CITY OF MARTINEZ **CITY COUNCIL AGENDA**
November 16, 2011

TO: Mayor and City Council

FROM: Philip Vince, City Manager

PREPARED BY: Michael Chandler, Senior Management Analyst

SUBJECT: Zocchi CEQA and Reuse Leases

DATE: November 9, 2011

RECOMMENDATION:

Conduct a public hearing and consider resolutions to:

A. Adopt a mitigated negative declaration for the lease and reuse of two existing buildings as indoor sports and courts facilities located at 330 and 360 Ferry Street; and
B. Authorize the City Manager to execute a lease agreement with Universal Sports Academy for use of City real property located at 330 Ferry Street; and
C. Authorize the City Manager to execute a lease agreement with Norcal Courts, LLC, for use of City real property located at 360 Ferry Street.

BACKGROUND:

With fund from state and federal agencies the City of Martinez acquired two parcels in November 2007, totaling 6.3 acres and consisting of various buildings and surrounding parking just north of the downtown Intermodal Facility/train station. The funding for this acquisition was part of the long term, multi-phase plan for the Intermodal Facility to provide additional Amtrak overflow parking on the site, and a pedestrian bridge connecting the new parking lot to the Intermodal Facility/train station. The site is commonly known as the "Zocchi property."

At one time the Zocchi property included multiple structures reflecting its former uses as cannery and storage facilities. In 2009 the Council approved removing metal, Quonset-style buildings, thus eliminating substandard and hazardous structures; however, two concrete "tilt-up" warehouse facilities remained. These facilities are located at 330 Ferry Street and 360 Ferry Street and are the subject structures of the proposed lease agreements. The 330 Ferry Street warehouse building was constructed in 1967 and encompasses approximately 48,000 square feet. The 360 Ferry Street building was constructed in 1959 and covers approximately 30,000 square feet. Both buildings are usable and structurally sound given the industrial uses they were designed to accommodate; however, reuse of the facilities in a different capacity (i.e. as recreational assembly buildings) will require various structural reinforcements.

The City's use of the Zocchi property includes construction of parking facilities for the Intermodal Facility. The City Council authorized a consultant services contract to design the layout of the interim parking configuration, which can be accommodated without removing either of the two remaining structures. Part of the design work will include a detailed construction cost estimate. The funding for construction of the interim parking and pedestrian bridge is from CCTA Measure J funds totaling approximately $3.6 million and will be available to the City this fiscal year. The City plans to repave the existing Zocchi property parking area in 2012 and provide 290 additional parking spaces for Amtrak train riders and potential users of the warehouse facilities.

Since the City acquired the Zocchi property, there has been interest in both short and long term use of the buildings. Both facilities have been used by various local groups as temporary storage sites, and the 330 Ferry Street building has been used to host downtown special events and further, as a Martinez Police Department training facility.

Given the fact that the City used public transportation funds to acquire the Zocchi property with the express purpose of providing additional parking as part of phase three of the Intermodal Project, City staff contacted the agencies that provided the funding, CCTA and CalTrans Rail Division, to explore the possibility of private reuse and development. Both agencies informed the City that it is possible to combine public and private projects but that any revenue generated from renting the facility would either have to go either into a special public transportation account, or directly back to the funding agencies.

City Council supported reuse of the facilities as part of the focus on the economic revitalization of downtown Martinez, and directed staff in the summer of 2010 to create and circulate a Request for Proposals (RFP) for use of the 330 Ferry Street building, as the 360 Ferry Street building was reserved by Council for a local non-profit endeavor known as the "California Center for Delta Research and Education" at the time. An RFP was mailed to 13 interested parties in September 2010. Three proposals were received, two of which were sports-oriented vendors and the other a local brewer/entrepreneur. The proposals were:

- **Universal Sports Academy-**Batting cages, indoor soccer/sports field, study room to provide casual and organized use of these areas.

- **California Sports Complex-**Provide five indoor basketball/volleyball courts, training room and fitness areas for rental, host tournaments, camps and leagues

- **Excelsior Brewing Company-**Provide a brewery, pub restaurant and indoor bocce courts.

After an extensive review process with members of the City Council Economic Development Subcommittee, and members of the Council and Parks, Recreation, Marina, and Cultural Commission (PRMCC), two vendors were selected for consideration, the Universal Sports Academy and California Sports Complex. During the review period, the smaller 360 Ferry Street building became available for private development after the California Center for Delta Research and Education's application for State Proposition 84 grant funding was denied in early 2011. As such, the City Council directed staff in April 2011 to begin the development process with both

developers. Universal Sports Academy was chosen to renovate the larger of the two Zocchi buildings at 330 Ferry Street, and California Sports Complex (now known as NorCal Courts, LLC) was selected as the developer for 360 Ferry Street.

The development process formally began with letters of intent or "LOI's" with the groups in May and June of 2011 to begin negotiations for leasing the facilities as indoor sports facilities. The LOI's included commitments from each group of approximately $18,000 to cover all costs of the requisite environmental review, and a portion of the legal review costs for the lease development. An Initial Study/Mitigated Negative Declaration (attached as Exhibit A) was prepared to analyze the lease and reuse of the buildings, and circulated on September 7, 2011. No comments were received after the required 20-day circulation was completed.

The Planning Commission held a public hearing on October 25, 2012, to recommend adoption of a mitigated negative declaration to the City Council for the lease and reuse of 330 and 360 Ferry Street as an indoor sports facility. The Commission unanimously recommended approval of the Mitigated Negative Declaration. The Commission also reviewed and approved within its purview the addition of "indoor field and court sports facilities" to the list of permitted uses within the Light Industrial District on which the Zocchi property is located, and found theses additional uses consistent with the General Plan.

Lease negotiations with the two development groups were completed in early November 2011. Key terms of the agreements include the following:

1) **Lease Term**: 15 years plus 5 one-year extensions.

2) **Rent**: No formal rent; however, Lessees are required to complete a series of mandatory alterations to the Premises and Parking Area (see #4 below), and contribute 4% of gross profit annually to a "Maintenance Reserve Fund" to be used for extraordinary repairs to Premises, or special preventative maintenance projects, subject to City approval.

3) **Uses**:
    a. USA: baseball/softball, soccer, lacrosse, rugby, kickball, bocce ball, Ultimate Frisbee, youth and adult flag football, fitness and training
    b. NCC: basketball and volleyball
    c. Special Events: both organizations can host special events for uses outside of the above, subject to the City's existing special event permitting process
    d. Lessees must offer discounts of no less than 10% for Martinez-based sports teams, leagues and residents.

4) **Mandatory Alterations**: to be completed within 180 days of Lessee's possession and are prescribed as Exhibit B to each Lease. These alterations include, among others, structural reinforcements/retrofitting of the buildings; ADA parking and accessibility improvements; exterior access (including construction of entryways, reception areas, and/or additional doors); painting of the building (interior and exterior); lighting installations; plumbing and electrical work; interior dry wall and paneling work; and construction of new restrooms.

5) **Maintenance Responsibilities**:
   a. All maintenance is responsibility of Lessee **with exception of the following, which remains the responsibility of the City**:
      i. General building structural repairs not related to weather protection, siding and painting, roof leaks or ADA improvements; decision whether or not to perform these repairs to be determined at discretion of City
      ii. Sewer, electrical, water/plumbing from public street to meter
      iii. Parking area (excluding Lessee's access ramps, ADA parking, and sidewalks/pathways)

Copies of the lease agreements are included as Exhibit B (Universal Sports Academy for 330 Ferry Street) and Exhibit C (Norcal Courts, LLC for 360 Ferry Street).

