

LEASE AGREEMENT
BETWEEN THE CITY OF SAN RAFAEL
AND THE SAN RAFAEL YACHT CLUB
_____, 2013

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AND THE SAN RAFAEL YACHT CLUB**

_____, 2013

THIS LEASE is made as of _____, 20__, by and between the City of San Rafael, a California municipal corporation duly chartered under the laws of the state of California (hereafter "City" or "Lessor"), and the San Rafael Yacht Club, a California not-for-profit corporation (hereafter "Yacht Club" or "Lessee").

RECITALS

A. The City owns that certain real property located adjacent to the San Rafael Canal in the City of San Rafael, County of Marin, State of California, bearing Assessor's Parcel No. 014-152-27 (the "City Parcel").

B. Since 1961, City has leased to Yacht Club a portion of the City Parcel commonly known as 200 Yacht Club Drive, San Rafael, California, and more particularly described as set forth in Exhibit "A" attached hereto and incorporated herein by reference ("the Premises"). During this time, Yacht Club has improved the Premises with a clubhouse, parking, and visiting docking facilities for its members, other yacht clubs, and the public. The Yacht Club also has made the facilities available on a regular basis for numerous civic, educational, and charitable uses and events.

C. City wishes to encourage and promote public use of the San Rafael Canal for self-propelled watercraft activities. Yacht Club is willing to assist in the development of these activities by providing docking facilities for public use.

D. To continue the mutual benefits provided by Yacht Club use of the Premises, the parties desire that Yacht Club shall continue to lease the Premises from the City on the terms set out in this Lease.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENTAL OF PREMISES.

For valuable consideration, the City leases to Yacht Club and Yacht Club leases from City the Premises described in Exhibit "A" hereto, including any improvements located thereon, on the terms, covenants and conditions set out in this Lease.

2. TERM.

2.1. Term. The term of the Lease ("Term") shall be for eight (8) years. The Term

shall commence on _____ (the "Commencement Date") and shall expire on _____ ("Expiration Date").

2.2. Option. Yacht Club shall have the option to renew this Lease on the same terms for an additional period of eight years, upon written notice to renew the Lease provided to City not less than six (6) months prior to the Expiration Date.

3. RENT.

3.1. Rent. The Yacht Club shall pay the City the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per year as rent during the term, payable in advance commencing on the Commencement Date of the Lease, and annually thereafter on the anniversary of the Commencement Date, with adjustments pursuant to Section 3.2.

3.2. Rent Adjustment.

a. The annual rent shall be increased at the commencement of the third year of the term and every two years thereafter during the term or any renewal term ("adjustment date" herein) to the lesser of: a) the annual rent in effect immediately preceding the adjustment date plus five per cent (5%); or b) the annual rent as adjusted for the change in the Consumer Price Index (CPI), as calculated in Section 3.2.b.

b. The base for computing the CPI adjustment is the Consumer Price Index for all Urban Consumers (base years 1982-1984=100) for San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index" herein), which is in effect on the date of the commencement of the term ("Beginning Index" herein). The Index published most immediately preceding the adjustment date in question ("Extension Index" herein) is to be used in determining the amount of the CPI adjustment. If the Extension Index has increased over the Beginning Index, the CPI adjustment shall be calculated by multiplying the annual rent by a fraction consisting of the Extension Index as the numerator and the Beginning Index as the denominator. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would have been obtained if the index had not been discontinued or revised.

4. USE OF PREMISES.

4.1 Permitted Uses. The Premises shall be used for the following uses:

a. Operation and maintenance of a yacht club, including providing boating activities and experiences to Yacht Club members and the public and the occasional rental of all or part of Premises on a per diem basis for events conducted by other organizations and individuals.

b. Club house including food service facilities.

c. Floating docks.

- d. Administrative offices.
- e. Vehicle parking.
- f. Personal watercraft storage.

4.2 Limits on Use. Yacht Club shall not use the Premises for any purpose, other than as set forth in this Lease, nor in any manner that will constitute waste, nuisance, or unreasonable annoyance to owners or occupants of adjacent properties.

