

**LICENSE AGREEMENT BETWEEN THE CITY OF REDWOOD CITY
AND
BAIR ISLAND AQUATIC CENTER, INC.**

THIS LICENSE AGREEMENT ("**Agreement**") is entered into as _____ day of _____, 2012 (the "**Effective Date**"), by and between **THE CITY OF REDWOOD CITY**, a charter city and municipal corporation of the State of California (the "**CITY**"), and **BAIR ISLAND AQUATIC CENTER, INC.**, a California non-profit corporation ("**BIAC**").

RECITALS

- A. BIAC operates an aquatic center to teach and promote human-powered aquatic activities to the young people of the San Francisco peninsula in order to provide an athletic outlet that fosters physical and character development; including physical health, teamwork, good sportsmanship and constructive use of time; to teach and enhance the awareness of the environmental sensitivity of the local waterways and to promote responsible, low-impact use of these waterways; to provide coaches, boats, equipment, and facilities (including boathouse(s) to further Center purposes; to maintain a nucleus of adults to provide the coaching and technical skills and the financial and community support necessary for successful conduct of the Center and, in order to assure the continued involvement of such persons in the Center, to provide instructional and competitive programs for adult athletes; to establish recreational and competitive programs and to encourage participation by athletes of all ages in local, regional, national, and international regattas; to sponsor and participate in community programs geared to environmental preservation of the local waterways.
- B. BIAC leases from CITY certain property commonly known as 1450 Maple Street, Redwood City, California, which BIAC uses in the operation of an aquatic center (the "**Aquatic Center**"),
- C. BIAC desires to expand its use of City property and its operations to include outdoor storage of boats and trailers and certain other equipment, installation and use of the following: a non-permanent tent or other portable structure containing rowing machines and other equipment for exercise, training and practice rowing operations, portable restroom facilities, other miscellaneous portable structures, gravel parking lot for vehicles with a drop off area and is seeking from CITY the right to use that real property known as 1402 Maple Street, consisting of approximately 1.1 acres and shown on Exhibit A, attached hereto and incorporated herein by reference (the "**Property**").
- D. With this expansion, and the approval of this Use Agreement, BIAC will no longer have any need for the property located across Maple Street which is the subject of a License Agreement between CITY and BIAC, DATED June 24, 2009.
- E. Upon the execution and approval of this Agreement, this Agreement shall supersede and terminate the June 24, 2009 License Agreement in its entirety.
- F. CITY has determined that because of the youth recreation programs and other benefits offered to the public by BIAC's programs, this use provides a common benefit.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Use.** For good and valuable consideration, receipt of which is hereby acknowledged, starting on March 1, 2012 (the "**Commencement Date**"), the CITY confers to BIAC a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use that certain real property owned by City situated in the County of San Mateo, State of California, more particularly shown on Exhibit A attached hereto (the "**Property**"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. The Property is shown generally on Drawing No. B attached hereto as Exhibit B. This Agreement gives BIAC a license only and notwithstanding anything to the contrary herein, this License does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Property, or any portion thereof. Nothing in this Agreement shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws.

THE PRIVILEGE GIVEN TO BIAC UNDER THIS USE AGREEMENT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PROPERTY ARE CONCERNED, AND BIAC SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PROPERTY. WITHOUT LIMITING THE FOREGOING, THIS LICENSE IS SUBJECT AND SUBORDINATE TO ALL EXISTING DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PROPERTY. BIAC MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK OR ACTIVITIES IN THE PROPERTY, INCLUDING ANY APPROVALS, PERMITS, CONSENTS OR NOTICES REQUIRED FROM OR TO CITY OR ANY OTHER AGENCY. BIAC COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT BIAC SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF ANY RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK OR ACTIVITIES TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY BIAC ON THE PROPERTY PURSUANT TO THIS USE AGREEMENT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. BIAC ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PROPERTY FOR BIAC'S INTENDED WORK, ACTIVITIES OR FACILITIES.

2. **Approval of Plans and Specifications.** BIAC shall install the permitted facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by CITY through the Use Permit process. The plans and specifications may be revised or amended only with prior written approval of CITY

3. **License Fee.**

A. As consideration for the grant of the License, BIAC shall pay CITY a license fee in the amount of \$ 12.00 per year (the "**License Fee**"). Each annual installment of the License Fee shall be payable in advance, on or before the annual anniversary date of the effective date of this Agreement. License fees shall be payable to CITY at the address set forth in Section 19 below or at such other address as CITY may from time to time designate in writing.

