

## LICENSE AGREEMENT

This AGREEMENT is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and CAL SAILING CLUB, A California non-profit corporation doing business at 124 University Avenue in Berkeley, California (Licensee).

### 1. LICENSE

- a. City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the exclusive use of the City's property located in the Berkeley Marina identified as Cal Sailing Club Site- the total property measuring approximately 67 feet by 150 feet, Parcel A (the "Property"), as shown on the map attached hereto as Exhibit A and made a part hereof.
- b. Licensee has the non-exclusive right to use the public hoist and the public dock located directly south of the Property, identified on Exhibit A as the west hoist and west dock.
- c. Licensee is a non-profit sailing and windsurfing club. This License is granted for the purpose of Licensee using the Property as described in Exhibit B, attached hereto and made a part hereof. In the event Licensee fails to use the Property for such purposes, or to provide the community services described herein, or uses the property for unauthorized purposes, City may, in its sole discretion, terminate this License.
- d. Licensee acknowledges that City holds the Property and the Marina in public trust pursuant to Chapter 347 of the California Statutes of 1913, as amended (the "Grant") and agrees to only use the Property as is consistent with the Grant and other applicable laws.

### 2. TERM

This License shall take effect once executed by both the City and the Licensee and duly approved by the Berkeley City Council (the "Effective Date"), subject to the following:

- a. The License Term will expire at midnight on December 31, 2020. Each twelve month period that ends on December 31st shall be considered a "License Year" and the 1st License Year shall be the period from the Effective Date until December 31, 2015. For purposes of determining the fee under Paragraph 3 below, the First License Year shall be pro-rated for any partial year. .
- b. Either party may terminate this License for any reason with ninety (90) days prior, written notice to the other party.
- c. If, after the term of this License expires, Licensee continues in possession and the City does not object, all Provisions of the License shall continue in effect, with the following exceptions: (1) the new agreement shall be on a month to month basis and shall be terminable by either party with at least thirty (30) days prior written notice; and, (2) the License Fee shall

increase to 105% of that which applied when the License expired, payable in advance on a monthly basis.

3. **FEE**

a. In consideration for the rights conveyed by this License, Licensee shall pay to City the following amounts:

TEN THOUSAND DOLLARS  
(\$10,000) in the first License Year;

TEN THOUSAND FIVE HUNDRED DOLLARS  
(\$10,500) in the second License Year;

ELEVEN THOUSAND AND TWENTY-FIVE DOLLARS  
(\$11,025) in the third License Year;

ELEVEN THOUSAND FIVE HUNDRED AND SEVENTY-SIX DOLLARS  
(\$11,576) in the fourth License Year; and

TWELVE THOUSAND ONE HUNDRED AND FIFTY-FIVE DOLLARS  
(\$12,155) in the fifth License Year.

Licensee shall make payments to the City as provided for in Exhibit C, attached hereto and made a part hereof.

b. Tenant agrees that the "fees" include rent, maintenance payments for the hoist and a sum to be used for capital improvements.

c. In addition Licensee shall pay for weekly service for the toilet as indicated in paragraph 5.b.

4. **NOTICES**

A written notice shall be deemed served upon mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this License, all notices to the City shall be addressed to:

City of Berkeley  
Real Property Administrator  
Public Works Department  
1947 Center Street, 4<sup>th</sup> Floor, Suite 400,  
Berkeley, CA 94704

With a copy sent to:

City of Berkeley  
Parks Recreation and Waterfront Department  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

For purposes of this License, all notices to Licensee shall be addressed to:

Commodore of the Cal Sailing Club  
124 University Avenue, Berkeley, CA 94710

**5. MAINTENANCE AND ALTERATIONS**

a. Licensee shall, to the City's satisfaction, maintain the Property in good order and repair and reasonably free and clean of all debris, trash and rubble

b. Tenant shall:

1. Provide two trash containers, similar to those on the Bay Trail in the Berkeley Marina, for public use in the public area around the Property.

2. Provide a portable toilet such as Porta-Potty, Porta-John, Port-Oilet or similar with a sink for use of the public and members of Licensee.

3. Maintain the existing galvanized chain link fence with green slates for coverage so it conforms to the adjacent property (estimated 150 square feet full length of the property line facing University).

c. The Licensee shall pay for all improvements and/or alterations to existing facilities used by Licensee. Upon termination of this License, all improvements to the Property shall remain on and with the Property, except that, if requested by City, Licensee shall, at its own expense, remove any facilities, equipment, materials or improvements installed or placed upon the Property by Licensee. Licensee shall otherwise surrender the Property to City in the same condition as at the commencement of this License.

d. City shall maintain the public docks and hoists in the South Sailing Basin, as shown on Exhibit A, in good order and repair during the term of this License.

e. Except as set forth in this paragraph, Licensee shall not construct any facilities or improvements, install any equipment, or make any alterations to the Property without the City's prior written consent, which consent shall not be unreasonably withheld. Licensee shall complete the following improvements on the timetable indicated and will obtain all necessary permits, and perform all environmental review required by local, City, State and Federal agencies

**6. ACCESS AND ENTRY TO THE PROPERTY BY OTHERS**

The City, its agents and employees, and members of the public have the right to enter the Property, provided such entry does not cause unreasonable interference with Licensee's activities.