4.3 Use of Premises for Community Events. Yacht Club shall donate the Premises for use, free of charge, by community or non-profit organizations selected by Yacht Club, on at least 30 occasions during each year of the Lease term or any extension thereof.

5. INSTALLATION OF DOCK FOR SELF-PROPELLED WATERCRAFT FACILITIES.

5.1. Installation of Dock. Within sixty (60) days following the Commencement Date, Yacht Club shall install on the Premises, at its sole expense, a prefabricated, ADA compliant, low-rise floating dock approximately 5' by 18' with a rise of 8 inches for launching of self-propelled watercraft onto the San Rafael Canal. The dock shall be approved by the City's Community Services Director prior to purchase and shall be purchased from a recognized manufacturer and distributor. The dock shall be installed on the parking lot side of the existing Yacht Club dock, without interfering with the Federal turning basin, and the installation shall be inspected and approved by the City's Public Works Director.

5.2. Storage and Amenities. Yacht Club shall provide and maintain portable secure storage racks for *[Insert Number]* self-propelled watercraft, in the Yacht Club parking lot area. Yacht Club shall provide access through the Yacht Club parking lot gate to the dock and to ADA compliant restroom facilities.

5.3. Use of Dock and Facilities. Yacht Club may provide for use of the dock, storage facilities, and restroom facilities to self-propelled watercraft users who are registered with the Yacht Club. Access to the dock and restroom facilities shall be open and available to the public on weekend hours per a schedule approved in advance by the City's Community Services Director. Such use by the public shall be free of charge or at a reasonable charge approved in advance by the Community Services Director.

6. UTILITIES.

Yacht Club shall make all arrangements for and shall pay for all utilities and services furnished to the Premises or used by Yacht Club, including, without limitation, gas, electricity, water, telephone service, and garbage collection, and for all connection charges.

7. IMPROVEMENTS.

No improvements to the Premises shall be undertaken without prior written approval of

the City, which approval shall not unreasonably be withheld. Title to all improvements constructed by the Yacht Club shall be owned by the Yacht Club until expiration of the Term or any renewal thereof, or the earlier termination of this Lease. All improvements, including the Yacht Club building, on the Premises at the expiration of the Term or any renewal thereof, or the earlier termination of this Lease shall, without compensation to the Yacht Club, then automatically and without any act of the Yacht Club or any third party become the property of the City. The Yacht Club agrees to execute, acknowledge, and deliver to the City any instrument reasonably requested by the City as necessary in the City's opinion to perfect the City's right, title, and interest to the improvements and the Premises, at such time and in such form as the City may request and the City Attorney shall approve.

8. MAINTENANCE AND REPAIRS.

8.1. Lessee's Duty to Maintain Premises. At all times during the term, Yacht Club shall, at its cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Premises in a clean, sanitary, orderly, and attractive condition. Yacht Club shall make any and all additions to or alterations or repairs in and about the Premises and the improvements that may be required, and shall otherwise observe and comply with all public laws, ordinances, and regulations from time to time applicable to the Premises; and Yacht Club shall indemnify and save harmless the City against all actions, claims, and damages by reason of Yacht Club's failure to comply with and perform the provisions of this section.

8.2. No Responsibility of City. City shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Lease.

8.3. Mechanic's Liens. Yacht Club shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from any work of construction, repair, restoration, replacement or improvement, or any other claim or demand; Yacht Club shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. Yacht Club agrees to indemnify and hold harmless the City and the Premises from all liability for any and all such liens, claims, and demands, together with reasonable attorney's fees and costs and expenses in connection therewith.

9. INSURANCE.

9.1. Public Liability, Property Damage and Professional Liability Insurance. During the term of this Lease and any renewal thereof, the Yacht Club shall maintain, at its sole cost and expense, public liability and property damage insurance with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate, insuring against all liability of the Yacht Club and its authorized representatives arising out of or in connection with the Yacht Club's use or occupancy of the Premises. The City, its officers, employees, and volunteers shall be named as additional insureds, and the policy shall contain cross-liability endorsements. Upon Yacht Club's exercise

of the option provided for in Section 2, if, in the reasonable opinion of the City, the amount of public liability and property damage insurance coverage at the time is not adequate, the Yacht Club shall increase the insurance coverage as reasonably required by the City.

