as required by the City and County of San Francisco. Such timetable will be to the satisfaction of the General Manager and the necessary repairs will be remedied in a timely and expeditious manner as necessary to satisfy the provisions of Paragraph 3 of the full agreement.

The Club further agrees that such timetable for repairs will include therein that health and safety code violations will be remedied first, that such work will commence no later than 30 days after approval of this lease and that all health and safety code work will be completed no later than six (6) months after the commencement of such repairs. All repairs will be up to all legal code requirements and any precautions necessary to protect the safety of the Club's members or the general public, including vacation of the premises if necessary, will be taken.

B. TERM

The term of the option to renew as described in Paragraph 7 of the full agreement shall be for an additional Twenty-Four (24) years only, thereby making the full possible term of this agreement not more than Forty-Nine years total.

C. RATES AND CHARGES

Lessee agrees that it will not raise, lower or otherwise change any rates and charges as described in Paragraph 10 of the full agreement without the prior written approval of the Lessor.

IN WITNESS WHEREOF, the Lessee and Lessor have executed these amendments in duplicate this July 1, 1979.

APPROVED AS TO FORM:

GEORGE AGNOST
CITY ATTORNEY

By Richard J. Agnost
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO
RECREATION AND PARK COMMISSION
LESSOR:

By Katherine Colzani
Secretary

By John J. Spring
General Manager

By Frank C. Danner
President

RESOLUTION APPROVING MANNER OF OPERATING

DOLPHIN SWIMMING AND BOATING CLUB
AND
SOUTH END ROWING CLUB

Ass-
7/20
P. 1

WHEREAS, the manner in which the Dolphin Swimming and Boating Club and the South End Rowing Club (hereafter "the Clubs") operate for public benefit, its hours of operation, the means by which nonmembers gain access, and the fees charged for use of the facilities by members and nonmembers, among other things, are subject to approval of this Commission; and

WHEREAS, membership in the Clubs must, in order to conform to the requirements of the Fourteenth Amendment of the U.S. Constitution and of the San Francisco Charter, be open to all interested persons who are presumptively entitled to join absent good cause for exclusion; and

WHEREAS, because of the duty of the Clubs to provide public recreation, initiation fees charged new applicants must be reasonable and not excessive in relation to the amounts charged new members in clubs of a similar nature; and

WHEREAS, the Clubs shall be allowed to charge a reasonable initiation fee, as long as such amount will not erect a financial barrier to persons wanting to use the Clubs' facilities as members, thereby effectively denying public access; and

WHEREAS, the Clubs have operated since 1935 in such a manner that members only have had access to the Clubs' facilities; and

WHEREAS, opening the Clubs' facilities to nonmembers is a new manner of operating the facilities which may expose the Clubs to problems and expenses not encountered before, such as increased security problems, including danger to persons and property, and increased operating expenses generated by the costs incurred in keeping the facilities open to the public and the impossibility of recouping from the possibly small number of non-member patrons the full costs incurred in opening the facilities to nonmembers; and

WHEREAS, providing an opportunity for the Clubs to try different methods of admitting nonmembers to their facilities will allow the Clubs the flexibility necessary to discover the most efficient manner in which these facilities can be utilized on behalf of members and nonmembers alike; and

WHEREAS, the Dolphin Club charges its members \$156.00 per year as dues and the South End Club charges its members \$140.00 per year as dues; and

WHEREAS, the financial statements of the Clubs reveal that the monthly dues charged members are reasonable and necessary in order to meet the operating expenses of the Clubs; and

WHEREAS, the Clubs plan to be open to non-members from 9:00 A.M. to 5:00 P.M., five days a week, every Monday, Wednesday, Friday, Saturday and Sunday; and

WHEREAS, the Clubs' members have access to the Clubs' facilities 24 hours a day; and

WHEREAS, the demand for and use of the facilities by nonmembers is likely to be greater during the day than at night; and

WHEREAS, security problems are greater at night; and

WHEREAS, it is desirable to allow the Clubs (for a period of time) to operate during the day only in order to gauge interest by nonmembers in the use of the Clubs' facilities before imposing on the Clubs the problems inherent in opening the facilities to nonmembers 24 hours a day; and

WHEREAS, the Clubs propose to charge nonmembers \$3.00 for access to the facilities; and

WHEREAS, this fee will allow nonmembers the use for the day of the Clubs' facilities, including sundeck, sauna, shower, handball court, gymnasium equipment and all areas open to members of the Clubs; and

WHEREAS, use of one of the Clubs' boats will not be permitted upon payment of this \$3.00 fee but only by prior appointment, upon payment of an additional amount of money, and only upon satisfactory proof that the nonmember is capable of using the boat safely; and

WHEREAS, the Clubs will pay a person an hourly salary to be available to let in nonmembers to the facilities; and

WHEREAS, the cost of using the YMCA facility on Golden Gate Avenue in San Francisco, including pool, sundeck, running track, gymnasium equipment, and handball court is \$4.00 for the day; and

WHEREAS, until the Clubs have been open to the nonmembers for a period of time it will be impossible to know whether the number of nonmembers using the facilities will be sufficient to reimburse the Clubs for the costs of providing access to them; and

WHEREAS, the Clubs have advertised in eight (8) publications geared toward persons interested in the sports of rowing and boating that the Clubs will be open to nonmembers and the times the Clubs will be open; and

number of nonmembers using the Clubs' facilities and the dates approximate times of such use; and

WHEREAS, the Clubs are hereby required to post a sign on the exterior of their facilities stating the hours of operation, telephone number to call for more information regarding the clubs or their activities, and a telephone number for persons to call at the Recreation and Park Department, and the hours to call such number, if they have trouble gaining access to the Club facilities, the posting of such sign to receive the prior approval of the Recreation and Park Department staff; and

WHEREAS, the Clubs are hereby required to return to this Commission in six months, or sooner, upon 21 days written advance notice from this Commission, or upon request of the Clubs, for review of the use of the facilities by nonmembers, including the fees charged nonmembers for such use, for the purpose of determining whether the number of nonmembers seeking to use the Clubs' facilities and the days and hours during which they seek to do so justify increasing or decreasing the hours during which the Club facilities must be made available to nonmembers in order to strike an equitable balance between the burden on the Clubs in keeping the facilities open to nonmembers and the obligation of the Commission and the Clubs to maximize the public use of the City's recreational facilities; and

WHEREAS, identification shall be required only of those person whom the Clubs' attendants reasonably suspect are under 18 years age and are attempting to gain access to the Clubs' facilities unescorted by an adult; and

WHEREAS, no other identification shall be required or requested of nonmembers in order to gain access to the Clubs' facilities, provided, however, that the Clubs shall, unless directed otherwise by the Recreation and Park Department, require nonmembers to sign a statement informing such persons of the dangers of swimming in the bay and stating that such persons assume the risk of swimming in the bay.

hereby approve: BE IT RESOLVED that the Commission does

1. The Annual membership fees of \$156.00 (Delphin) and \$140.00 (South End) on their members, payable yearly;
2. The clubs' plan to open their facilities to non-members from 9:00 A.M. to 5:00 P.M. every Monday, Wednesday, Friday, Saturday and Sunday;
3. The charge to a nonmember for use of the clubs' facilities of \$2.00 for the day; and
4. The charge to new members of an initial fee not to exceed \$50.00, said amount payable in quarterly installments in the first year of membership of not less than \$12.50 per quarter.