FISCAL IMPACT:

The lease terms require the developers to pay for all modifications, alterations, and enhancements to the facilities, and contribute 4% of gross profit into a Maintenance Reserve Fund. The net result is no direct capital outlays to or from the City's General Fund. Indirect benefits from the recreational reuse of the facilities may include additional sales tax revenues resulting from increased activity in the downtown; establishment of new businesses serving the clientele utilizing these facilities; and general improvement of a largely underutilized portion of the downtown area.

ACTION:

A. Motion adopting resolution approving a mitigated negative declaration for the lease and reuse of two existing buildings as indoor sports and courts facilities located at 330 and 360 Ferry Street; and
B. Motion adopting a resolution authorizing the City Manager to execute a lease agreement with Universal Sports Academy for use of City real property located at 330 Ferry Street; and
C. Motion adopting a resolution authorizing the City Manager to execute a lease agreement with Norcal Courts, LLC, for use of City real property located at 360 Ferry Street.

Attachments: Resolutions A, B, and C
Exhibit A: Initial Study/Mitigated Negative Declaration
Exhibit B: Universal Sports Academy Lease for 330 Ferry Street
Exhibit C: Norcal Courts, LLC Lease for 360 Ferry Street

APPROVED BY:
City Manager

RESOLUTION NO. -11

ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION AND MONITORING REPORTING PROGRAM FOR LEASE FROM THE CITY OF MARTINEZ AND USE OF 330 AND 360 FERRY STREET AS INDOOR FIELD AND COURT SPORTS FACILITIES

WHEREAS, Universal Sports Academy and Norcal Sports ("the applicant") has requested the following approvals regarding its proposal to reuse two industrial warehouses as indoor courts and sports facilities located at 330 and 360 Ferry Street:

A. Approval of a lease to reuse the two warehouses located at 330 and 360 Ferry Street; and

B. Approval of an a addition to permitted uses within the Light Industrial Zoning District to include indoor field and court sports facilities pursuant to Section 22.34.100 of the Martinez Municipal Code. Use Permit, which also would allow an exception to the H-I.

WHEREAS, the City of Martinez has prepared an Initial Study and Mitigated Negative Declaration for the Project, which analyses the environmental impact of the proposed lease and addition to the list of permitted uses within the Light Industrial Zoning District to include indoor field and court sports facilities; and

WHEREAS, the Initial Study, Mitigated Negative Declaration and accompanying Mitigation Monitoring and Reporting Program (***Exhibit A*** attached) have been completed in compliance with the California Environmental Quality Act (CEQA) and the guidelines as promulgated by the State Secretary of Resources and notice has been provided to the public and to neighboring property owners in compliance with CEQA, the guidelines and the Martinez Municipal Code; and

WHEREAS, on October 25, 2011, the Planning Commission held a public hearing and considered all oral and written comments on the Mitigated Negative Declaration, accompanying Mitigation Monitoring and Reporting Program; and

WHEREAS, the Planning Commission considered the Initial Study, Mitigated Negative Declaration, accompanying Mitigation Monitoring and Reporting Program and adopted Resolution No. PC 11-10,stating that the Planning Commission recommends to the City Council that that the proposed Initial Study, Mitigated Negative Declaration and Mitigation Measures be approved; and

WHEREAS, on November 16, 2011, the City Council of the City of Martinez held a duly noticed public hearing on the project and considered oral and written comments on the Mitigated Negative Declaration and accompanying Mitigation Monitoring and Reporting Program; and

WHEREAS, the Custodian of Records in the City Clerk of the City of Martinez; and

NOW, THEREFORE, BE IT RESOLVED by the Martinez City Council that:

1. The Mitigated Negative Declaration for the project is hereby approved.

2. The above recitals are found to be true and constitute part of the findings upon which this resolution is based.

3. The City Council further finds that on the basis of the whole record before it, including, but not limited to, the Initial Study and Mitigated Negative Declaration and the staff analysis contained in the staff report, that there is no substantial evidence that the proposed project will have a significant effect on the environment, and the proposed mitigated negative declaration reflects the City's independent analysis and judgment. Furthermore, the Mitigation Measures set forth in the Initial Study have been agreed to by the applicant and incorporated into the plans, and the Mitigated Negative Declaration, proposed mitigation measures and Mitigation and Monitoring Reporting Program for said project is found to be complete and in compliance with CEQA, the CEQA Guidelines, and City CEQA requirements.

BE IT FURTHER RESOLVED that the Clerk of the City of Martinez is hereby directed to file a Notice of Determination ("NOD") in accordance with CEQA Guidelines section 15094 with the County of Contra Costa.

* * * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of November, 2011 by the following vote:

AYES:
NOES:
ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT "A"

CITY OF MARTINEZ

Initial Study

Project title:	Recreation Facility (Zocchi)
Lead agency name and address:	City of Martinez, 525 Henrietta Street Martinez CA 94553
Contact person and phone number:	Dina Tasini, Contract Project Manager (925) 372-3561
Project location:	330 and 360 Ferry Street
Project sponsor's name and address:	Universal Sports Academy and Norcal Sports Academy
General Plan: Existing:	Central Martinez Specific Plan Area – Special Study Area
Zoning: Existing:	Light Industrial

Description of project:

The applicants propose to lease from the City of Martinez and reuse two existing industrial buildings located on City property at 330 and 360 Ferry Street, Martinez CA, as indoor sports facilities. The 6.3-acre site is located north of the Union Pacific railroad tracks and west of Ferry Street, with Alhambra Creek forming the westerly boundary and Martinez Regional Shoreline Park to the north. The parking area serves as overflow parking for the Amtrak Station to the south.

The City proposes to repave the existing parking area at a later date and provide approximately 290 parking spaces to be shared with Amtrak Train riders and users of the indoor sports facilities. A preliminary site plan has been prepared by staff and is attached (See attachment A)

The project will require the following entitlements:

A) An addition to permitted uses within the Light Industrial Zoning District to include indoor field and court sports facilities pursuant to Section 22.34.100 of the Martinez Municipal Code.

Surrounding land uses and setting: The 6.3 acre site is located north of the Union Pacific railroad tracks and west of Ferry Street, with Alhambra Creek forming the westerly boundary and Martinez Regional Shoreline Park to the north

Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement). Contra Costa Transportation Authority will review the Initial Study to insure that the parking facility adjacent to the proposed recreation facilities is available for use by commuters.

Other project assumptions: The Initial Study assumes compliance with all applicable State, Federal, and Local Codes, Rules and Regulations including, but not limited to the City of Martinez Improvement Standards, the California Building Code, the Contra Costa County Water Agency Code, the State Health and Safety Code, and the State Public Resources Code.

DETERMINATION: (To be completed by the Lead Agency) On the basis of this initial evaluation:

__ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

X I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

__ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

__ I find that the proposed project MAY have a potentially significant impact or potentially significant unless mitigated impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

__ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature: Date:

Printed Name:

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

☒	Aesthetics	☐	Agriculture Resources	☒	Air Quality
☐	Biological Resources	☐	Cultural Resources	☐	Geology / Soils
☐	Hazards & Hazardous Materials	☐	Hydrology / Water Quality	☐	Land Use / Planning
☐	Mineral Resources	☐	Noise	☐	Population / Housing
☐	Public Services	☐	Recreation	☐	Transportation / Traffic
☐	Utilities/Service Systems	☐	Mandatory Findings Of Significance	☐	Greenhouse Gas Emissions

EVALUATION OF ENVIRONMENTAL IMPACTS:

1. A brief explanation is provided in the Discussion section for all answers except “No Impact” answers that are adequately supported by the information sources cited in the question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer is explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers take account of the entire action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. “Potentially Significant Impact” is appropriate if there is substantial evidence that an effect is significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.