9.2. The Yacht Club's Fire Insurance for Personal Property. The Yacht Club shall, at its sole cost and expense, maintain on all the personal property located within the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of their actual cash value. The proceeds from any such policy shall be used by the Yacht Club for the replacement of said personal property or for the restoration of the Yacht Club's improvements or alterations.

9.3. Other Insurance Requirements. All the insurance required under this Lease shall:

a. Be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least A + 3A status as rated in the most recent edition of Best's Insurance Reports.

b. Be issued as a primary policy.

c. Contain an endorsement requiring at least thirty (30) days' written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with the other party within thirty (30) days of the Commencement Date of this Lease, and again not less than thirty (30) days before expiration of the term of the policy.

10. INDEMNIFICATION.

Yacht Club shall defend, protect, indemnify and hold harmless the City against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) (collectively "Claims") arising in any way out of the Yacht Club's operations on or use of the Premises under this Lease, including any Claims under any Federal or State regulations related to accessibility.

11. DESTRUCTION.

11.1. Destruction Due to Risk Covered by Insurance. If, during the term, the Premises are totally or partially destroyed or damaged from a risk which has been insured against, rendering the Premises totally or partially inaccessible or unusable, the Yacht Club shall be entitled to receive the proceeds of the insurance and shall, with due diligence, restore the Premises to substantially the same condition as immediately before such destruction.

11.2. Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed or damaged from a risk not insured against rendering

the Premises totally or partially inaccessible or unusable, the Yacht Club may elect to terminate this Lease by giving notice to the City within thirty (30) days after determining the restoration costs and replacement value. If the Yacht Club does not so elect to terminate the Lease, the Yacht Club shall, at its sole cost and expense (except as otherwise provided herein) and with due diligence, restore the Premises to substantially the same condition as they were in immediately before such destruction. Such destruction shall not terminate this Lease.

11.3. The Yacht Club's Restoration of the Premises. If the Premises are destroyed or damaged during the Lease Term and the Yacht Club is required to restore the Premises, the restoration shall be accomplished as follows:

a. The Yacht Club shall complete the restoration within one hundred eighty (180) working days after final plans, specifications, and working drawings have been approved by the City and all other appropriate government bodies, all permits required to commence construction of the restoration have been obtained and all construction contracts have been awarded (subject to a reasonable extension for delays resulting from causes beyond the Yacht Club's reasonable control).

b. The Yacht Club shall notify the City of the commencement date of construction related to the restoration not later than ten (10) days before commencement of such work.

c. The Yacht Club shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises and to adjacent property owners and users.

11.4. Loss During Last Part of Term. If destruction or damage in an amount greater than ten percent (10%) of the total value of the Premises occurs during the last year of the Lease Term, whether or not the loss is covered by insurance, the Yacht Club shall have the option to terminate this Lease by giving notice to the City not more than thirty (30) days after the event which causes such destruction or damage, in which event the City shall be entitled to receive any insurance proceeds payable with respect to the damage or destruction.

11.5. Waiver of Civil Code Sections. The Yacht Club waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) and any successor statutes with respect to any destruction of the Premises.

12. ASSIGNMENT.

The Yacht Club shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, without first obtaining the City's written consent. Any assignment, encumbrance or sublease without the City's consent shall be void, and shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute consent to a subsequent assignment, encumbrance or sublease. Nothing in this section shall prohibit, or require the City's consent for, the Yacht Club's use of Premises pursuant to Sections 4 and 5 of this Lease.

