

DUPLICATE



**CITY OF SAN DIEGO
PUBLIC PURPOSE LEASE**

BY AND BETWEEN

THE CITY OF SAN DIEGO,
a California municipal corporation

AND

SAN DIEGO ROWING CLUB
a California 501(c)(3) non-profit corporation
and
INTERCOLLEGIATE ROWING CONSORTIUM

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CITY OF SAN DIEGO PUBLIC PURPOSE LEASE

[SAN DIEGO ROWING CLUB; APN 760 - 031 - 04]

THIS CITY OF SAN DIEGO PUBLIC PURPOSE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and SAN DIEGO ROWING CLUB, a California 501(c)(3) non-profit corporation ("SDRC") and the INTERCOLLEGIATE ROWING CONSORTIUM, a consortium made up of the University of San Diego ("USD") and the University of California San Diego ("UCSD") Regents of the University of California, a California corporation ("Consortium"), (SDRC and the Consortium shall be referred to collectively as "LESSEE"), to be effective as of the date when signed by the parties and approved by the San Diego City Attorney (the "Effective Date"), as follows:

RECITALS

- A. CITY and LESSEE are parties to that certain CITY OF SAN DIEGO FLAT LEASE, filed in the Office of the San Diego City Clerk as Document No. RR-270877, between CITY and THE ROWING COUNCIL OF SAN DIEGO, a California non-profit corporation (the "Original Lease"). The Original Lease was assigned from THE ROWING COUNCIL OF SAN DIEGO to THE SAN DIEGO ROWING CLUB AND MISSION BAY ROWING ASSOCIATION, California non-profit corporations, by that certain ASSIGNMENT OF LEASE AND MEMORANDUM OF COSTS AND RESPONSIBILITY, dated July 31, 1989, with written consent and approval of CITY pursuant to CITY OF SAN DIEGO CONSENT TO ASSIGNMENT OF FLAT RATE LEASE AGREEMENT dated September 22, 1989, and filed in the Office of the San Diego City Clerk as Document No. 769724, on September 26, 1989. That portion of the leasehold interest held by THE MISSION BAY ROWING ASSOCIATION was subsequently assigned by that certain ASSIGNMENT OF LEASE, dated March 31, 1995, to THE INTERCOLLEGIATE ROWING CONSORTIUM, with written consent and approval of CITY pursuant to THE CITY OF SAN DIEGO CONSENT TO ASSIGNMENT OF FLAT RATE LEASE AGREEMENT, dated June 14, 1995.
- B. The Original Lease expired on July 31, 2013.
- C. Pursuant to the Original Lease, CITY leased to LESSEE approximately 1.07 acres (1.04 acres of land and 0.03 acres of water) at 1220 El Carmel Place in San Diego, California 92109 (the "Premises," as shown in **Exhibit A: Premises**, attached hereto). LESSEE operates a non-profit rowing and storage facility commonly referred as the Coggeshall Rowing Center consisting of six house bays to store rowing shells and oars, weight training area, locker rooms and class rooms, office and storage rooms, club house room, restrooms and shower facilities, a concrete launch apron, revetment wall, and outdoor storage facility on the Premises.
- D. This Lease is for a public purpose. LESSEE's mission is to promote recreational and competitive rowing activities in Mission Bay Park by operating a rowing facility for recreational, collegiate, instructional, educational and competitive rowing and paddling sports programs for approximately 250 adults, 120 high school athletes, approximately 50 seasonal members, approximately 150 collegiate athletes of USD and UCSD, and the general public, subject to its articles, bylaws and rules ("LESSEE's Mission"). In addition, SDRC provides rowing related activities to the general public, including numerous regattas such as the San Diego Jr's, San Diego Crew Classic, the Fall Classic, and UCSD's Susan G. Komen Row for Cure. SDRC also provides rowing experiences for injured or disabled veterans through the Wounded Warriors program. Moreover, guests with rowing experience are welcome at any

time to participate in organized rowing practices. SDRC promotes organized regattas and races and provides boats, equipment and support staff for over 1000 rowers annually. All of SDRC'S activities are carried out by SDRC's employees and volunteers.

- E. LESSEE has requested this Lease for the purpose to continue offering LESSEE's mission to the community and to invest approximately Eight Hundred Fifty Thousand (\$850,000) in repairs, upgrades and capital improvements to the Premises, as more particularly set forth in this Lease and described in **Exhibit D: Development Summary**.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Termination of Original Lease. Upon the parties' execution and delivery of this Agreement, the Original Lease shall be terminated as of the Effective Date of this Lease and shall be void and of no further force or effect except as to any monetary obligations, claims, and remedies accrued thereunder, and any rights and obligations that shall survive the termination of the Original Lease according to its terms or by law.
2. No Prior Assignments. Except as stated in Recital A, above, LESSEE represents and warrants that it has not assigned, transferred, or purported to have assigned or transferred, in any manner, any right or obligation under the Original Lease. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with any person or legal entity claiming to hold any right under the Original Lease, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs.
3. Lease. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY.
4. Premises Square Footage. LESSEE acknowledges and agrees that the square footage of the Premises (the "Premises Square Footage") shall be forty six thousand six hundred nine (46,609) square feet, which is comprised of one thousand three hundred seven (1,307) square feet of water area and forty five thousand three hundred two (45,302) square feet of land area, and that such square footage figure shall not be subject to revision except with an actual physical change in the Premises.
5. Allowed Uses. LESSEE shall use the Premises solely for the following purposes ("Allowed Uses"): (a) operation and maintenance of a public rowing facility for recreational, collegiate, instructional, educational and competitive rowing sports program to its members and students; and (b) providing rowing activities to the general public consistent with LESSEE's Mission including rowing experience for youth, military families and physically challenged individuals. LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY's prior consent in each instance. CITY may approve in writing additional Allowed Uses ("Additional Allowed Uses") that are in compliance with the primary purpose of aquatic activities for the general public, from time to time and in CITY's sole discretion. Each and all Allowed Uses (including Additional Allowed Uses) shall be conducted in compliance with all applicable laws, rules, regulations and directives of competent governmental authorities.