4. “Potentially Significant Unless Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less than Significant Impact”. Mitigation measures are described and how they

reduce the effect to a less than significant level. Measures from earlier analyses may be cross-referenced.

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or Negative Declaration.

6. Where ever possible references to information sources for potential impacts (e.g., general plans, zoning ordinances) are incorporated into the checklist. Where appropriate, a reference to the page or pages where the statement is substantiated is included. A source list is attached and other sources used, or individuals contacted, are cited in the discussion.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
I.	AESTHETICS — Would the project:				
	a) Have a substantial adverse effect on a scenic vista?				X
	b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
	c) Substantially degrade the existing visual character or quality of the site and its surroundings?				X
	d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?		X		

Discussion:

a-d) The site consists of two large warehouse buildings and a poorly maintained parking lot. The buildings have been vacant for some time and are in disrepair. There are no additions proposed and so no scenic vistas will be impacted. The buildings exist. The reuse of the buildings will improve the area. The exterior of the buildings will remain intact however there will be some exterior modifications made, as painting of the exterior, addition of required disabled access ramps and signs. The addition of lights both on the buildings and in the parking lot will create a new source of lights, however there are existing lights on the building and new light fixtures will be designed in such a manner as to reduce glare and light by shielding the lights and providing fixtures which are downlit. Overall exterior painting of buildings, addition of disabled access ramps, signage and building lights will be beneficial and improve the visual character of the site.

Aesthetics Mitigation Measure 1: All lighting shall be designed to reduce glare and the light source shall be “downlit”.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
II.	AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				X
	a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
	b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
	c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				X

Discussion:

a-c) The site is vacant within an urbanized area, currently designated for non-agricultural uses. The project site is not considered or used for agricultural purposes or farmland. The project site has been used for light industrial purposes and has not been considered as prime farmland, therefore no changes to or conversion from agricultural resources will result from the reuse of the structures as recreation facilities. There are no conflicts with existing zoning for agricultural uses since the property is zoned for light industrial uses. No agricultural use occurs at or near the site.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
III.	AIR QUALITY — Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
	a) Conflict with or obstruct implementation of the applicable air quality plan?				X
	b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
	c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				X
	d) Expose sensitive receptors to substantial pollutant concentrations?				X
	e) Create objectionable odors affecting a substantial number of people?				X

Discussion:

a-e) The proposed Zocchi site development would be an adaptive re-use of two vacant industrial buildings located at the end of Ferry Street in Martinez. The site is adjacent to the Martinez Regional Shoreline Park and just north of the Martinez Intermodal Facility.

The Bay Area Air Quality Management District (BAAQMD) has recently adopted new CEQA guidance. The new guidance recommends consideration of project exposure to community risk and hazards related to Toxic Air Contaminant (TAC) and fine particulate matter ($PM_{2.5}$). The project would not increase community risks or hazards, as it would not generate new emissions of Toxic Air Contaminants (TACs) or $PM_{2.5}$. The project could, however, be considered a sensitive receptor for air pollutants. The document *CEQA Air Quality Guidelines*[1] provides the following guidance on sensitive receptors:

"If a project is likely to be a place where people live, play, or convalesce, it should be considered a receptor. It should also be considered a receptor if sensitive individuals are likely to spend a significant amount of time there. Sensitive individuals refer to those segments of the population most susceptible to poor air quality: children, the elderly, and those with pre-existing serious health problems affected by air quality. Examples of receptors include residences, schools and school yards, parks and play grounds, daycare centers, nursing homes, and medical facilities. Residences can include houses, apartments, and senior living complexes. Medical facilities can include hospitals, convalescent homes, and health clinics. Playgrounds could be play areas associated with parks or community centers."

While the proposed project, which provides for indoor rather than outdoor recreation does not exactly fit the above description, it would attract young people, considered a segment of the population sensitive to poor air quality, so the project has been considered to be a sensitive receptor. The construction of the project would not involve demolition, earthmoving or any other practices that would require large numbers or extensive use of diesel equipment on the project site, nor are there any residential sensitive receptors close to the project site.

Although not required to reduce impacts to a less-than-signficant level, appropriate site planning and design can greatly reduce exposure of site users. The air quality modeling used in this analysis shows a sharp variation in concentrations of railroad diesel particulate across the building at 330 Ferry Street. In order to mitigate this impact for the users and employees of the recreation facility, special design of the air handling system will be necessary.

Air Quality Mitigation Measure 1: Applicant shall place intakes for the air handling system as far as practical from the southern edge of the building to minimize contamination of the indoor air by railroad emissions.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
IV.	BIOLOGICAL RESOURCES – Would the Project:				
	a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
	b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?				X
	c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
	d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
	e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
	f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Discussion:

a-f) The project site is primarily covered with asphalt and industrial structures. The vegetated portions of the site are limited to the wetland vegetation in the Alhambra Creek channel along the western edge of the project site and non-native vegetation adjacent to the tributary to Alhambra Creek along the eastern edge boundary. No wetland, habitat or vegetation exists on the site. The project includes the reuse of two existing warehouses; the reuse of the buildings will require construction of disabled access ramps, exterior lighting and interior construction. There will be limited construction on the exterior of the building causing little or no impact to the existing parkland and wetland adjacent to the site.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
V.	CULTURAL RESOURCES — Would the project:				
	a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?				X
	b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?				X
	c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
	d) Disturb any human remains, including those interred outside of formal cemeteries?				X

Discussion:

a-d) There are no known cultural resources on the property, recent record searches reported no prehistoric or historical archaeological resources. The buildings were identified as built before 1946. None of the buildings have been identified as eligible for the National Register of Historic Places.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
VI.	GEOLOGY AND SOILS — Would the project:				
	a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
	• Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
	• Strong seismic ground shaking?				X
	• Seismic-related ground failure, including liquefaction?				X
	• Landslides?				X
	b) Result in substantial soil erosion or the loss of topsoil?				X
	c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X	
	d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X	
	e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X

Discussion:

a) The entire San Francisco Bay Area is located in a region of active seismicity. The seismicity of the region is primarily related to the San Andreas Fault system. The San Andreas fault contains several major faults and fault zones including the San Andreas Fault Zone, and the Hayward, Franklin, Calaveras, Concord, Greenville, and Antioch faults. The estimated maximum credible earthquake magnitude for this fault is 6.5.

b) The reuse of two existing warehouse buildings will not result in soil erosion or loss of topsoil since construction is limited to a disabled access ramp for each building that does not require removal of topsoil and will not cause soil erosion.

c-e) The proposed project would be constructed to comply with applicable construction codes and requirements intended to mitigate any adverse impacts resulting from construction on expansive soils, potential ground failure and liquefaction. The project does not anticipate using septic or other alternative wastewater disposal systems.