B. As additional consideration, BIAC shall, and hereby agrees to provide the following programs in conjunction with Redwood City Parks and Recreation Department:

- 1) Expand the pilot at risk youth program, to provide free paddling and rowing programs to at risk youth identified by the Parks, Recreation and Community Services Department in the after school programs at Sequoia High School and Woodside High School..
- 2) New and additional paddling programs to Middle School students to be offered through the City's After School programs at nominal charges to participants, using BIAC's coaches and mentors.
- 3) Provide new Team Paddling programs to the Redwood City High School age youth at nominal fees.

4. Acknowledgments by BIAC.

A. BIAC acknowledges that BIAC has no right, title, or interest in or to any portion of the Property, other than the License specifically granted by the terms of this Agreement. The License is personal to BIAC and cannot be assigned, transferred, or otherwise conveyed by BIAC or by operation of law.

B. BIAC further acknowledges that the Property may be subject to flooding and other use limitations and that CITY makes no representations regarding the suitability of the Property for BIAC's intended use.

5. Use of Property

A. Authorized Activities on the Property. BIAC may enter upon and use the Property for the sole purpose of conducting its aquatic operations and activities, including training on land, and including outdoor storage and repair of boats and trailers and certain other equipment and personal property, use of and training on rowing machines and other equipment for exercise and training, (collectively, the "**Activities**"). BIAC, shall not conduct any boat washing activities on the Property and shall not discharge any water into the bay.

B. Installation of facilities. BIAC may install certain facilities consisting of a temporary and non-permanently attached tent or other portable structure not to exceed three thousand (3000) square feet, electric power drop pole, portable restroom facilities, other miscellaneous portable structures, a gravel parking lot for vehicles with a drop off area, and other similar facilities, all related to and used in connection with the Aquatic Center. Except with CITY's prior written consent, which shall not be unreasonably withheld, BIAC shall not make any alterations, additions, improvements or other changes (collectively referred to as "**Alterations**") on or with respect to the Property, not specifically described herein. This Agreement specifically authorizes BIAC to install the necessary electric drop pole to provide electricity to the temporary structure housing the rowing machines; however, BIAC shall first obtain a building permit and all other necessary permits or approvals to install such pole. Upon termination of this License, at CITY's request, BIAC shall remove such all Alterations. No compensation shall be owed to BIAC in any event for any Alterations made by BIAC to the Property.

C. Subject to City Uses. The City reserves the right to use the real Property in common with BIAC, as long as such use does not materially interfere with BIAC's licensed Activities on the Property.

D. Permits and Approvals. Before beginning any work in the Property, BIAC shall obtain any and all permits, licenses and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties that are required to commence, complete and maintain the permitted work. Promptly upon receipt of such Approvals, BIAC shall deliver copies of them to CITY. BIAC recognizes and agrees that no approval by CITY for purposes of BIAC's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit BIAC's obligation to obtain all such regulatory Approvals, at BIAC's sole cost.

E. Exercise of Due Care. City shall use, and shall cause its employees to use, due care at all time to avoid damage or harm to BIAC's personal property located on the Property. BIAC shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to City's property or other surrounding property and to native vegetation and natural attributes of the Property and to minimize bay shoreline erosion. Except as otherwise provided in this Agreement, BIAC shall not disturb the surface of the Property or perform any excavation work without the prior written approval of City, which City may withhold in its sole discretion. City shall have the right to condition and/or oversee any permitted excavation work.

F. Responsibility for Maintenance of Facilities. BIAC shall be solely responsible for repairing and maintaining all facilities placed in or on the Property pursuant hereto in good and safe condition, and City shall have no duty whatsoever for any repair or maintenance of the Property.

G. Revocability. BIAC acknowledges and agrees that the installation of the facilities permitted hereunder, regardless of cost, shall not in any way whatsoever limit City's right to revoke this License pursuant to the terms hereof or any of City's other rights hereunder.