LESSEE shall use the Premises as allowed by this section to benefit its members, students, and the general public to CITY's reasonable satisfaction and subject to LESSEE's Mission. LESSEE shall continuously use the Premises throughout the term of this Lease.

6. Competent Management. LESSEE shall provide competent management of the Premises to CITY's reasonable satisfaction. "Competent management" shall mean demonstrated ability in the management and operation of a rowing club and related facilities and providing programs and services consistent with the Allowed Uses in compliance with all applicable federal, state, CITY and San Diego County laws, rules, regulations and policies, and in a fiscally responsible manner.
7. Operating Plans - Life Guard Division Approval. At least sixty (60) days prior to each October 1st, LESSEE shall, at its sole cost and expense, submit to CITY a written, annual operating plan describing how LESSEE intends to conduct each of the Allowed Uses in the waters of Mission Bay Park for the year following each October 1. Each such operating plan shall be in form and content reasonably satisfactory to CITY, and shall be subject to the approval of CITY's Fire-Rescue Department, Life Guard Division (the "LGD"). Except as required by law, LESSEE shall not make any changes to an existing LGD-approved operating plan without CITY's prior written approval in each instance, which may not be unreasonably withheld or delayed. LESSEE shall conduct each Allowed Use in accordance with its most recently LGD-approved operating plan. CITY acknowledges that LESSEE has submitted an operating plan for the first Lease year, which has been approved by the LGD.
8. CITY's Consent, Discretion. Whenever required under this Lease, CITY's consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his/her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
9. Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
10. Reservation of Rights.
 - a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
 - d. Noninterference. CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by

LESSEE to repair any physical damages to Premises or LESSEE's personal property directly caused by CITY's exercising of its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

11. Rates and Charges. LESSEE's charges for use of facilities on the Premises shall be in accordance with the rates and charges schedule set forth in **Exhibit B: Rates & Charges**, attached hereto. LESSEE shall not make any change to the rates and charges schedule without CITY's prior written approval in each instance, which approval may not be unreasonably withheld.
12. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan; however, LESSEE may allow the use of the Premises as a forum for open public debate.
13. Signs. LESSEE shall install and at all times during the Term maintain a CITY-approved sign identifying the Premises as CITY-owned and available for public use consistent with the terms of this Lease. The sign shall be installed by LESSEE at a location approved by CITY. Other than signage currently installed on the Premises, LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
14. Hours of Operation. LESSEE has established a regular schedule of days and hours of operation to best serve the public, attached hereto as **Exhibit C: Hours of Operation**. LESSEE shall not make any changes to its days and hours of operation without CITY's prior written consent.
15. CITY Use. CITY may use the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program. After each such use, CITY shall leave the Premises in the same condition found. Such use by CITY shall be at CITY's sole cost and expense.
16. Term. The term of this Lease ("Initial Term") shall be ten (10) years, commencing on the Effective Date.
17. Option to Extend. Provided that the LESSEE is not in default of this Lease, LESSEE may extend this Lease for two additional terms as further set forth in this Section 17 ("Extended Term") pursuant to all the terms, covenants and conditions of this Lease continuing in effect. The first Extended Term shall be for ten (10) years commencing upon the expiration of the Initial Term ("First Extended Term") and the second Extended Term shall be for five (5) years commencing upon the expiration of the First Extended Term ("Second Extended Term"). In the event LESSEE decides not to exercise an Extended Term, LESSEE shall give CITY not less than six (6) months prior written notice from the expiration of the term then in effect of this Lease ("Termination Notice").
18. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full

force and effect, except that LESSEE shall then pay to CITY fair market rent determined by an appraisal prepared by CITY's Real Estate Assets Department.

19. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.
20. Rent. For purposes of this Section 19 of this Lease, SDRC occupies 31,694 sq.ft. of the Premises and the Consortium occupies 14,915 sq.ft. of the Premises.
 - a. Base Monthly Rent. For the period commencing on the Effective Date and ending the following September 30th, the base monthly rent ("Base Monthly Rent") shall be Two Thousand One Hundred Thirty-Nine Dollars and Thirty-Five Cents (\$2,139.35). An annualized Base Monthly Rent shall be recomputed on October 1 of each year during the Term and the next year's Base Monthly Rent shall be adjusted to the rental rate determined by such re-computation.
 - b. Base Monthly Rent Adjustments. Pursuant to San Diego City Council Policy 700-08, Mission Bay Park Policies ("CP-700-08"), beginning October 1, 2019, and as of October 1 of each year thereafter, an annualized Base Monthly Rent shall be computed by multiplying the square footage of the Premises occupied by SDRC by a number representing 33-1/3% of the average total annual commercial square foot rent paid for leases in Mission Bay Park, attributing the rent to the total land and water areas under lease occupied by SDRC, as set forth in this Lease, during the immediately preceding fiscal year (July 1 through June 30). The resulting number shall be divided by twelve (12) to establish the Base Monthly Rent for the twelve (12) months following the effective date of the computation. The Base Monthly Rent shall at all times comply with CP-700-08, as may be revised from time to time by the San Diego City Council. If CP-700-08 is repealed, the Base Monthly Rent shall thereafter be adjusted (upward only) annually as of October 1 to an amount up to the then-current fair market rental value of the Premises and the Allowed Uses, subject only to then-current San Diego City Council Policies and controlling laws, rules and regulations applicable to the rental rate for Premises.
 - c. Payment by Consortium. In accordance with CP 700-08, the Consortium, as an educational institution that provides aquatic programs in Mission Bay Park, is exempt from payment of rent, as long as it uses all its revenue generated in excess of operating costs from the activities within Mission Bay Park for improvements, maintenance and operation of the Premises.
 - d. CITY shall notify LESSEE of the result of any changes to CP 700-08 or each such re-computation of the Base Monthly Rent as soon as reasonably practicable. Until such notice

is received by LESSEE, LESSEE shall continue to pay Base Monthly Rent as set forth in this Section 19. LESSEE shall pay to CITY the amount of any underpayment of Base Monthly Rent pending such notice together with its payment of rent next coming due. CITY shall credit the amount of any overpayment of Base Monthly Rent pending such notice against rent next coming due.

- e. Additional Allowed Uses Payment. LESSEE shall pay CITY ten percent (10%) of Gross Revenue, as defined in Section 23 below, from any and all Additional Allowed Uses (Additional Allowed Uses Payment”) on a monthly basis.
21. Additional Rent. Under the Original Lease, CITY had the right to assume ownership of the leasehold improvements at the end of the lease term. The parties agree that the current value of the leasehold improvements (the “Improvements Value”) is One Hundred Twenty Thousand Three Hundred Dollars (\$120,300). In lieu of CITY’s exercising its right to assume ownership of the leasehold improvements, LESSEE shall pay to CITY additional rent (“Additional Rent”) in the amount of Eight Thousand Five Hundred Dollars and Seventy Five cents (\$8,500.75) per year, which equals the Improvements Value plus an amount that will yield a five and one-half percent (5.5%) rate of return to CITY over the Term. LESSEE shall pay the Additional Rent to CITY annually, commencing on the Effective Date and on each anniversary of the Effective Date thereafter until LESSEE has made twenty-five (25) such payments. The foregoing obligation regarding the payment of Additional Rent shall survive the expiration or earlier termination of this Lease. In the event LESSEE fails to exercise its options for the Extended Term as referenced in Section 17 above, the remaining balance of the Improved Value shall be paid to the CITY as a lump sum payment concurrently with the final rent payment of the Initial Term or First Extended Term. The lump sum payment to the CITY after the expiration of Initial Term shall be \$81,519.11 and after expiration of First Extended Term shall be \$29,726.94
22. Delinquent Payments. Amounts due CITY under this Lease and not paid when due shall be delinquent. LESSEE shall pay CITY interest on the delinquent amount at the rate of ten percent (10%) per year from the date such payment was due. Delinquent amounts may be referred for collection, and LESSEE shall then pay to CITY a collection-referral fee in the amount of ten percent (10%) of the unpaid amount or Twenty-Five Dollars (\$25), whichever is greater. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE’s default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
23. Gross Revenue. "Gross Revenue" shall mean all revenue derived from all uses of the Premises, including without limitation all revenue derived from any subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenues; (e) cash refunds made to customers in the ordinary

course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

24. Time and Place of Payment. Base Monthly Rent shall be payable monthly, in advance on the first (1st) day of each month. Additional Allowed Uses Payment shall be payable on the thirtieth (30th) day of the month following the month for which said Additional Allowed Uses Payment is calculated. All payments to be paid by LESSEE under this Lease shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

25. Inspection of Records. LESSEE shall keep and maintain accurate and complete records and accounts in accordance with generally accepted accounting principles consistently applied, showing all revenue derived from use of the Premises. LESSEE shall make such records and accounts available to CITY for inspection at all reasonable times. Such records and accounts shall be made available to CITY at the Premises during the Term and in a location within San Diego County after the expiration or earlier termination of this Lease. LESSEE shall maintain such records and accounts and make them available to CITY for inspection for five (5) years after the date such records are produced.
26. Unauthorized Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease and of which CITY had no prior knowledge, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.
27. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
28. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.

29. Assignment and Subletting. LESSEE shall not assign or sublease any rights granted by this Lease or any interest in this Lease without CITY's prior written consent. Any assignment by operation of law shall automatically terminate this Lease. CITY shall receive Fifty Percent (50%) of the incremental gross rental revenue due to the LESSEE from any subleases.
30. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.
31. Default and Remedies.
- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
- i. LESSEE fails to make any payment required under this Lease when due;
 - ii. LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated a bankrupt;
 - v. LESSEE makes a general assignment for the benefit of creditors; or
 - vi. If any one of the following ceases to be true (any or all of which shall be automatically amended to reflect any and all changes to the requirements of CP-700-08, section C, NON-COMMERCIAL, NON-PROFIT LEASES AND AGREEMENTS):
 - (1) To the extent LESSEE has members, LESSEE selects its members on a first-come basis and in accordance with rules or bylaws approved by CITY;
 - (2) LESSEE's activities on the Premises fall within CITY's Mission Bay Park policies and cannot be practically furnished by commercial enterprises;
 - (3) If LESSEE charges its members for services which compete with services offered by commercial enterprises, such charges are comparable to the prices charged by commercial enterprises, and all such services are necessary to the operation of the Premises;
 - (4) LESSEE is incorporated as a nonprofit organization under the laws of the State of California, and qualifies as such under the statutes of the State of California and the Federal Department of Internal Revenue; and
 - (5) LESSEE conducts a regular schedule of competitive events involving LESSEE's Mission, and maintains membership in leading California and/or national groups dedicated to the furtherance of LESSEE's Mission.