Greenhouse Gas Emissions:

Would the project:	**Potentially Significant Impact**	**Less Than Significant with Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment	☐	☐	☐	☒
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases	☐	☐	☐	☒

Discussion:

a-b) Gases that trap heat in the atmosphere are referred to as greenhouse gases (GHGs) because they capture heat radiated from the sun as it is reflected back into the atmosphere, much like a greenhouse does. The accumulation of GHGs has been implicated as a driving force for global climate change. Definitions of climate change vary between and across regulatory authorities and the scientific community, but in general can be described as the changing of the earth's climate caused by natural fluctuations and anthropogenic activities, which alter the composition of the global atmosphere.

California State law defines GHGs as Carbon Dioxide, Methane, Nitrous Oxide, Hydrofluorocarbons, Perfluorocarbons, and Sulfur Hexafluoride. The primary contributions to GHG emissions in California are transportation, electric power

production from both State and out of state sources, industry, agriculture and forestry, and other sources, which include commercial and residential activities.

The City of Martinez Climate Action Plan (CAP), adopted in June 2009, presents goals, principles, and strategies for reducing the City's GHG emissions, conserving energy and natural resources, and preparing the community for the expected effects of global warming. The CAP was developed through a public planning process, under direction of the City Council. The CAP addresses GHG emissions within City limits.

The BAAQMD has established a climate protection program to reduce pollutants that contribute to global climate change and affect air quality in the Bay Area. The climate protection program includes measures that promote energy efficiency, reduce Vehicle Miles Traveled (VMT), and develop alternative sources of energy all of which assist in reducing emissions of GHG and in reducing air pollutants that affect the health of residents. The BAAQMD also seeks to support current climate protection programs in the region and to stimulate additional efforts through public education and outreach, technical assistance to local governments and other interested parties, and promotion of collaborative efforts among stakeholders.

The greenhouse gas emission impacts have been evaluated by Donald Ballanti as part of his report entitled Community Risks and Hazards Air Quality Impact Analysis for the Proposed Zocchi Site Development, City of Martinez dated August 2011. The report analyzed the existing conditions and most importantly the existence of the Intermodal Train Facility adjacent to the site. Locomotive emissions were calculated at two locations (at either end of the train loading area). The emissions were calculated on the weekday train schedule and from BAAQMD data from the Shell refinery monitoring site located in Martinez. Data was also compiled for stationary sources. The health risk analysis determined that there was not a significant impact provided the applicant installed air intake systems at the southern side of building located at 330 Ferry Street and as provided as Mitigation Measure 1 in the Air Quality Section of this initial study.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
VII.	HAZARDS AND HAZARDOUS MATERIALS — Would the project:				
	a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
	b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
	c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
	d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
	e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
	f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
	g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
	h) Expose people or structures to a significant risk of loss, injury or death involving wild land fires, including where wild lands are adjacent to urbanized areas or where residences are intermixed with wild lands?				X

Discussion:

a-c) The activities at the site include indoor recreational activities. The project includes the reuse of two warehouse buildings. There will be no creation, emission or transport of hazardous material.

d) The site has been historically used for industrial uses. The proposed project site is not listed on any local, State or Federal databases. The reuse of the buildings will not create a significant hazard to the environment since the buildings are being reused and remodeled to provide a safe use by the public at large.

e-f) The site is not located within the vicinity of a public or private airstrip.

g) The proposed reuse of the buildings for recreation uses will not interfere with the adopted emergency response plan or emergency evacuation plan because the employees and visitors to the site will have an emergency plan in place and access to the site is gained from Ferry Street. There are two land emergency access points are the Bay Trail Bridge to Granger's Wharf Parking lot at the end of Berrellesa Street, and a private road through the Shell Refinery. There are approximately 40 trains per day, with Ferry Street crossed periodically for approximately 1-10 minutes during each trains arrival to the Intermodal. There may be a train blocking the railroad crossing for brief periods; however, the two land access points provide adequate emergency access.

h) The project site is contained within an urban area so the risk of exposure to wildland fires is minimal.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
VIII.	HYDROLOGY AND WATER QUALITY - Would the project:				
	a) Violate any water quality standards or waste discharge requirements?				X
	b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
	c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?				X
	d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?				X
	e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				X
	f) Otherwise substantially degrade water quality?				X
	g) Place a building within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
	h) Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?				X
	i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
	j) Inundation by seiche, tsunami, or mudflow?				X

Discussion:

a,c-f) The warehouses have historically been used for industrial purposes. The reuse of the structures for recreational uses requires an increase in restroom facilities and a greater amount of discharge of wastewater and sewage. The site is within the Central Sanitation District. Central Sanitation is responsible for wastewater treatment. There are no natural watercourses on the project site or its area. The project includes the reuse of the facilities and the only additional impervious surface will be the construction of disabled access ramps. These will be constructed in such a manner to permit access of disabled persons through the front entrance of each building. The additional runoff will be minimal.

Runoff water quality is regulated by the National Pollution Discharge Eliminating System (NPDES) Nonpoint Source Program (established through the Clean Water Act). The NPDES program objective is to control and reduce pollutants to water bodies from nonpoint discharges. The program is administered by the California Regional Water Quality Control Board (RWQCB). The project site would be under the jurisdiction of the San Francisco Bay RWQCB.

The City of Martinez is a participant in the Contra Costa Clean Water Program. The Clean Water Program maintains compliance with the NPDES Storm Water Discharge Permit and promotes storm water pollution prevention within that context. Compliance with the NPDES Permit is mandated by State and Federal statutes and regulations.

Construction activities and post construction land uses could result in degradation of water quality in nearby surface water bodies by reducing the quality of storm water runoff. Implementation of the guidelines provided by the Clean Water program will reduce these impacts to a less than significant level. Project specific conditions of approval to comply with NPDES may be included in the project, subject to Planning Commission approval.

b) This project will not interfere with groundwater supplies or aquifers existing on the site. There are no known users of wells in the area, depending on access to groundwater.

g-h)The property is not located within Zone X. Zone X is defined as areas of 500-year flood; areas of 100-year flood with average depths of less than one foot or with drainage areas less than one square mile; and areas protected by levees from the 100-year flood. Furthermore, recent improvements to Alhambra Creek appear to have been effective in reducing recurrence of downtown flooding.

i) The project does not affect any levee or dam since the site is not located within any dam failure inundation zones.

j) The project is not located on a coastal site where inundation by seiche and tsunami can occur. There are no significant natural watercourses in the area that can cause mudflow.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
IX.	LAND USE AND PLANNING — Would the project:				
	a) Physically divide an established community?				X
	b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
	c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Discussion:
a-b) The project site is located on an approximately 6.3 – acre parcel north of the Union Pacific Railroad tracks and west of Ferry Street, with Alhambra Creek forming the primary westerly boundary. The site is currently developed with two vacant warehouse buildings. Land uses in the vicinity of the project site include the Amtrak Station to the south; and the Martinez Regional Shoreline to the north and east. The park area to the north is a designated wetland, preserved for wildlife habitat, nature education, and observation. The proposed project is located on one site and will not divide an established community.