13. DEFAULT.

13.1. Yacht Club's Default. The occurrence of any of the following shall constitute a default by the Yacht Club:

a. Failure to pay any amount under this Lease when due, if such failure continues for thirty (30) days.

b. Failure to perform any other provision of this Lease if such failure to perform is not cured within thirty (30) days after notice of such failure has been given by the City to the Yacht Club. If the default is curable, but cannot reasonably be cured within thirty (30) days, the Yacht Club shall not be in default of this Lease if the Yacht Club commences to cure the default within the thirty (30)-day period and diligently and in good faith continues to pursue the cure of such default.

c. An assignment, encumbrance, or sublease without obtaining the City's written consent pursuant to Section 12.

d. Abandonment or surrender of Premises by Yacht Club.

f. Any attachment, execution, levy, or seizure under legal process, of Yacht Club's interest in Premises.

g. Appointment of a receiver to take possession of Yacht Club's interest in Premises, for any reason.

h. Filing of a petition in bankruptcy by or against Yacht Club.

i. Any other event designated by this Lease as an event of default.

13.2. Notice of Yacht Club Default. Notices of default given under this section shall specify the alleged default and the applicable lease provisions and shall demand that the Yacht Club perform the provisions of this Lease, within thirty (30) days, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless the City so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California. Such notices are the only notices required to be given by the City to the Yacht Club in the event of a default and are not in addition to any statutory notices required under the unlawful detainer statutes of California.

13.3. City's Remedies.

a. **Nature of Remedies.** The City shall have the following remedies if the Yacht Club commits a default. These remedies are not exclusive; they are cumulative and in addition to any other remedies now or later allowed by this Lease or by law.

b. **Termination of the Yacht Club's Right to Possession.** The City may terminate the Yacht Club's right to possession of the Premises at any time if the Yacht Club fails to cure a default within thirty (30) days. No act by the City other than giving specific written notice to the Yacht Club of the City's intent to terminate the Yacht Club's right to possession of the Premises shall be necessary to terminate this Lease. Acts of maintenance to protect the City's interest under this Lease shall not constitute a termination of the Yacht Club's right to possession of the Premises.

c. **City's Right to Cure the Yacht Club's Default.** The City, at any time after the Yacht Club commits a default, may, but need not cure the default at the Yacht Club's cost. If the City at any time, by reason of the Yacht Club's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the City shall be due immediately from the Yacht Club to the City at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by the City until the City is reimbursed by the Yacht Club.

14. CITY'S ENTRY ON PREMISES.

The City, its officers, employees, agents & volunteers shall have the right to enter the Premises at all reasonable times and on reasonable notice for any of the following purposes:

a. To determine whether the Premises are in good condition and whether the Yacht Club is complying with its obligations under this Lease.

b. To perform any necessary construction or maintenance and to make any restoration to the Premises that the City has the right or obligation to perform.

c. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease or required by law.

15. NOTICE.

All notices and other communications required to or permitted under this Agreement shall be in writing and shall be conclusively deemed to have been duly given (1) when hand delivered to the other party; or (2) three (3) business days after the same has been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below.

The City: City of San Rafael
Attention: City Clerk
1400 Fifth Avenue
San Rafael, California 94901

with copy to: City of San Rafael, Office of the City Attorney
1400 Fifth Avenue
San Rafael, CA 94901

City of San Rafael, Community Services Department
618 "B" Street
San Rafael, CA 94901

The Yacht Club: San Rafael Yacht Club
Attention: Commodore
200 Yacht Club Drive
San Rafael, California 94901

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph, and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given above by giving the other party written notice of the new address in the manner set forth above.

16. NONWAIVER.

No delay or omission in the exercise of any right or remedy of either party shall impair such a right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

17. ATTORNEYS' FEES.

If either party commences an action or suit against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