6. Restrictions on Use. BIAC agrees that, by way of example only and without limitation, the following uses of the Property by BIAC, or any other person claiming by or through BIAC, are inconsistent with the limited purpose of this License and are strictly prohibited as provided below:

A. Improvements. Except as otherwise expressly provided herein, BIAC shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Property, nor shall BIAC make any alterations or additions to any of existing structures or improvements on the Property, unless BIAC first obtains CITY's prior written consent, which CITY may give or withhold in its sole and absolute discretion. For purposes hereof, asphalt, concrete and cementations concrete driveways, sidewalks and parking areas, shacks and storage facilities, and fences shall be deemed "improvements."

B. Trees and Other Plantings. BIAC shall not plant any trees or other vegetation in or on the Property, except as otherwise expressly provided herein and except in accordance with detailed plans approved by CITY in writing in advance.

C. Dumping. BIAC shall not cause or permit the dumping or other disposal in, on, under or about the Property of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

D. Hazardous Material. BIAC shall not cause, nor shall BIAC allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released or disposed of in, on, under or about the Property, or transported to, from or over the Property. BIAC shall immediately notify City when BIAC learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Property. BIAC shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts and the like (collectively, "**Laws**") requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that BIAC or its Agents or Invitees cause a release of Hazardous Material, BIAC shall, without cost to City and in accordance with all Laws and using the highest and best technology available, promptly return the Property to the condition immediately prior to the release. In connection therewith, BIAC shall afford City a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy and procedure. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances in the Property; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids, provided, the foregoing shall not prohibit BIAC from traversing to, from and across the Property in standard motor vehicles. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property.

E. Nuisances. BIAC shall not conduct any activities in, on, under or about the Property that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

F. Use of Adjoining Land. BIAC acknowledges that the privilege given under this License shall be limited strictly to the Property. BIAC shall not traverse over or otherwise use any adjoining lands of City, except that property leased to BIAC by City under separate agreement.

G. Ponding; Water Courses. BIAC shall not cause any ponding on the Property or any flooding on adjacent land. BIAC shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under or about the Property, nor shall BIAC engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

7. Term of License. The privilege conferred to BIAC pursuant to this Use Agreement shall commence on the Commencement Date and shall expire upon written notice from CITY revoking this License. City may at its sole option freely revoke and terminate this License at any time without cause or liability, and without any obligation to pay any consideration to BIAC or return to BIAC any part of the License fee. Upon any such revocation, BIAC shall immediately surrender the Property in the condition required hereunder. BIAC may terminate the License by delivering written notice to CITY not less than thirty (30) days prior to the date of termination. In addition, whether or not notice of termination is given under this Agreement, the License shall terminate concurrently with the termination of the Lease.

8. Covenant to Maintain Property. In connection with its use hereunder, BIAC shall at all times, at its sole cost, maintain the Property in a good, clean, safe, secure, sanitary and slightly condition.

9. Removal or Alteration of Facilities. Without limiting City's rights hereunder, BIAC shall promptly, at City's written request, alter or remove at its sole expense any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Property by BIAC, as may be necessary to avoid any actual or potential interference with any of City's operations and use of the Property. In the request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice BIAC fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge BIAC all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City's demand. In the event of an emergency City may, at its sole option and without notice, alter, remove or protect at BIAC's sole expense, any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Property by BIAC, except for utility facilities owned by either a private company or a public agency that are necessary for operations after an emergency as determined by City in its sole discretion. The owner of such utility facilities shall, upon written or oral notice by City that an emergency exists, take immediate action at its sole expense to protect, remove or relocate such facilities as required by City to meet the emergency.

10. Signs. BIAC shall not place, erect or maintain any sign, advertisement, banner or similar object in, on, or about the Property without CITY's prior written consent, which CITY may withhold in its sole discretion.

11. Surrender. Upon the expiration of this License or within ten (10) days after any sooner revocation or other termination of this License, BIAC shall surrender the Property in the same or better condition as received. At such time, BIAC shall remove all of its property from the Property and any signs and, upon City's request, other structures or improvements permitted hereunder, and shall repair, at its cost, any damage to the Property caused by such removal. BIAC's obligations under this Section shall survive any termination of this License.

12. Repair of Damage. If any portion of the Property or any personal property of City located on or about the Property is damaged or threatened by any of the activities conducted by

BIAC or anyone acting by or through BIAC hereunder, BIAC shall immediately, at its sole cost, notify City by facsimile of such damage or threat. City may, but shall not be obligated, to remedy such damage or threat at BIAC's sole cost, or City may elect to witness BIAC's repair work. In the event City elects not to remedy such damage or threat, BIAC shall repair any and all such damage and restore the Property or property to its previous condition subject to City's inspection, review and approval. City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Property.