Planning/Zoning: The site is zoned L-1 (Light Industrial), permitting manufacturing, assembling, compounding, packaging, and processing of a variety of goods. The use is currently not permitted within the light industrial zoning. As part of this project application, the Planning Commission will consider an addition to permitted uses pursuant to the City of Martinez Municipal Code Section 22.34.100. Adding indoor field/court sports facility to permitted uses with the light industrial zoning districts is.

c) There is no habitat conservation or natural community plan for the project site.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
X.	MINERAL RESOURCES — Would the project:				
	a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
	b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X

Discussion:
a-b)The project site does not contain known mineral resources nor is the site delineated in the City's General Plan as a locally-important mineral resource recovery site, and therefore no loss of available mineral resources will occur.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XI.	NOISE — Would the project:				
	a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
	b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?				X
	c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
	d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				X
	e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
	f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

Discussion:

a-d)The project site is currently vacant, Adjacent uses are the Martinez Regional Shoreline Park to the east and north, the Union Pacific railroad tracks to the south, and Alhambra Creek, which separates the site from the residences fronting Berrelessa to the west. Existing sensitive receptors include single family residential to the west and northeast. However, the proposed use involves indoor recreational use; therefore no noise will be generated from the use once the patrons have entered the building. Noise generated from the site will consist of vehicles driving to and from the site and car doors shutting, starting of engines, and voices. None of these sounds will exceed the current background noise of the area. Construction noise will occur when the buildings are being improved, the majority

of which is interior remodeling. Exterior work for installation of lights on the buildings, disabled access ramps, signage, and painting will take place for a short duration and within the permitted construction hours and noise levels pursuant to the City of Martinez Noise Ordinance.

e-f) No impact.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XII.	POPULATION AND HOUSING — Would the project:				
	a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
	b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
	c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Discussion:

a) The proposed reuse of the industrial buildings will have no effect on the location, distribution, density or growth rate of the population of the area, because the project does not include a residential component.

b-c) The proposed project would not affect existing housing nor create a substantial demand for additional housing, because the project is taking place within existing vacant buildings and no housing is removed and therefore no displacement of people will take place.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XIII.	PUBLIC SERVICES —				
	a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
	• Fire protection?			X	
	• Police protection?			X	
	• Schools?				X
	• Parks?				X
	• Other public facilities?				X

Discussion:

a) The project site is served by the Consolidated Fire District of Contra Costa County and the City of Martinez Police Department. Reuse of the vacant industrial buildings for recreational uses will increase the number of calls for service, but the vacant structures are currently an attractive nuisance, occupancy will deter such activities. The location of the buildings to the north of the railroad tracks may limit response time when the Ferry Street crossing is blocked by trains. In order to ensure access to and from the site by emergency personnel, a secondary emergency access has been granted through the Shell Refinery private road to the east of the site. Furthermore, an additional access point is available through the Bay Trail Bridge to Grangers Wharf, at the end of Berrellesa Street. Access to this bridge can be gained by all emergency personnel and select City of Martinez staff. The tracks are not blocked on such a frequent basis since the Intermodal was improved about 10 years ago and the area for loading and unloading of passengers was relocated, allowing for less time in which the trains block the Ferry Street Crossing. The trains block the tracks for approximately 1-10 minutes depending on the length of the train.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XIV.	RECREATION —				
	a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
	b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X

Discussion:

a) The reuse of the vacant industrial buildings will increase available recreation facilities in Martinez and will have no impact on existing recreation facilities.

b) The project includes the reuse of two vacant industrial buildings for recreational uses. Construction will be predominately interior reinforcements and other tenant improvements. The construction will have no adverse impact on the physical environment because construction takes place primarily within the building and will not affect the adjacent environment.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XV.	TRANSPORTATION/TRAFFIC — Would the project:				
	a) Cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?				X
	b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X
	c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
	d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X
	e) Result in inadequate emergency access?				X
	f) Result in inadequate parking capacity?				X
	g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

Discussion:

a-b) The proposed Recreational Facilities project for indoor youth/adult sports would consist of two separate components (buildings) with a shared parking field. The project site would be located just south of Ferry Street north of existing rail lines directly opposite the existing Amtrak Station. Two existing on-site buildings would be refurbished and improved to provide proposed project uses. One building is located on the northwest portion of the site (Norcal Sports) and the other building is located on the southeast quadrant of the site (Universal Sports Academy). A parking field would comprise the southwest portion of the site with vehicle parking also available on either side of the northerly building. In all, a total

of 290 parking spaces would be provided for both facilities and residual demand by Intermodal transportation users.

The proposed Norcal Sports project component would consist of a 30,000 square foot building that would house primarily basketball and volleyball uses. The proposed configuration could provide five (5) basketball courts or six (6) volleyball courts or any combination thereof.

The facility will typically open between 10:00 a.m. and 10:00 p.m. and operate both weekdays and weekends year round. Typically, normal (i.e. more intense use) activities occur Monday through Friday between September and May when schools are in session and weather is inclement. The most intense weekday uses occur between 4:00 p.m. through 7:00 p.m. when both youth and adult activities overlap. Weekend uses are typically reserved for tournament play and/or other non-related sport events. During these time periods, both vehicle trip generation and parking demand are higher due to multiple teams and all-day tournaments. June through August is a slower period (i.e. less intense use) for the facility use due to better weather and schools being out of session.

The proposed Universal Sports Facility project component would consist of a 38,000 square foot building housing primarily soccer, lacrosse, and softball/baseball uses. The proposed configuration would provide a multi-sport court, a multi-sport turf field, and softball/baseball “training tunnels”.

The Universal Sports Academy use profile would be very similar to the proposed Norcal Sports. The facility is typically open between 10:00 a.m. and 11:00 p.m. and operates both weekdays and weekends year round. Typically, normal (i.e. more intense use) activities occur Monday through Friday between September and May when schools are in session and weather is inclement. The most intense weekday uses occur between 4:00 p.m. through 7:00 p.m. when both youth and adult activities overlap. With soccer and softball uses, the facility tends to draw on an age 18 and under demographic. Weekend uses are typically reserved for tournament play and/or other non-related sport events. During these time periods, both vehicle trip generation and parking demand are higher due to multiple teams and all-day tournaments. June through August is slower period (i.e. less intense use) for the facility due to better weather and schools being out of session.

<u>Norcal Sports:</u>

For proposed Norcal Sports project uses, vehicle count and participation activity were taken directly from data gathered at an existing indoor sports facility in Oregon operated by the project applicant. During the most intense weekday use period between 4:00-6:00 p.m., there would be a combination of youth and adult activities. Most youth participants are dropped off/picked-up by their parents, whereas most adults drive in, park, and then leave the facility when activities are over. For this reason, it was assumed that 50% of the participants are dropped-off/picked-up while the other 50% would stay on-site. Typically, there are four teams with 12 players on each team (maximum) participating during this time

period. Assuming conservative auto occupancy of 1.1 persons per vehicle, the proposed Norcal Sports Project is expected to generate 66 PM peak hour trips.

Universal Sports Academy:

For the proposed Universal Sports Academy project uses, vehicle count and participation activity were based on actual PM peak period counts conducted at a similar indoor sports facility offering the same uses (The Burlingamer--soccer and baseball). During the most intense weekday use period between 4:00-6:00 p.m., there are a combination of youth and adult activities. Most youth participants are dropped off/pick-up by their parents, whereas most adults drive in, park, and then leave the facility when activities are over. Between the hours of 10:00 am and 4:00 pm, there were approximately 20-25 youths and 10-15 adults on-site. Based on discussions with Burlingamer staff, during normal weekday PM periods this activity would likely increase by 100%. Therefore, as a conservative estimate counted PM peak hour vehicle trips were increased by a factor of 2.0 to account for normal activity. The proposed Universal Sports Academy is expected to generate 58 PM peak hour trips.

The total expected weekday PM peak hour trip generation for the proposed Recreational Facilities projects were calculated to generate 124 PM peak hour trips (78 in, 66 out).