- b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:
- i. the worth at the time of award of any unpaid rent that was due at the time of termination;
 - ii. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
 - iii. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
 - iv. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
 - v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses b(i) and b(ii), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause b(iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:
- i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
 - ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is noncurable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
 - e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.
32. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.

- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

33. Indemnification and Hold Harmless.

- a. SDRC Indemnification and Hold Harmless. SDRC shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SDRC's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with SDRC's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that SDRC's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, SDRC shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- b. USD Indemnification and Hold Harmless. USD shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries

to any person or property, including injury to USD's officers, employees, invitees, guests, agents, or contractors, which are due to USD's negligent acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that USD's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

- c. UCSD Indemnification and Hold Harmless. UCSD shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to UCSD's officers, employees, invitees, guests, agents, or contractors, which are due to UCSD's negligent acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that UCSD's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

- 34. Insurance. LESSEE shall procure and maintain for the duration of the Term and Extended Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by LESSEE, his agents, representatives, employees or subcontractors.

LESSEE shall provide, at a minimum, the following:

Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- c. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Permit or the

Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

- d. Workers' Compensation. For all of the LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.
- (1) Self-Insured Retentions. Self-insured retentions must be declared to and approved by CITY. CITY may require LESSEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY.
- (2) Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- (3) Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- (4) Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- (5) Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under this Lease.

Commercial General Liability Insurance Endorsements:

- i. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including

but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

- ii. PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects

operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

Workers' Compensation Insurance Endorsements:

- iii. WAIVER OF SUBROGATION. The Workers' Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

35. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
36. Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time.
37. Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
38. Maintenance. LESSEE shall, at LESSEE's sole cost and expense, maintain the entire Premises, including without limitation the Coggeshall Rowing Center, all to CITY's standards for similar CITY-owned properties and in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY
39. Entry and Inspection. LESSEE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency situations, CITY may at all reasonable times, but only upon reasonable prior notice to LESSEE, enter and inspect the Premises and the operations conducted on the Premises.

40. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
41. Development Plan. LESSEE shall perform not less than Eight Hundred Fifty Thousand (\$850,000) in repairs, upgrades and capital improvements to the Premises in accordance with the Development Plan approved by CITY under this Lease and as further described in **Exhibit D: Development Summary**, attached hereto. CITY may authorize changes to the Development Plan, provided that the basic concept of the Development Plan shall not be materially modified without the approval of the San Diego City Council; a document evidencing changes to the Development Plan shall be filed in the Office of the San Diego City Clerk. LESSEE's failure to develop the Premises in accordance with and by the deadlines set forth in the Development Plan shall constitute a default of this Lease. CITY may approve an extension of up to one (1) year for completion of the Development Plan without further City Council action.
42. Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of the Premises.
43. Payment Bond. Prior to the commencement of any work on the Premises, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements on the Premises are accepted by CITY and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.
44. Construction Bond. If LESSEE constructs improvements on the Premises, LESSEE shall in each instance deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
45. Prevailing Wage. Prevailing wage rates apply to this Lease. LESSEE shall comply with State prevailing wage laws, including, but not limited to, those requirements set forth in attached Exhibit E: Prevailing Wage Requirements.

46. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
47. Taxes. Subject to the provisions of Article XIII, Sections 3(d) and (e) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
48. Ownership of Improvements; Removal of Improvements and Personal Property.
- a. Improvements. During the term of the Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- b. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- c. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease

needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by competent CITY staff.

- d. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

49. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

50. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

- a. Release and Hazardous Substances. For purposes of this Lease, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. For purposes of this Lease, "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

- b. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

- c. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be

responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- d. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises,

including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. CITY shall protect, defend, indemnify, and hold LESSEE harmless from any and all claims, costs, and expenses related to environmental liabilities not resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises.

- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any hazardous substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

51. Asbestos Disclosure. Portions of the structural components of the improvements on the Premises may contain asbestos. If so, LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
52. Asbestos. If either CITY or LESSEE makes improvements, alterations or repairs to the improvements on the Premises, the party causing such improvements, alterations or repairs shall be responsible for any asbestos removal, management or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the improvements on the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
53. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
54. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp).
- Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."
55. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

Manager
San Diego Rowing Club
PO Box 99856
San Diego, California 92169

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101

56. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).
57. California Public Records Act ("CPRA"). CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the CPRA. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

58. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment

Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

59. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
60. Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
 - a. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
 - b. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
61. Disabled Access Compliance. LESSEE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
 - a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

- d. Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
 - i. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
 - ii. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.
62. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. LESSEE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - c. LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
63. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
64. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified

local residents and firms whenever practicable.