13. No Costs to City. BIAC shall bear all costs or expenses of any kind or nature in connection with its use of the Property, and shall keep the Property free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Property.

14. Indemnity. BIAC shall indemnify, defend, reimburse and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Property, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of BIAC, its officers, directors, members, employees, agents, consultants, contractors or subcontractors (collectively, "**Agents**"), its invitees, guests or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this License, (b) any failure by BIAC to faithfully observe or perform any of the terms, covenants or conditions of this License, (c) the use of the Property or any activities conducted thereon by BIAC, its Agents or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by BIAC, its Agents or Invitees, on, in, under or about the Property, any improvements or into the environment, or (e) any failure by BIAC to faithfully observe or perform any terms, covenants or conditions of this License; except solely to the extent of Claims resulting directly from the sole negligence or willful misconduct of City or City's authorized representatives. In addition to BIAC's obligation to indemnify City, BIAC specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to BIAC by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Property and claims for damages or decreases in the value of adjoining property. BIAC's obligations under this Section shall survive the expiration or other termination of this License. The City and CITY Indemnified Parties shall have no liability to BIAC or any BIAC Party as the result of damage or loss to property or injury or death to any such person arising on the Property or out of the Activities conducted on the Property, except for damages to BIAC property caused by the sole negligence or willful misconduct of City. .

A. The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages.

B. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this Section.

15. Waiver of Claims.

A. Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of BIAC, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by BIAC,

B. BIAC acknowledges that this License is freely revocable by City and in view of such fact; BIAC expressly assumes the risk of making any expenditures in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of BIAC or other waivers contained in this License and as a material part of the consideration for this License, BIAC fully RELEASES, WAIVES AND DISCHARGES forever, any and all claims, demands, rights, and causes of action against, for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that City exercises its right to revoke or terminate this License.

C. BIAC acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and BIAC fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

D. BIAC expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the facilities or BIAC's uses hereunder. City would not be willing to give this License in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and BIAC expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of BIAC or other waivers contained in this License and as a material part of the consideration for this License, BIAC fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this License or the uses authorized hereunder, including, without limitation, any interference with uses conducted by BIAC pursuant to this License, regardless of the cause, and whether or not due to the negligence of City or its Agents.

E. As part of BIAC's agreement to accept the Property in its "As Is" condition as provided below, and without limiting such agreement, BIAC on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in

any way be connected with the physical or environmental condition of the Property and any related improvements or any law or regulation applicable thereto or the suitability of the Property for BIAC's intended use.

F. In connection with the foregoing releases, BIAC acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

G. BIAC acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. BIAC realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this License.

16. As Is Condition of Property; Disclaimer of Representations. BIAC accepts the Property in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Property. Without limiting the foregoing, this License is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

17. No Assignment. This Use Agreement and License is personal to BIAC and shall not be assigned, conveyed or otherwise transferred by BIAC under any circumstances. Any attempt to assign, convey or otherwise transfer this License shall be null and void and cause the immediate termination and revocation of this License.

18. Cessation of Use. BIAC will not terminate its activities on the Property pursuant hereto without prior written notice to City.

19. No Joint Ventures or Partnership; No Authorization. This License does not create a partnership or joint venture between City and BIAC as to any activity conducted by BIAC on, in or relating to the Property. BIAC is not a state actor with respect to any activity conducted by BIAC on, in, under or around the Property. The giving of this License by City does not constitute authorization or approval by City of any activity conducted by BIAC on, in, around or relating to the Property.

20. Covenant Not to Discriminate. In the performance of this its activities pursuant to this License, BIAC agrees not to discriminate against any employee, any City employee working with BIAC, or applicant for employment with BIAC, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition (cancer-related or genetic characteristics), marital or domestic partner status, gender and/or gender identity, age (40 or over), or sexual orientation (including heterosexuality, homosexuality, and bisexuality).