**7. USE OF MARINA PROPERTY: PUBLIC TRUST.**

a. Licensee shall keep any public and or common areas of the Marina free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the Property.

b. Licensee agrees that except as otherwise provided in this License, it is not a covenant or condition of this License or of any other agreement with Licensee that City undertake or cause to be undertaken any development or redevelopment of the Property or Marina or any improvement thereto, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

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

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

e. Nothing contained herein shall be deemed to create any liability to City for any personal injury, or any damage to motor vehicles, vessels, or other property of Licensee's members, employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants or employees. Licensee is solely responsible for the security of the Property, and for the safety of those using the Property. Licensee acknowledges that if City provides security guards or police patrols for the Marina or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such acts. To induce City to provide such security, if any, as City in its sole discretion deems reasonable, appropriate and economically feasible, Licensee hereby waives any present or future claims Licensee may have against City, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage insurance for the benefit of Licensee or any other person or entity.

f. Licensee acknowledges that City holds the Property and the Marina in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended ("the Grant"), subject to the conditions, restrictions, limitations, rights, powers, duties and reversionary rights and other

rights created or reserved in the Grant. Licensee agrees that, notwithstanding anything in this License to the contrary, Licensee shall use the Property consistently with and in a manner that shall not result in a violation of the Grant or of provisions of the Berkeley City Charter, California law and/or the California Constitution.

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

h. Licensee agrees that it shall not interfere with the free and unobstructed access by the people to the waters of the San Francisco Bay and the waterfront of such waters; provided, however, that Licensee shall be obligated to permit such access only as required for consistency with applicable laws of the State of California, Alameda County, the City of Berkeley, the Grant, and/or City of Berkeley's and /or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

#### **8. TAXES, ASSESSMENTS, AND OTHER CHARGES**

Licensee shall pay all applicable personal property taxes lawfully levied on account of personal property owned by Licensee on the Property, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Property. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

#### **9. UTILITIES AND SERVICE FEES**

Licensee shall make all arrangements for and pay for all utilities and services furnished to or used on the Property (except for water and electric services), including without limitation, gas, telephone, and garbage service, and for any connection charges thereof. City will provide and pay for electric service to the Property and also provide and pay for water and electric services to the public dock used by Licensee.

#### **10. ASSIGNMENT AND SUBLICENSING PROHIBITED**

This License is personal to Licensee. Licensee may not assign or sublicense this License in whole or in part, and any attempt to assign or sublicense this License shall terminate it.



## **11. INDEMNIFICATION**

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

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

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

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

## **12. INSURANCE**

a. Licensee at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$1,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Licensee and its authorized representatives arising out

of and in connection with Licensee's use or occupancy of the property. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this license, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this license.

c. Licensee at its cost shall maintain on all its personal property, Licensee's improvements, and alterations, in on, or about the property, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Licensee for the replacement of personal property or the restoration of Licensee's improvements or alterations.

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

e. Licensee shall forward all insurance documents to

Real Property Administrator  
City of Berkeley Public Works Department  
1947 Center Street Suite 400, 4<sup>th</sup> Floor  
Berkeley, California 94704

### **13. RISK OF LOSS**

Licensee bears all risk of loss under this License.

### **14. CONFORMITY WITH LAW**

a. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal,

hazardous materials, water and air quality. All activities conducted by Licensee on the Property must be in accordance with these laws, ordinances, codes and regulations. Licensee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Licensee, or its officers, employees, partners, directors, agents, invitees, or guests, of any laws, ordinances, codes or regulations.

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

c. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office, in addition to any other entities as required by law.

d. Licensee shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

#### **15. INDEPENDENT CAPACITY**

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent contractor and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

#### **16. CITY NON-DISCRIMINATION ORDINANCE**

Licensee hereby agrees to comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this License, Licensee agrees as follows:

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

b. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EE0-1 forms, affirmative action plans and any other



documents which, in the opinion of the City, are necessary to monitor compliance with this nondiscrimination provision. In addition, Licensee shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

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

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

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

**18. CONFLICT OF INTEREST PROHIBITED**

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

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income; investment or interest in real property of that person or Licensee.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

**19. RECYCLED PAPER FOR WRITTEN REPORTS**

If Licensee is required by this License to prepare a written report or study, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent (10%) more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this License, recycled paper is paper that contains at least fifty percent (50%) recycled product. If recycled paper is not available, Licensee shall use white paper. Written reports or studies prepared under this License shall be printed on both sides of the page whenever practical.