65. Water Quality – Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the CITY's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at its sole cost and expense, at a minimum implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

66. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
67. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
68. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
69. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
70. Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.
71. Legal Proceedings. If any party brings an action or proceeding against another party under this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorneys' fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against LESSEE relating to LESSEE's leasehold or otherwise in connection with this Lease, and CITY intervenes therein, becomes a party, or is made a party thereto, LESSEE shall pay all of CITY's expenses thereof, including without limitation costs and attorneys' fees.

72. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
73. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole reasonable discretion.
74. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of CITY-owned properties like the Premises.
75. Use of Proceeds. LESSEE shall use all net revenue received from the operation of the Premises for the continued operation, maintenance, and improvement of the Premises and purposes incidental thereto. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.
- a. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after the end of its fiscal year. The financial report shall include an operating statement, any revenue generated in excess of operating costs and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, and covering the period between the last annual report and the expiration or termination date of this Lease.
- b. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years.
- c. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice. CITY may conduct an audit of LESSEE's books, statements, documents, records, and financial data, or demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.
- d. Proposed Budget. At least forty-five (45) days after each fiscal year-end of LESSEE's during the Term, LESSEE shall deliver to CITY five (5) copies each of documents

evidencing LESSEE's proposed programs and business plan for the next fiscal year. Such documents shall in form and content reasonably satisfactory to CITY. Electronic correspondence to the CITY of such report is acceptable.

- e. Activities Report. At least forty-five (45) days prior to each fiscal year-end of LESSEE's during the Term, LESSEE shall deliver to CITY evidence, in form and content reasonably satisfactory to CITY, that each of the following is true (any or all of which shall be automatically amended to reflect any and all changes to the requirements of CP-700-08 section C, NON-COMMERCIAL, NON-PROFIT LEASES AND AGREEMENTS):

- (1) The Premises are available for use by the public in a manner consistent with and subject to LESSEE's Mission;
- (2) LESSEE selects its members on a first-come basis and in accordance with LESSEE's rules or bylaws approved by CITY;
- (3) LESSEE's activities on the Premises fall within CITY's Mission Bay Park policies and cannot be practically furnished by commercial enterprises;
- (4) If LESSEE charges its members for services which compete with services offered by commercial enterprises, such charges are comparable to the prices charged by commercial enterprises, and all such services are necessary to the operation of the Premises;
- (5) LESSEE is incorporated as a nonprofit organization under the laws of the State of California, and qualifies as such under the statutes of the State of California and the Federal Department of Internal Revenue; and
- (6) LESSEE conducts a regular schedule of competitive events involving LESSEE's Mission, and maintains membership in leading California and/or national groups dedicated to the furtherance of LESSEE's Mission.

76. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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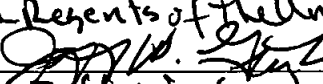
IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

SAN DIEGO ROWING CLUB, a California 501(c)(3)
Non-profit corporation

BY: 
Name: DANIEL K. O'NEILL
Title: PRESIDENT

INTERCOLLEGIATE ROWING CONSORTIUM

BY: 
Name: KY SNYDER
Title: VP Operations / COO

The Regents of the University of California
BY: 
Name: Jeff W. Graham
Title: Executive Director, RE

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: Cybele Thompson
Title: Director, Real Estate Assets

Approved as to Form:

MARA W. ELLIOTT, City Attorney

BY: 
Name: MARA W. ELLIOTT
Title: Deputy City Attorney
Date: November 29, 2018

Cybele Thompson
Director, Real Estate Assets

- Exhibit A: Premises
- Exhibit B: Rates & Charges
- Exhibit C: Hours of Operation
- Exhibit D: Development Summary
- Exhibit E: Prevailing Wage Requirements

EXHIBIT 'A'
LEGAL DESCRIPTION FOR
LEASE PARCEL 12
(SAN DIEGO ROWING CLUB)

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LAND OF FALSE BAY ALSO KNOWN AS MISSION BAY, AND INCLUDING ANY PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT STATION #999, THE NAD 83 COORDINATES OF SAID STATION BEING NORTH 1861952.14 AND EAST 6261038.58, AS SHOWN ON RECORD OF SURVEY MAP NO. 16891, FILED IN THE OFFICE OF THE COUNTY RECORDED FEBRUARY 28,2001; THENCE NORTH 34°39'08" WEST 8701.14 FEET TO THE CITY OF SAN DIEGO GPS STATION PT #1904, THE NAD 83 COORDINATES OF SAID STATION BEING NORTH 1869109.87 AND EAST 6256091.18 PER RECORD OF SURVEY MAP NO. 14492, FILED IN THE OFFICE OF THE COUNTY RECORDER MARCH 31, 1994; THENCE SOUTH 14°27'10" WEST 4325.58 FEET TO THE **TRUE POINT OF BEGINNING**, THE NAD 83 COORDINATES OF SAID POINT BEING NORTH 1864921.18 AND EAST 6255011.59, SAID POINT BEING THE MOST NORTHERLY CORNER OF MISSION BAY YACHT CLUB LEASE NO. 15 AS SHOWN ON SAID RECORD OF SURVEY MAP NO. 16891; THENCE ALONG SAID NORTHERLY LINE SOUTH 72°30'50" WEST, 166.56 FEET TO THE BEGINNING OF A NON-TANGENT 339.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEAR NORTH 87°09'35" EAST; THENCE SOUTHERLY ALONG SAID NORTHERLY LINE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°46'50" A DISTANCE OF 87.45 FEET; THENCE LEAVING SAID NORTHERLY LINE ALONG THE SOUTHERLY, WESTERLY, NORTHERLY AND NORTHEASTERLY LINE OF LEASE NO. 12 AS SHOWN ON SAID RECORD OF SURVEY MAP NO. 16891 THE FOLLOWING 12 COURSES:

- | | | | |
|----|----------------------|--------------|---|
| 1. | NORTH 62°29'10" WEST | 45.03 FEET; | THENCE |
| 2. | NORTH 79°25'52" WEST | 131.15 FEET; | THENCE |
| 3. | NORTH 10°34'08" EAST | 36.00 FEET; | THENCE |
| 4. | SOUTH 79°25'52" EAST | 24.00 FEET; | THENCE |
| 5. | NORTH 10°34'08" EAST | 111.00 FEET; | TO THE BEGINNING OF A TANGENT 70.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE ALONG THE ARC OF SAID CURVE |
| 6. | NORTHEASTERLY | 79.15 FEET; | THROUGH A CENTRAL ANGLE OF 64°47'05"; THENCE |

PAGE 1 OF 2
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- | | | | |
|-----|----------------------|--------------|--|
| 7. | NORTH 75°21'13" EAST | 50.00 FEET; | TO THE BEGINNING OF A TANGENT 60.00
FOOT RADIUS CURVE CONCAVE SOUTH-
ERLY; THENCE ALONG THE ARC OF SAID
CURVE |
| 8. | EASTERLY | 41.00 FEET; | THROUGH A CENTRAL ANGLE OF
39°09'03"; THENCE |
| 9. | SOUTH 65°29'44" EAST | 111.18 FEET; | THENCE |
| 10. | SOUTH 43°54'43" EAST | 50.00 FEET | TO THE BEGINNING OF A NON-TANGENT
70.00 FOOT RADIUS CURVE CONCAVE
SOUTHWESTERLY, A RADIAL LINE TO
SAID BEGINNING BEARS NORTH
46°05'21" EAST; THENCE ALONG THE
ARC OF SAID CURVE |
| 11. | SOUTHEASTERLY | 32.28 FEET | THROUGH A CENTRAL ANGLE OF
26°25'29"; THENCE |
| 12. | SOUTH 72°30'50" WEST | 8.00 FEET | TO THE TRUE POINT OF BEGINNING. |

CONTAINS 1.07 ACRES, MORE OR LESS.

GARY L. HUS DATE
L.S. 7019
EXPIRATION DATE 06/30/2018

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS DRAWING IS THE C.C.S. 83 ZONE 6 GRID BEARING BETWEEN STATION #1904 AND #999 PER ROS 16891. I.E. S 34°39'08" E

THE COMBINED SCALE FACTOR AT STATION #999 IS 1.0000063. GRID DISTANCE = GROUND DISTANCE * COMBINED SCALE FACTOR.

LEGEND

● DENOTES FOUND 2" IRON PIPE W/DISC. MARKED "L.S. 6641" PER ROS 16891 UNLESS OTHERWISE NOTED

T.P.O.B. DENOTES TRUE POINT OF BEGINNING

ACREAGE:
WATER = 0.03 AC
LAND = 1.04 AC
TOTAL = 1.07 AC

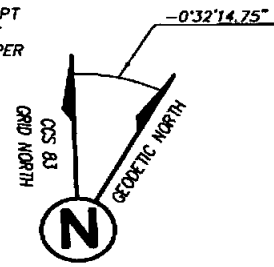
MEAN HIGH WATER LINE
JUNE 2000

CARMEL POINT

RECORD OF SURVEY

MISSION BAY MAP NO. 16891
YACHT CLUB
LEASE NO. 15

CITY OF SAN DIEGO GPS PT #1904, FD 2 /1" CITY OF SAN DIEGO BRASS DISC PER ROS 14492
N 1869109.87
E 6256091.18
NAD 83



CONVERGENCE ANGLE AT BASE STATION #999
SCALE 1" = 200'

P.O.C.
FD 2 1/2" IRON PIPE
W/DISC. STAMPED "L.S. 6641" STA #999 PER ROS 16981
N 1861952.14
E 6261038.58
NAD 83

LINE TABLE		
LINE	LENGTH	BEARING
L1	166.56	S72°30'50"W
L2	45.03	N62°29'10"W
L3	131.15	N79°25'52"W
L4	38.00	N10°34'08"E
L5	24.00	S79°25'52"E
L6	111.00	N10°34'08"E
L7	50.00	N75°21'13"E
L8	111.18	S65°29'44"E
L9	50.00	S43°54'43"E
L10	8.00	S72°30'50"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	87.45	339.00	14°46'50"
C2	79.15	70.00	64°47'05"
C3	41.00	60.00	39°09'03"
C4	32.28	70.00	26°25'29"



PROJECT DESIGN CONSULTANTS
PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEYING
701 B Street, Suite 800, San Diego, CA 92101
619-235-6471 FAX 619-234-0349

REFERENCE DRAWINGS

ROS 16891, ROS 14492

GARY L. HUS L.S. 7019
MY REGISTRATION EXPIRES 06-30-2018

DATE

LEASE DESCRIPTION FOR SAN DIEGO ROWING CLUB

DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	PDC			

CITY OF SAN DIEGO, CALIFORNIA		W.O. NO.
SHEET 1 OF 1 SHEET		
FOR CITY ENGINEER	DATE	1864-6253, 1862-6253 CCS '83 COORDINATES
		222-1692, 224-1692 LAMBERT COORDINATES