21. Liens. BIAC shall not permit any liens of any type, including but not limited to mechanic's or material men's liens, stop notices or other liens (collectively "**Liens**") to be filed against the Property by reason of any action or inaction by BIAC. If any liens of any type are filed against the Property during the term of this Agreement as a result, directly or indirectly, of any action or inaction by BIAC, BIAC shall cause the same to be discharged of record, by payment of the claim, by posting and recording the bond contemplated by the California Civil Code Section 3143, or by other action acceptable to CITY, within 20 days after demand by City. BIAC shall indemnify, hold harmless, and defend CITY and CITY Indemnified Parties from and against any and all claims relating to such liens.

22. Security. BIAC hereby acknowledges that CITY shall have no obligation whatsoever to provide security for the Property, and BIAC hereby assumes all responsibility for the protection of BIAC, its agents and invitees from acts of third parties, and shall indemnify, defend, and hold harmless CITY against any and all claims arising from or relating to failure to provide security.

23. Compliance. At its sole cost and expense, BIAC shall comply and cause all BIAC Parties to comply with ordinances, requirements, policies and standards of CITY and all other governmental authorities with jurisdiction and authority over the Property and BIAC's Activities, including but not limited to the Conditional Use Permit Number UP 2011-54, issued by CITY to BIAC on or about December 15, 2011. BIAC shall not create or permit any unsafe conditions upon the Property, shall promptly report to CITY the discovery of any unsafe conditions, and shall take all actions necessary and reasonably appropriate to correct any unsafe conditions. BIAC shall erect and maintain as reasonably required by existing conditions all reasonable safeguards for safety and protection, including posting danger signs, barricades, and other warnings as necessary or appropriate with respect to hazards on or about the Property. BIAC shall comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements and with good and safe practices in connection with its use of the Property.

24. Compliance with Laws. BIAC shall, at its expense, conduct and cause to be conducted all activities on the Property allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. BIAC shall, at its sole expense, procure and maintain in force at all times during its use of the Property any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. BIAC understands and agrees that City is entering into this License in its capacity as a property owner with a proprietary interest in the Property and not as a regulatory agency with police powers. BIAC further understands and agrees that no approval by City for purposes of this License shall be deemed to constitute approval of any federal, state, City or other local regulatory authority with jurisdiction, and nothing herein shall limit BIAC's obligation to obtain all such regulatory approvals at BIAC's sole cost, or limit in any way City's exercise of its police powers.

25. Changes to Property. The City reserves the right to temporarily close access to the Property and to make changes to the Property, from time to time upon thirty (30) days written notice to BIAC, including, without limitation, changes in the locations, size, shape and number of entrances to the Property and to the fences, gates and other improvements on or benefiting the Property. However, in the event of an emergency, City may make such changes without notice to BIAC.

26. Insurance. During the term of this Agreement, BIAC shall maintain the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability insurance written on a form that provides coverage at least as broad as form ISO CG 00 01 10 01 (12/04 Edition), covering the insured with a duty to defend against claims of bodily injury, personal injury and property damage arising out of BIAC's operations (which shall include the Activities described in Section 4 above), assumed liabilities, or use of the Property, including contractual liability coverage for the performance by BIAC of the indemnity agreements set forth in this Agreement, and coverage for damage to the Property (including all improvements in BIAC's care, custody, or control), for limits of liability not less than:

Bodily Injury, Personal Injury and \$2,000,000 annual aggregate	\$1,000,000	each occurrence	and
Property Damage Liability	\$300,000	annual aggregate	

B. Marine Protection and Indemnity Insurance. Marine Protection and Indemnity Insurance written on a form that provides coverage at least as broad as form ISO EM 05 01, with limits of liability of not less than \$1,000,000.

C. Damage to BIAC Property. BIAC hereby waives any recovery of damages against City (including its employees, officers, directors, agents, or representatives) for loss or damage to any structures, tenant improvements and betterments, fixtures, equipment, and any other personal property because BIAC has elected not to cover such property with insurance.

D. U.S. Rowing Association Insurance. Insurance with the U.S. Rowing Association of the type and with coverage in the amount currently maintained by BIAC.

E. Other.

1) The minimum limits of policies of insurance required of BIAC under this Agreement shall in no event limit the liability of BIAC under this Agreement. Such insurance shall: (i) name CITY as an additional insured; (ii) be primary insurance as to all claims thereunder and provide that any insurance carried by CITY is excess and is non-contributing with any insurance requirement of BIAC; (iii) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to CITY; and (iv) contain a waiver of subrogation and cross-liability endorsement or severability of interest clause acceptable to CITY. BIAC shall deliver the policy or policies or certificates thereof on or before the Commencement Date and delivery of such policy or policies shall be a prerequisite to and condition of BIAC's right to use the Property pursuant to this Agreement.