**20. AUDIT**

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

**21. SETOFF AGAINST DEBTS**

Licensee agrees that City may deduct from any payments due to Licensee under this License any monies that Licensee owes City under any ordinance, agreement or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

**22. GOVERNING LAW**

The laws of the State of California shall govern this License.

**23. AMENDMENTS**

The terms of this License shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

**24. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Licensee has obtained a City business license as required by B.M.C. Chapter 9.04 and its license number is written below; or, Licensee is exempt from the provisions of B.M.C.5555 Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Licensee shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

**25. SEVERABILITY**

If any part of this License or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this License which can be given effect without the invalid provision or application, and to this end the provisions of this License are declared to be severable.

**26. WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this License or a waiver of any other default of Licensee.

**27. BERKELEY LIVING WAGE ORDINANCE**

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

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

c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject Property. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Property.

d. If Licensee fails to comply with the requirements of the LWO and this License, the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the License, upon which City may terminate this License.

e. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and

impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

**28. BERKELEY EQUAL BENEFITS ORDINANCE**

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

b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the License.

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

**29. NUCLEAR FREE BERKELEY.**

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

**30. OPPRESSIVE STATES.**

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

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State:

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

- b. For purposes of this License, the Tibet Autonomous Region and the provinces of Abo, Kham, and V-Tsang shall be deemed oppressive states.
- c. Licensee's failure to comply with this paragraph shall constitute a default of this License and City may terminate this License. In the event that City terminates this License due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this License is terminated.

### **31. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY**

At the termination of this License, Licensee shall: 1) give up and surrender the Property, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all Property which is not a fixture of or permanent attachment to the Property and which is owned and was installed by Licensee during the term of this License except improvements designated in Paragraph 5 or improvements to the licensed property approved subsequent to the License approval.

### **32. EFFECT ON SUCCESSORS AND ASSIGNS**

This License shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

### **33. PESTICIDES**

All use of pesticides on the property shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

### **34. SIGNS**

Licensee shall not install or letter any signs on the Property without the prior written consent of City. All signs on the property shall conform to the provisions of B.M.C. Chapter 20.04 and the Marina design guidelines for signs.

### **35. CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.



**36. REVIEW OF AGREEMENT BY COUNSEL; FAMILIARITY WITH CONTENTS AND EFFECT**

Licensee and City each represent that in entering into this Agreement, it has relied upon the legal advice of its attorneys, if it so chooses. Licensee further represents that the terms of this Agreement have been completely read by it, and that these terms are fully understood and voluntarily accepted by it, and if applicable, its attorneys.

**37. AGREEMENT JOINTLY DRAFTED**

Licensee and City and counsel for each, if applicable, has reviewed and revised, or had the opportunity to revise this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

**38. ENTIRE AGREEMENT**

The terms and conditions of this License, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this License. This License shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee. No other agreement, statement, or promise relating to the subject matter of this License shall be valid or binding except by a written amendment to this License.

If any conflicts arise between the terms and conditions of this License and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this License shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the second paragraph of this lease.

CITY OF BERKELEY

By: \_\_\_\_\_  
CITY MANAGER Date

Registered by:


Approved as to form:

\_\_\_\_\_  
City Auditor Deputy City Attorney

Attest:

\_\_\_\_\_  
City Clerk

Cal Sailing Club

By:  \_\_\_\_\_  
Date 11-15-14

Cal Sailing Club

By: \_\_\_\_\_  
Date

Tax Identification No. \_\_\_\_\_

Berkeley Business License No. 9902403

Incorporated: Yes: ☒ No: ☐

Certified Woman Business Enterprise: Yes: ☐ No: ☒

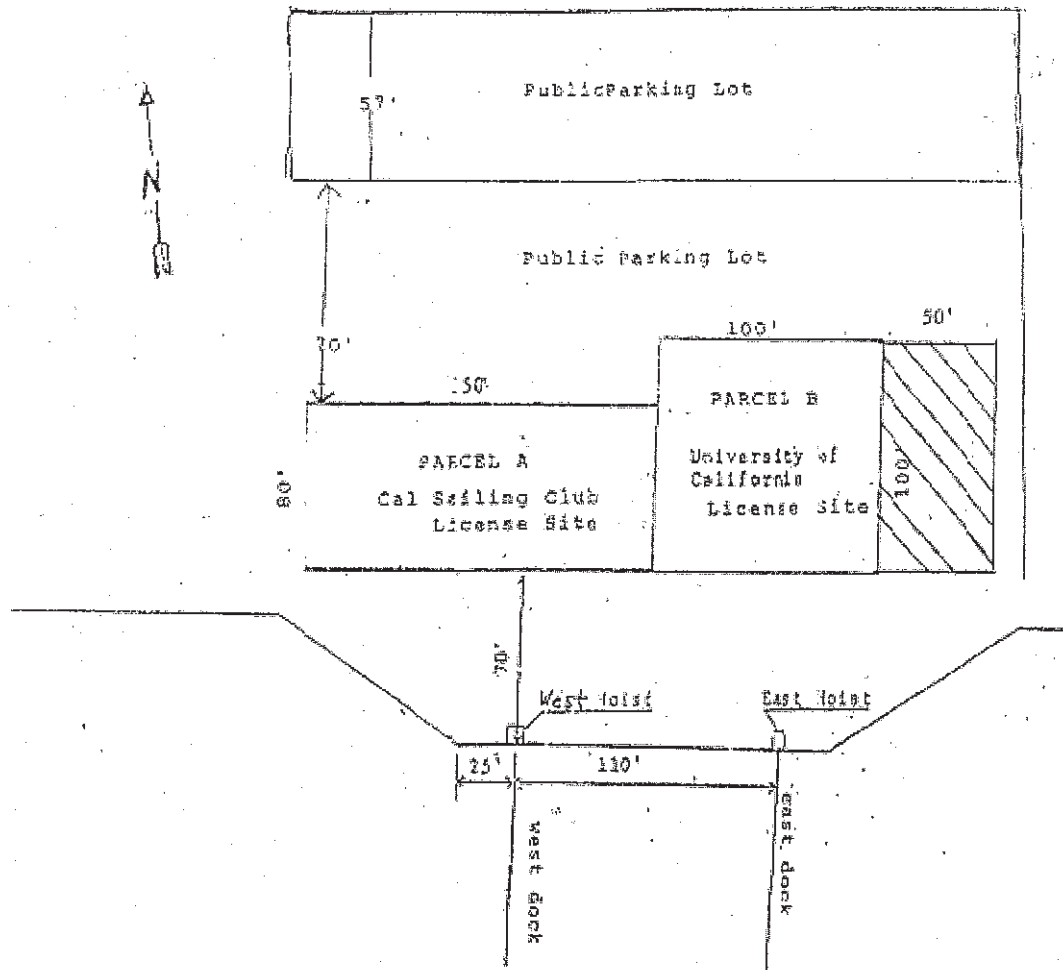
Certified Minority Business Enterprise: Yes: ☐ No: ☒

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: : Yes: ☐ No: ☒

# EXHIBIT A

UNIVERSITY AVENUE



PROPERTY DESCRIPTION

EXHIBIT A

## EXHIBIT B

### USE OF PROPERTY

Licensee shall only use the Property described on Exhibit A attached hereto to operate the CAL SAILING program as follows:

1. Teach sailing and windsurfing techniques and provide low cost access to sailing and windsurfing equipment and programs through a membership program that is open to the general public. Licensee may operate and lease sailboats, windsurf boards, and maintain an accessory storage facility for its members. Licensee will primarily use the west boat hoist and adjacent dock to support its activities and operate an accessory storage facility for boats and windsurfing equipment.
2. Provide social events and administer Club business.
3. Provide rental storage lockers for windsurfing boards and other sailing equipment, except boats.
4. Conduct community service and recreational sailing activities as follows:
  - a) Participate in youth programs sponsored by the City.
  - b) Sponsor outreach programs to youth to provide them with the opportunity to experience seamanship, sailing, and windsurfing. Provide scholarships to youth who cannot afford to participate in Licensee's programs.
  - c) Participate in and promote City's "Berkeley Bay Festival" in which the general public is invited to learn more about the Marina and its activities. Participation includes free demonstration rides in various sailing craft, and promotion includes distribution of City fliers advertising the event.
  - d) Sponsor and participate in such other boating and related activities as may be mutually agreed upon by Licensee and the City's Waterfront Manager.
5. Licensee may use and provide its services on the Property from 6:00 AM to 10:00 PM on any day of the year.
6. Licensee shall submit an annual report to the City that describes Licensee's community activities. This report shall be due on March 1st of each license year.

## **EXHIBIT C**

### **PAYMENT**

1. The License Fee described in Paragraph 3 of the License Agreement shall be paid in advance by the Licensee to the City in equal installments every month of each License Year. All payments must be received no later than thirty (30) calendar days from the start of each month. Any payment received after this thirty (30) day time period will be assessed a ten percent (10%) late-penalty.
2. Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department located at 2180 Milvia Street, Berkeley, CA 94704.
3. Failure to make full payments on time is grounds for termination of this License by the City.