Exhibit A: Premises
Aerial Map



Exhibit B: Rates & Charges

San Diego Rowing Club Fees and Dues 2018

Initiation Fees

Juniors Team	First Year on the Team	\$100
	Returning years on the Team	\$25
Young Adult	Graduated HS and between 18 and 28 years of age	\$75
Regular Membership	28 and up	\$125

Dues

Regular	All members 28 and up	\$75/month \$900/annual
Additional Family Member	Additional family member	\$37/month \$444/annual
Century Club	(current age + yrs. as SDRC member) > 100	\$225/annual
Non-Resident Member	Must reside outside of San Diego County	\$260/annual
Guest	One month membership & only once per year	\$75/one month
Young Adult	Graduated HS and 18 and under 28	\$45/month
SDRC Juniors Team Alumni	Graduate of Juniors Team while a Collegiate Undergrad	\$99/annual
College Summer Break	For college rowers on break, 3 months	\$225
Coxswain		FREE
Coached Program	Competitive Program	\$210/Qtr.
	Recreational Program	\$150/Qtr.

Storage Fees

Boat Storage – 1x	Single racing shell storage	\$30/month \$360/annual
Boat Storage – 2x	Double racing shell storage	\$45/month \$540/annual

Miscellaneous Fees

Women's Locker Rental		\$11/small/month \$25/large/month
Electronic door key VOB		\$25 deposit

Exhibit C: Hours of Operation

San Diego Rowing Club Hours of Operation

Boathouse available to all members with Door Access Key - 24/7/365

Staff on Site and Premises Open to the Public:

Monday through Friday – 8am – 5pm

Saturday – 7am – 10am or by appointment

Sunday – By appointment only

Boathouse Staff Info

Boathouse Manager Cell – 858-352-8380

Boathouse Office – 858-488-1893

Boathouse Fax – 858-488-1893

Boathouse Email: bhmanager@sandiegorowing.org

Holidays:

New Year's Day

President's Day

Memorial Day

Easter

Independence Day

Labor Day

Thanksgiving

Christmas Day

Exhibit D: Development Summary

A. Financial Plan. LESSEE shall spend not less than \$850,000 in in repairs, upgrades and capital improvements to the Premises as further set forth in this Exhibit D.

B. Development schedule for completion and costs.

Boathouse – Exterior - \$261,000

- Roof repair/ replacement – 2019
- Replace skylights (49 total) – 2019, '30
- Replace exterior lighting, - 2019,'32
- Bead blast aprons and floors for non-slip surface – 2020,'25,'30, '35, '40
- Paint exterior of building- 2018,'24,'29,'34,' 39
- Replace Garty Pavilion retractable awning – 2024, '36
- Replace/Upgrade 6 rolling bay doors - 2019
- Replace signage - 2031
- Repair/replace Garty sliding doors – 2028

Boathouse – Interior - \$460,000

- Replace/upgrade interior boat & oar storage racks – 2024, '33, '39
- Remodel/expand bathrooms & lockers. Replace and add exhaust fans. – 2019, '20
- Upgrade electrical wiring – 2025, '37
- New workbenches and stainless steel cabinets – 2019
- Paint interior of building, - 2020, '28, '36
- Replace/upgrade electronic key systems - 2023, '29, '36
- Resurface Garty Pavilion floors - 2020, '26, '33
- Remodel of all offices (SDRC and IRC). – 2021
- Replace Garty Pavilion radiant heat boiler system – 2027
- Replace/upgrade restrooms water heater system – 2017, '32

Grounds - \$129,000

- Replace/Upgrade exterior boat storage racks – 2023
- Upgrades and repairs to the exterior gates and fencing – 2025
- Replace/repair landscape & watering system - 2021, '28, '35
- Replace side yard wind screens - 2021,'28, '35
- Repair/Upgrade storm water drainage system - 2019, '25, '31, '37

* All projects are estimated in 2018 dollars. The actual cost of projects will be higher due to increases in construction costs, and shall be performed at the sole cost and expense of LESSEE. The estimated cost listed for those items with multiple years for completion is the total estimated cost for that item to be spent over the multiple years listed.

Exhibit E: Prevailing Wage Requirements

By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.
2. **Penalties for Violations.** LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
3. **Payroll Records.** LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require

its contractors and subcontractors to also comply with section 1776. LESSEE, its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. **Apprentices.** LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
5. **Working Hours.** LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
6. **Required Provisions for Contracts and Subcontracts.** LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
7. **Labor Code Section 1861 Certification.** LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
8. **Labor Compliance Program.** The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. LESSEE shall withhold contract payments pursuant to the contract between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at (619) 236-6000.
9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the

Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- 9.1. A contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- 9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- 9.3. By signing this Lease, LESSEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Lease or upon request.
10. **Stop Order.** For LESSEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
11. **List of all Subcontractors.** The CITY may ask LESSEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the CITY’s request. LESSEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this Lease. Additionally, LESSEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Lease (regardless of tier), within ten (10) working days of the completion of the work authorized by this Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.
12. **Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:
 - 12.1. **Registration.** LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

- 12.2.** Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).
- 12.3** List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

RESOLUTION NUMBER R- **312044**

DATE OF FINAL PASSAGE **NOV 20 2018**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE EXECUTION OF THE
CITY OF SAN DIEGO PUBLIC PURPOSE LEASE WITH THE
SAN DIEGO ROWING CLUB AND INTERCOLLEGIATE
ROWING CONSORTIUM FOR THE LEASE OF CITY-OWNED
PROPERTY IN MISSION BAY PARK.