2) For all liability policies required above, BIAC shall cause CITY to be named as a Certificate Holder on Accord-25 Certificates of Insurance that contain language requiring 30 days written notice to CITY in the event of cancellation or material change in any scheduled policy.

3) For all property policies required above, BIAC shall cause CITY to be named as a Certificate Holder on Accord 27 Certificates of Insurance that contain language

requiring 30 days written notice to CITY in the event of cancellation or material change in any scheduled policy.

4) With regard to the liability insurance policies required above, such insurance policies shall name CITY as an additional insured on endorsements ISO CO 20 10 10 01 and CO 20 37 10 01, or broader, with completed operations coverage.

5) All policies required hereunder shall provide for the following: (i) name as additional insureds the City and its officers, agents and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this License and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of BIAC's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from BIAC's activities (and BIAC's Agents and Invitees) under this License (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials).

6) Prior to the Commencement Date of this License, BIAC shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event BIAC shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of BIAC, and the cost thereof shall be paid to City within five (5) days after delivery to BIAC of bills therefore.

7) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

8) Should any of the required insurance be provided under a claims made form, BIAC shall maintain such coverage continuously throughout the term of this License and, without lapse, for a period of three (3) years beyond the License expiration or termination, to the effect that should any occurrences during the License term give rise to claims made after expiration or termination of the License, such claims shall be covered by such claims-made policies.

9) BIAC's compliance with the provisions of this Section shall in no way relieve or decrease BIAC's indemnification obligations under this License or any of BIAC's other obligations hereunder. Notwithstanding anything to the contrary in this License, this License shall terminate immediately, without notice to BIAC, upon the lapse of any required insurance coverage. BIAC shall be responsible, at its expense, for separately insuring BIAC's personal property.

27. Entire Agreement; Severability. This Agreement contains the sole and complete agreement between the parties relating to the Property and the License. This Agreement may not be changed orally and may be amended only by an agreement in writing signed by both parties. In the event that any provision of this Agreement shall be held to be or become invalid or unenforceable in certain circumstances, the validity and enforceability of the remaining provisions, or such provision in other circumstances, shall not in any way be affected or impaired.

28. Notices. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to CITY or BIAC, as the case may be, at the respective addresses listed below each parties signature or to the last changed address given by the party to be notified as hereinafter specified, or may be made by personal service.

29. Termination of Previous License Agreement. Upon the complete execution of this Agreement by CITY and BIAC, the previous License Agreement executed by CITY and BIAC on June 24, 2009, a copy of which is attached hereto as **Exhibit C**, shall be terminated and have no further force or effect.

30. Applicable Law and Venue. This Agreement and all rights and remedies of the parties hereto shall be construed and enforced in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of San Mateo.

31. Waiver of Default: Cumulative Remedies. No waiver of any default by any party to this Agreement shall be implied from any omission by any other party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any party to or of any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any party by this Agreement shall be deemed to be cumulative and no such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such party shall not impair such party's standing to exercise any other right or remedy.

32. Further Assurances. The City and BIAC shall execute, on request, all other documents and instruments as the other party shall reasonably request, which are reasonably required to carry out obligations imposed under, and affect the purposes of, this Agreement.

33. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Agreement. Signatures may be made by telecopy provided the original is promptly mailed to the other party.

BIAC REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and date first above written.

REDWOOD CITY:

BAIR ISLAND AQUATIC CENTER, INC.:

By: _____
Robert B. Bell, City Manager

By: _____
Patricia S. Worthington, President

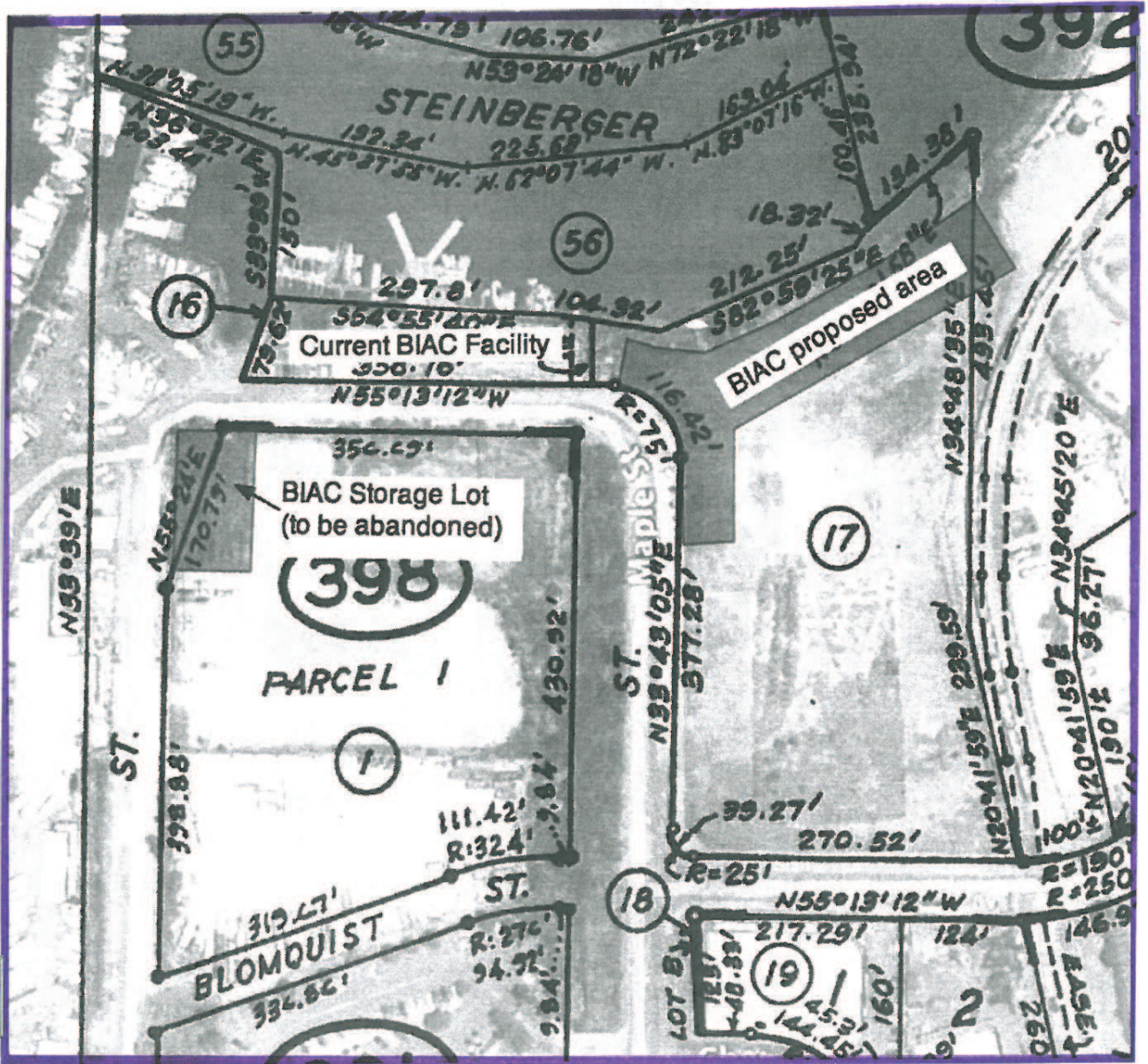
Bair Island Aquatic Center, Inc.
1450 Maple Street
Redwood City, CA 94063

ATTEST:

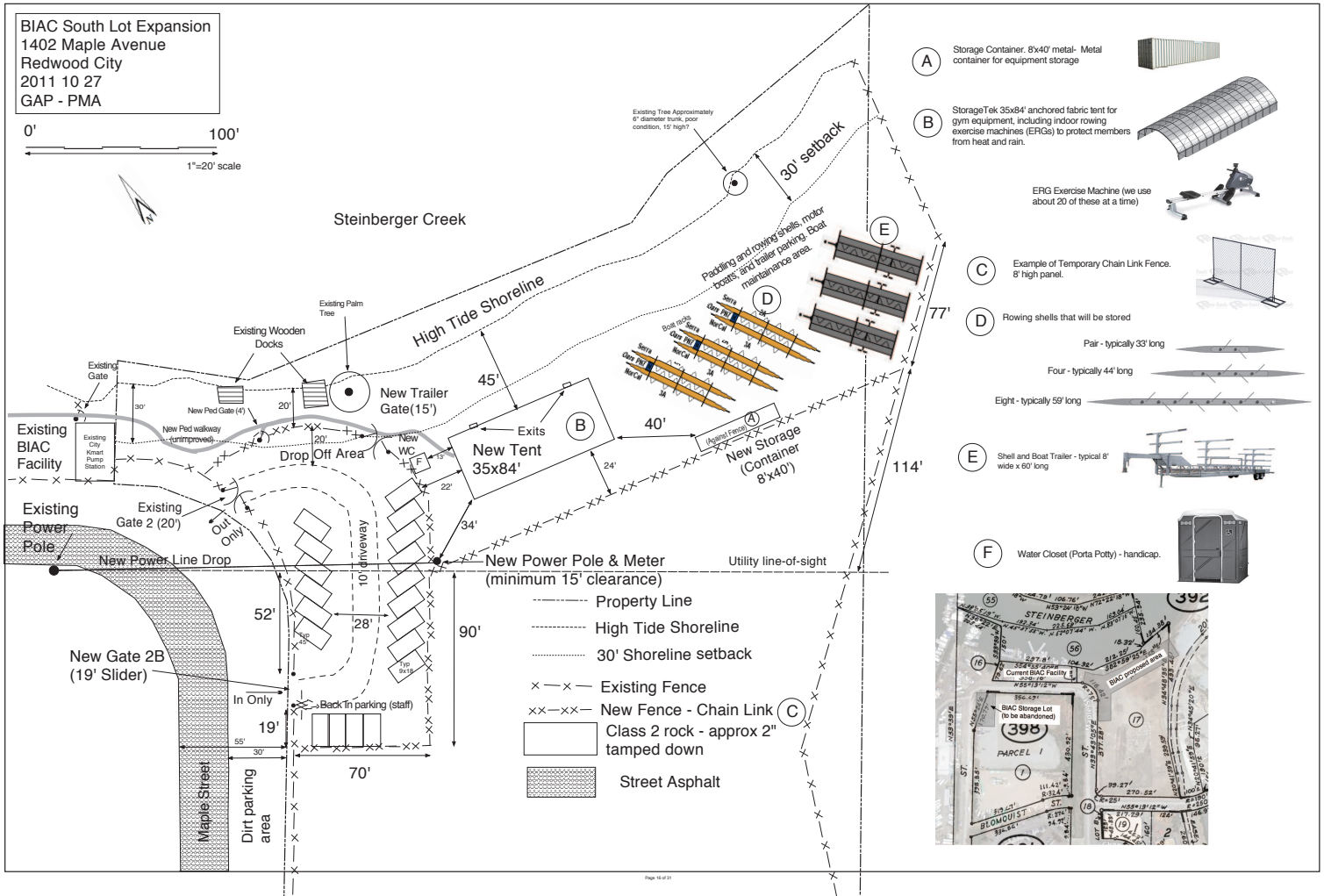
Silvia Vonderlinden, City Clerk

APPROVED AS TO FORM:

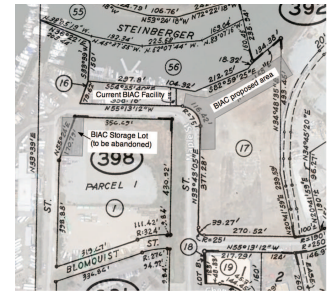
Pamela Thompson, City Attorney



BIAC South Lot Expansion
 1402 Maple Avenue
 Redwood City
 2011 10 27
 GAP - PMA



- (A) Storage Container. 8'x40' metal- Metal container for equipment storage
- (B) StorageTek 35x84' anchored fabric tent for gym equipment, including indoor rowing exercise machines (ERGs) to protect members from heat and rain.
- ERG Exercise Machine (we use about 20 of these at a time)
- (C) Example of Temporary Chain Link Fence. 8' high panel.
- (D) Rowing shells that will be stored
 Pair - typically 33' long
 Four - typically 44' long
 Eight - typically 59' long
- (E) Shell and Boat Trailer - typical 6' wide x 60' long
- (F) Water Closet (Porta Potty) - handicap.



- Property Line
- High Tide Shoreline
- 30' Shoreline setback
- x-x-x Existing Fence
- xx-xx-xx New Fence - Chain Link (C)
- Class 2 rock - approx 2" tamped down
- Street Asphalt