18. SURRENDER OF PREMISES; HOLDING OVER.

18.1. Surrender of Premises. On expiration of the term, or on termination of the term as provided in the Lease, the Yacht Club shall surrender to the City the Premises and all improvements thereon in good condition, except for ordinary wear and tear. The Yacht Club shall remove all its personal property within thirty (30) days following expiration or termination of the Lease. The Yacht Club shall perform all restoration to the Premises made necessary by the removal of any alterations or the Yacht Club's personal property within the time periods stated in this section. The City may elect to retain, or dispose of in any manner, any alterations or the Yacht Club's personal property that the Yacht Club does not remove from the Premises prior to expiration or termination of the term as allowed or required by this Lease by giving at least ten (10) days' notice to the Yacht Club. Title to any such alterations or the Yacht Club's personal property that the City elects to retain or dispose of on expiration of the ten (10)-day period shall vest in the City. The Yacht Club waives all claims against the City for any damage to the Yacht Club resulting from the City's retention or disposition of any such alterations or the Yacht Club's personal property. The Yacht Club shall be liable to the City for the City's costs for storing, removing, and disposing of any alterations or the Yacht Club's personal property. If the Yacht Club fails to surrender the Premises to the City on expiration of the term as required by this section, the Yacht Club shall defend, indemnify, protect, and hold the City harmless from all

damages, claims, or liabilities resulting from the Yacht Club's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from the Yacht Club's failure to surrender the Premises.

18.2. Holding Over. If the Yacht Club, with the City's prior consent, remains in possession of the Premises after expiration or termination of the term, or after the date in any notice given by the City to the Yacht Club terminating this Lease, such possession by the Yacht Club shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. All provisions of this Lease shall apply to the month-to-month tenancy.

19. MISCELLANEOUS PROVISIONS.

19.1. General Conditions.

- a. **Time of Essence.** Time is of the essence of each provision of this Lease.
- b. **Consent of Parties.** Whenever consent or approval of either party is required and no standard for that approval is specified herein, that party shall not unreasonably withhold or delay such consent or approval.
- c. **Successors.** This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns.
- c. **Non-Discrimination.** The Yacht Club shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Lease.

19.2. Interpretation of Lease.

- a. **California Law; Venue.** This Lease shall be construed and interpreted in accordance with the laws of the State of California. Any and all actions to enforce this agreement shall be conducted in the County of Marin, California.
- b. **Integrated Agreement; Modification.** This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement signed by the parties.
- c. **Captions; Table of Contents.** The captions and the table of contents of this Lease shall have no effect on its interpretation.
- d. **Singular and Plural.** When required by the context of this Lease, the singular shall include the plural.
- e. **Severability.** The unenforceability, invalidity, or illegality of any

provision of this Lease shall not render the other provisions unenforceable, invalid, or illegal.

19.3. Taxes. Yacht Club is advised that this Lease may create a possessory interest, or some other interest subject to taxation or assessment. Yacht Club understands, acknowledges, and agrees that it is solely responsible for payment of any and all applicable taxes.

19.4. Compliance with all Laws. Yacht Club shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. Yacht Club shall perform all services under this Lease in accordance with these laws, ordinances, codes and regulations.

20. PROCEDURE FOR DISPUTES.

20.1. Mediation. Any dispute between the parties relating to the interpretation of the Lease and/or enforcement of their rights and obligations under this Lease shall be referred to mediation within thirty (30) days written notice of one party to the other. Mediation shall be conducted by a mediator mutually agreed upon by the parties. If the parties cannot agree within ten (10) calendar days of receipt of the Notice to Mediate, the presiding judge of the Marin Superior Court shall appoint a mediator. The mediation shall be conducted within ninety (90) days of appointment of the mediator. Costs of mediation shall be divided equally between the two parties.

20.2. Judicial Action. Should mediation not resolve the dispute between the parties, either party may pursue judicial remedies in the appropriate court. The prevailing party in any judicial action shall recover their reasonable attorneys' fees and costs.

Initials: **The City** _____ **The Yacht Club** _____

21. COUNTERPARTS.

This Lease has been executed by the parties in counterparts, each of which shall be deemed to be an original copy.

IN WITNESS WHEREOF, this Lease is hereby executed as of the date first above written.

**City of San Rafael,
a California municipal corporation**

**San Rafael Yacht Club,
a California non-profit corporation**

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

ESTHER BEIRNE, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

EXHIBIT "A"

Description of Leased Premises