Overall Impacts:
The proposed reuse of two warehouse buildings to be used as Recreational facilities would not significantly affect traffic flow in the project study area. Based on approved Intermodal Phase 3 Parking Expansion project uses, the net new increase in weekday PM peak hour trips from proposed indoor youth/adult sports facilities would be less than 100 trips (65 PM peak hour trips). Overall peak hour intersection Level of Service (LOS) would remain unchanged from previously analyzed conditions with all intersections operating at acceptable levels (LOS D or better). In addition, the proposed project would not require more detailed transportation analyses required by the Contra Costa Transportation Authority for those projects generating 100 PM peak hour trips or greater. With respect to weekday project parking demand, the proposed project is expected to create a demand for 73 parking spaces between 4:00-6:00 p.m. leaving an overall surplus of 217 spaces. However, weekday peak parking demand would likely peak during the later evening hours (7:00 p.m.) when youth/adult uses overlap. During this time period, peak demand would equal 120 parking spaces for both facilities. This would provide a parking surplus of 170 spaces for other Intermodal uses.

c) There will be no impact on air traffic patterns as a result of the reuse of the industrial buildings for recreational uses.

d) There will be no changes to the roadway design; therefore there will be no significant increase in hazards due to changes in design features.

e) Currently there is only one access point to the site and it is on Ferry Street across the railroad tracks. The access may be blocked when a train crosses the tracks and is

stationary across the roadway. A secondary emergency access has been secured through Shell Refinery's private road to the east of the site. In case of emergency this roadway can be utilized.

f) Parking demand was analyzed by *Omni Means, Engineers and Planners* in the report dated August 2011 entitled Martinez Intermodal Recreational Facilities Parking and Traffic Impact Analysis.

g) The reuse of these buildings for recreational uses will encourage participants to ride bicycles and/or arrive in carpools.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XVI.	UTILITIES AND SERVICE SYSTEMS — Would the project:				
	a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
	b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
	c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
	d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
	e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
	f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
	g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

Discussion:

a-b) The proposed reuse of the vacant warehouses will necessitate an increase in restroom facilities and an increase in wastewater treatment requirements; however, the use of the buildings as recreational facilities will not create a demand that will exceed current carrying capacity, nor will the project result in the need to construct new water or wastewater treatment facilities.

c) The development will be required to provide on-site storm drainage that would be conveyed into the existing system.

d-e)The proposed project is located within the service areas of the wastewater provider (Central Sanitary District) and water supplier (Martinez Water District). As an infill site, the supplies and facilities are sufficient to serve the reuse of this facility.

f) The City of Martinez is currently served by Allied Waste, which handles solid waste and recycling services for the City. All refuse is first taken to the Allied Waste transfer station (unincorporated area of Martinez), and that which is not recycled is taken to the Keller Canyon Landfill in Pittsburg, which has sufficient capacity for the City's wastestream.

g) Solid waste pickup is done in accordance with refuse service provided through the City's franchised hauler Allied Waste Systems.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XVII.	MANDATORY FINDINGS OF SIGNIFICANCE —				
	a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
	b) Does the project have impacts that are individually limited, but cumulatively considerable? (Cumulatively considerable means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)				X
	c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?				X

Discussion:

a-c) The reuse of two vacant industrial buildings as recreational facilities will not substantially degrade the environment, create cumulative impacts or cause substantial adverse effects on human beings, because the buildings are existing and remodeling of the structures will take place primarily within the structure. The proposed use is in keeping with the adjacent recreational uses at the Regional Park, there are no additional buildings proposed or intensification of uses. Sufficient parking is available and existing transportation systems can accommodate the use. Reuse of the buildings will not have an adverse impact on wildlife since the site is fully developed and has been previously used for industrial purposes.

Attachments:

1. Site Plan

Reference Material:

1. Planning Application documents submitted by applicant
2. City of Martinez Municipal Code, Chapter 22, Zoning
3. City of Martinez General Plan
4. Traffic Study, completed by Omni Means, August 2011
5. Air Quality Study completed by Don Ballanti, August 2011

REVISIONS				DESIGNED BY	CITY OF MARTINEZ		CONCEPT B ILLUSTRATIVE SITE PLAN TOTAL PARKING SPACES: +/- 290	MARTINEZ INTERMODAL FACILITY PHASE 3 PARKING LOT EXPANSION	SCALE 1"=40'-0"
NO.	DESCRIPTION	BY	DATE	DRAWN BY	COMMUNITY DEVELOPMENT DEPARTMENT 525 VENETTA STREET MARTINEZ, CALIFORNIA 94553				DATE 10-5-10
				CHECKED BY					SHEET NO. 3 / TOTAL SHEETS 4
				DATE					

MITIGATION MONITORING PLAN

Mitigation Measure	Monitoring Responsibility	Monitoring Schedule	Monitoring Procedure	Date Completed	Initials
I. AESTHICS					
AES-1: All lighting shall be designed to reduce glare and the ligh source shall be "downlit"	City of Martinez Building Department	Prior to Installation types of fixtures and light emissions should be evaluated	Review specifications for compliance with recommendations.		
2. AIR QUALITY					
AIR QUALITY-1: Applicant shall place intakes for air handling system as far as practical from the southern edge of the building located at 330 Ferry street to minimize contamination of the indoor air by railroad emissions.	City of Martinez Building Department	After construction prior to final approval by the building department	Monitor installation and final operation during construction and prior to finalization of building permits		

ATTACHMENT B

RESOLUTION NO. – 11

AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH UNIVERSAL SPORTS ACADEMY FOR USE OF CITY REAL PROPERTY LOCATED AT 330 FERRY STREET

WHEREAS, the City of Martinez used a combination of funding from local, regional, and State transportation agencies to acquire two parcels totaling 6.3 acres and consisting of various buildings and surrounding parking located north of the Intermodal Station in November 2007; and

WHEREAS, the site is commonly known as the "Zocchi property"; and

WHEREAS, the primary purpose of acquiring the Zocchi property was to provide additional Amtrak overflow parking on the site; and

WHEREAS, the City removed several substandard and hazardous metal, Quonset-style structures from the Zocchi property in 2009; and

WHEREAS, two concrete "tilt up" warehouse facilities remain on the site, at 330 and 360 Ferry Street, respectively; and

WHEREAS, the City desires to lease the 330 and 360 Ferry Street facilities for recreational reuse as indoor sports facilities; and

WHEREAS, the City selected Universal Sports Academy ("USA") as the developer for the building located at 330 Ferry Street ("the Premises") and entered into a formal Letter of Intent with USA on June 3, 2011, to begin negotiations for leasing of the Premises; and

WHEREAS, an Initial Study was conducted to evaluate any potential adverse impacts of the recreational reuse of the facilities; and

WHEREAS, the City Planning Commission on October 25, 2011, recommended approval of the Initial Study and adoption of a Mitigated Negative Declaration, and approved within its purview the addition of "indoor field and sports court facilities" to the list of permitted uses within the Light Industrial District on which the subject facilities are located, and found that the proposed use and the leasing of the facilities therefore were consistent with the General Plan; and

WHEREAS, the City Council approved the Initial Study and adopted a Mitigated Negative Declaration by the adoption of separate resolution on even date herewith; and

WHEREAS, the City believes that USA's proposed reuse of the Premises will provide a benefit to the health and welfare of the people of Martinez and its neighboring cities; and

WHEREAS, the City and USA have reached agreement on the terms and conditions of the lease for the Premises, attached hereto as Exhibit B; and

WHEREAS, as a condition of the lease, USA will be required to perform numerous alterations and improvements to the Premises and portions of the parking area adjacent to the Premises at its own expense; and

WHEREAS, the City desires to enter into a Lease Agreement to provide USA use of the Premises.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute a Lease Agreement with Universal Sports Academy upon the mutually agreeable terms, considerations, covenants, and conditions substantially as set forth in the form attached to this resolution, with any non-substantive modifications subject to the review and approval of the City Manager and City Attorney's Office, for use of the City's Real Property located at 330 Ferry Street, conditioned upon finalization of a Partnership Agreement or other binding organizational document for Universal Sports Academy which authorizes said action in a form acceptable to the City Attorney's Office.

* * * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of November, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT B

LEASE

Section 1. Premises
Section 2. Term and Termination
Section 3. Rental Terms
Section 4. Use
Section 5. Alterations
Section 6. Possession
Section 7. Insurance
Section 8. Default
Section 9. Remedies
Section 10. Maintenance and Repairs
Section 11. Estoppel Certificate
Section 12. Severability
Section 13. Assignment or Subletting
Section 14. Entry
Section 15. Signs
Section 16. Holding Over
Section 17. Destruction and Condemnation
Section 18. Indemnity
Section 19. Lessor's Right to Perform For Lessee
Section 20. Notices
Section 21. Attorney Fees
Section 22. Legal Effect
Section 23. Titles
Section 24. Successors
Section 25. Waiver
Section 26. Services and Utilities
Section 27. Entire Agreement
Section 28. Taxes
Section 29. Lessor Subsequent Improvements
Section 30. Time of the Essence
Section 31. Subordination
Section 32. Governing Law
Section 33. Sale of Premises By Lessor
Section 34. Guarantee

****

This Lease (Lease) dated as of the ___ day of _____, 2011 is entered into by and between the City of Martinez, a Municipal Corporation (Lessor) and Universal Sports Academy, a California General Partnership (Lessee).

Recitals

A. WHEREAS, Lessor owns a building consisting of approximately 48,000 square feet located upon that certain real property located at 330 Ferry Street, Martinez, California, commonly known as APN # 373-030-018-7, as more particularly described in Exhibit A, attached hereto and incorporated by reference. Said building is hereafter referred to as the "Premises."

B. WHEREAS, Lessor desires that the Premises be used in a manner that benefits the health and welfare of the people of the City of Martinez and its neighboring cities.

C. WHEREAS, Lessor believes that Lessee's indoor sports business will provide such a benefit to the people of the City of Martinez and its neighboring cities.

D. WHEREAS, Lessee has agreed to bear all costs related to the Alterations (defined herein) and tenant improvements described herein, and the City of Martinez will expend no monies in furtherance of Lessee's use of the Premises.

E. WHEREAS, Lessor and Lessee have negotiated in good faith the terms of the lease as set forth herein and wish to reduce such terms to writing.

Section 1. Premises.

Lessor leases to Lessee and Lessee leases from Lessor the "Premises", together with a non-exclusive right to use up to 50 spaces within the adjacent parking area located primarily to the south, east and west of the Premises (the "Parking Area") as set forth in **Exhibit A,** between the hours of 10:00 a.m. and 11 p.m., Monday through Friday, and 8 a.m. and 11 p.m. on weekends, on a first-come, first-served, space available basis. The Parties hereto acknowledge that no specific number of parking spaces is guaranteed by this Lease and the City reserves the right to allocate parking spaces within the Parking Area for the exclusive use of commuter parking Monday through Friday.

Section 2. Term and Termination.

(a) The term of this Lease is for fifteen (15) years (Term), commencing on the ___ day of ____, 2011 (Commencement Date) and ending on the ____day of ____ 2026, unless sooner terminated as herein provided.

(b) Lessee shall have the right upon written notice to this Lessor, delivered at least thirty (30) days prior to the expiration of the Lease Term or any Renewal Term, to extend the Term of this Lease for five (5) additional one (1) year periods (the Renewal Terms) on the same

terms and conditions as set forth herein, provided that Lessee is not otherwise in default under the Lease.

(c) Notwithstanding the foregoing, this Lease shall be terminable by Lessor (i) immediately upon the occurrence of an Event of Default as provided in Section 8 hereof, (ii) immediately if upon the determination of the Lessor's Chief Building Official that the building located on the Premises does not meet the required Health and Safety Standards of the City or in the event of an emergency, (iii) upon three hundred sixty five (365) days written notice if the Premises and/or Parking Area are needed for City governmental purposes, as determined by the City Council in its reasonable discretion, (iv) immediately, upon a determination by Lessor that such termination is required by state or federal law; (v) upon written notice, as and if required by Caltrans, the Contra Costa County Transportation Authority (CCTA), other State or Federal agency, in order for Lessor to comply with the terms of the grants, loans, or other funds used to purchase the Premises; and (vi) as otherwise expressly provided in this Lease. City governmental purposes include any public uses by the City or other Governmental entity for any purpose but shall not include lease to any other third party private entity.

(d) If this lease is terminated within fifteen (15) years from the date of execution of this Lease for City governmental purposes, as provided in section (c) (iii) above, Lessor shall reimburse Lessee for the unamortized value of all Alterations as required in Exhibit B to be property of the Lessor upon termination hereof, determined on a fifteen (15) year straight line basis from the date of completion of the Alterations. A fifteen (15) year depreciation table shall be prepared by the parties and appended to this Lease within thirty (30) days of completion of the Alterations described in Exhibit B.

Section 3. Rental Terms.

(a) Lessee shall establish a Maintenance Reserve Fund to which Lessee shall annually deposit the sum of Four Percent (4%) of the gross profits of Lessee's operations at the Premises as shown in the Annual Profit and Loss Statement of preceding 12 month period. Said Maintenance Reserve Fund shall be kept in a segregated bank account for the benefit of the Premises, and funds deposited into the Maintenance Reserve Fund by Lessee shall be used only for extraordinary repairs to or major preventative maintenance projects for the Premises as determined by the Lessor, outside of normal and routine maintenance, which, if left unrepaired or uncompleted, would shut down or otherwise require modification to the Premises and/or cause material damage to fixtures or equipment. Lessee shall provide to Lessor within 45 days following one year after the commencement date hereof and annually thereafter, a copy of Lessee's Financial Statements, including, but not limited to a Profit and Loss Statement and Balance Sheet and copies of all Bank Statements for the Maintenance Reserve Fund. Lessee shall continue to maintain the Maintenance Reserve Fund during the entire Term of this Lease. Lessee shall not at any time use any funds deposited into the Maintenance Reserve Fund for operational, routine maintenance or any other purpose without the express written consent of Lessor, which consent may be withheld for any reason or no reason whatsoever. Lessor, in the sole discretion of the City Manager, or his/her designee, may require a financial audit of Lessee once every three (3) years at the sole expense of Lessee. At the expiration or earlier termination

of this Lease, the funds in the Maintenance Reserve Fund, less any amounts necessary to complete any project previously requested by Lessee and authorized by Lessee and Lessor, shall be released to Lessee.