WHEREAS, The San Diego Rowing Club, a California 501(c)(3) non-profit corporation
(SDRC), has been in continuous existence in San Diego for almost 130 years, since 1888; and

WHEREAS, the Intercollegiate Rowing Consortium (Consortium) is a consortium
comprised of the University of San Diego (USD) and the University of California San Diego
(UCSD); and

WHEREAS, the SDRC and Consortium are hereafter referred to collectively as the
“Lessee,” and

WHEREAS, in August 1988, SDRC and the Rowing Council of San Diego entered into a
25-year lease agreement (Original Lease) with the City of San Diego (City) to occupy the City-
owned real property comprised of approximately 1.041 acres of land and approximately 0.03
acres of water located at 1220 El Carmel Place, San Diego, California 92019, in Mission Bay
Park (Property); and

WHEREAS, the Rowing Council of San Diego assigned its interest in the Original Lease
to the predecessors in interest of the Consortium; and

WHEREAS, under the Original Lease, the Lessee maintains and operates a rowing and
paddling facility including boat storage, boat house, club room, locker rooms, weight training

room, and boat launching area; Lessee organizes rowing related activities for its members and guests in Mission Bay, including numerous regattas such as the San Diego Juniors, the San Diego Crew Classic, the Fall Classic, and the Susan G. Komen Row for the Cure; Lessee provides boats, equipment, and support staff for over 800 rowers annually and rental to the public for meetings, weddings, colloquiums, and corporate events; Lessee provides rowing opportunities for injured or disabled veterans through the Wounded Warriors program and supports a rowing program for Cathedral Catholic High School; and Lessee houses the men's and women's crew teams for UCSD and USD, which are comprised of over 250 collegiate athletes; and

WHEREAS, in 1989, the Lessee built an approximately 17,000 square foot rowing center comprised of six boat house bays, a club house room, outside storage facilities, a concrete launch apron extending to the sand, and landscaped the City's adjacent parking area at an approximate cost of \$2,140,000; and

WHEREAS, the Original Lease expired on July 31, 2013, and is currently in holdover status; and

WHEREAS, in 2013, the Lessee approached the City with the request for exclusive lease negotiations for a new lease agreement; and

WHEREAS, in May 2015, the Smart Growth and Land Use Committee authorized exclusive negotiations with the Lessee for a new lease; and

WHEREAS, City staff and the Lessee have negotiated a proposed new lease in accordance with City Council Policy 700-08, with the following terms to continue the current uses of the Property: an initial term of 10 years, with two options to extend the term for 10 years and five years, respectively, for a total term of 25 years; rent equal to 33 1/3% of the average

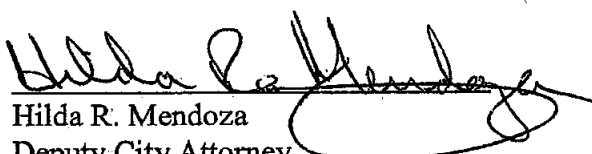
total annual commercial square feet rent paid for leases in Mission Bay, with the Consortium exempt from payment of rent in accordance with City Council Policy 700-08; and as additional consideration for the new lease, Lessee will invest approximately \$850,000 in capital improvements and maintenance to the leasehold improvements during the term of the lease; and

WHEREAS, the market value of the real estate subject to this new lease, as appraised by City staff, is \$465,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute the City of San Diego Public Purpose Lease, with The San Diego Rowing Club and the Intercollegiate Rowing Consortium, a consortium comprised of the University of San Diego and the University of California San Diego, which is on file in the Office of the City Clerk as Document No. RR- 312044, for the lease of City-owned real property comprised of approximately 1.041 acres of land and approximately 0.03 acres of water located at 1220 El Carmel Place, San Diego, California 92019, in Mission Bay Park.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Hilda R. Mendoza
Deputy City Attorney

HRM:nja
09/18/18
Or. Dept: READ
Doc. No.: 1838538

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 13 2018.

ELIZABETH S. MALAND
City Clerk

By Linda Bruen
Deputy City Clerk

Approved: 11/20/18
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 13 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage NOV 20 2018

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Ginda Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **312044**

Passed by the Council of The City of San Diego on November 13, 2018, by the following vote:

YEAS: BRY, ZAPP, WARD, COLE, KERSEY, CATE, SHERMAN,
ALVAREZ, GÓMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

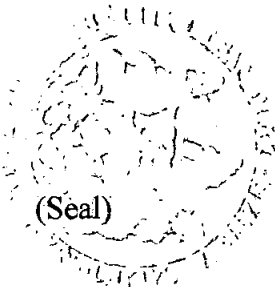
AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

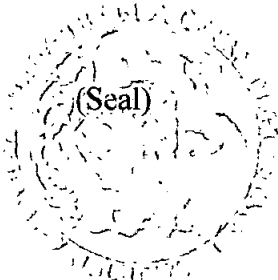


By: Linda Irwin, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-312044, approved on November 13, 2018. The date of final
passage is November 20, 2018.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California



By: Linda Irwin, Deputy