(b) On or before the Commencement Date, Lessee shall pay to Lessor a Security Deposit in the amount of ten thousand dollars ($10,000.00). Said Security Deposit shall be held in a separate fund by Lessor. Said Security Deposit shall not bear interest in favor of Lessee. Said Security Deposit shall be replenished in full by Lessee within thirty (30) days of any drawdown of the Security Deposit by Lessor due to Lessee's failure to perform any obligation for which an expenditure is required pursuant to Section 19 herein. Said Security Deposit shall be returned to Lessee upon the expiration or termination of Lease, less any amounts due to Lessor at that time.

(c) Lessee shall offer discounts of no less than ten percent (10%) for Martinez-based sports teams, leagues and/or Martinez residents to encourage local participation in the use of the Premises.

Section 4. Use.

The Premises are to be used for the operation of an indoor field sports facility, consisting of baseball, softball, soccer, lacrosse, rugby, kickball, bocce ball, Ultimate Frisbee, youth and adult flag football, fitness and training, or any combination thereof, to be used for practices, training, games and tournaments, incidental accessory office and snack bar use to support said field sports activities (Permitted Use), and no part of the Premises shall be used for any different purpose at any time except as may be permitted by the issuance of a temporary use permit by the City for events from time to time. The Parking Area is to be used for Parking for the customers and employees of the business to be located on the Premises during the Operating Hours as described herein and for no other purpose at any time. Operating Hours shall be defined as 10:00 a.m. to 11:00 p.m. Monday through Friday, and 8 a.m. to 11 p.m. on weekends, or as expressly permitted by advance written permission of Lessor. Lessee shall not do or permit any act to be done that will increase the existing rate or cause cancellation of insurance on the Premises. Lessee shall not use the Premises or the Parking Area or permit anything to be done in or about the Premises or Parking Area which will in any way conflict with any statutes, law, ordinances, regulations and rules now in force or which may hereafter be promulgated. Lessee shall at its sole cost and expense promptly comply with all statutes, law, ordinances, regulations and rules and other requirements of all governmental entities that pertain to the occupancy or use of the Premises and Parking Area, and shall at all time maintain the Premises and Parking Area in a good order with all due care for the safety and cleanliness of the Premises. Lessee shall not use the Premises for the conduct of the Permitted Use or any other occupation of the Premises or the Parking Area until completion of the Preliminary Alterations set forth in Exhibit B have been completed and a certificate of occupancy has been issued by Lessor.

Section 5. Alterations.

(a) Lessor and Lessee agree that the alterations described on **Exhibit B** and **Exhibit C**, attached hereto and incorporated herein by reference, shall be completed at the expense of the Lessee. Lessee shall not make or suffer to be made any alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, without the prior written consent of Lessor, which consent may not be unreasonably withheld. Any alteration to the Premises or Parking Area without the prior written consent of Lessor shall be a breach of this Lease and, at the option of Lessor, shall cause a termination of this Lease. Lessee shall keep the Premises, Parking Area and any improvements located thereon free and clear from any and all liens and claims arising out of any work performed, materials furnished or obligations incurred by or for the account of Lessee.

(b) All alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, shall be at the sole cost and expense of Lessee, including all design, construction, engineering, permitting, inspection and other costs and fees associated therewith. Unless Lessor shall indicate in writing at any time during the term of this Lease and except as set forth in **Exhibit C** hereof, any alterations, additions or improvement made or suffered to be made by Lessee with respect to the Premises or Parking Area shall on the termination of the Lease become a part of the Premises and the property of Lessor. Upon notice to Lessee, Lessee shall at its sole cost and expense forthwith and with all due diligence remove any alterations, additions or improvements made by or on behalf of Lessee which improvements were not approved by Lessor in accordance with section 5(a) above. Upon removal of any alterations, addition, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area removed by Lessee pursuant to the terms hereof, Lessee shall forthwith and with all due diligence at its sole cost and expense repair any damage to the Premises or Parking Area caused by such removal and restore the Premises to a broom clean and tenant ready condition.

(c) Any and all work to be performed by or through Lessee relating to the Premises or Parking Area shall be performed in a good and workmanlike manner and in accordance with the applicable laws and regulations and the industry standard of customs and care applicable to such work. Lessor shall have no responsibility for any work performed by Lessee under this Agreement. Lessee shall defend, indemnify, and hold harmless Lessor as set forth in Section 18 hereof for any liability or claims made in connection with such work.

(i) Before any work of construction, alteration, or repair is commenced on the Premises or the Parking Area, and before any building materials have been delivered to the Premises or Parking Area by Lessee or under Lessee's authority, Lessee shall comply with all the following conditions:

(1) Notify Lessor of Lessee's intention to commence a work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements.

Lessor shall have the right to post and maintain on the Premises any notices of nonresponsibility provided for under applicable law.

(2) Furnish Lessor with a true copy of Lessee's contract with the general contractor. The contract shall give Lessor the right but not the obligation to assume Lessee's obligations and rights under that contract if Lessee should default.

(3) Furnish Lessor payment and performance bonds naming Lessor as beneficiary. Said bonds shall be issued by a responsible surety company, licensed to do business in California, and approved by Lessor, and shall be in an amount not less than 100% of the estimated cost of the improvement and shall remain in effect until the entire cost of the work shall have been paid in full and the new improvements shall have been insured as provided in this Lease.

(4) Furnish Lessor with a project budget that includes all cost estimates for work to be performed on the Premises or Parking Area.

(5) Deliver to Lessor certificates and endorsements of insurance as set forth below with insurers with a Best rating of no less than A:XI:

a. Workers' Compensation Insurance to cover the employees of contractor and all subcontractors as required by the Labor Code of the State of California for all of the contractor/subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to Lessor.

Said Worker's Compensation policy shall have the following endorsement:

"All rights of subrogation are hereby waived against the City of Martinez, its officers and employees when acting within the scope of their appointment or employment."

b. Commercial General Liability Insurance including personal injury and property damage insurance for all activities of the Lessee, the contractor and subcontractors arising out of or in connection with the Premises, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, products liability and completed operations, X,C,U hazards, vehicle coverage and non- owned auto liability coverage in an amount no less than $2 million dollars combined single limit personal injury and property damage for each occurrence.

Each such policy shall be endorsed with the following specific language:

(1) The City of Martinez is named as additional insured for all liability arising out of the work performed by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, in the performance of the contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided is primary and no insurance held or owned by the City shall be called upon to contribute to a loss.

(4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the City.

c. Any deductible or self-insured retentions must be declared to and approved in writing by City. At the option of City, insurer shall reduce or eliminate such deductible or self-insured retention as respects City, its officers and employees or Lessee and contractor shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

d. Certificates of insurance evidencing coverage for "builder's all risk,"

e. Lessee shall maintain, keep in force, and pay all premiums required to maintain and keep in force all insurance above at all times during which such work is in progress.

(6) The provision to the Lessor of all necessary permits from all governmental agencies having jurisdiction over the work of improvement, including but not limited to, the City, Contra Costa County Fire District, Contra Costa County Environmental Health, and Central Contra Costa Sanitary District..

(d) Within 180 days after the date that Lessee takes possession of the Premises, Lessee shall complete construction of the Alterations set forth in **Exhibit B.** Failure, regardless of cause, to complete construction within said 180 day period shall, at Lessor's election exercised by notice, terminate this Lease. Completion of said Alterations shall be in compliance with any and all approval standards of Lessor as may be submitted in writing to Lessee as part of Lessor's approval of said work and shall generally be in compliance with the City Planning Design Standards set forth in **Exhibit E**.

(e) In consideration of the favorable rental terms established in Section 3, Lessee has agreed to perform certain improvements and alterations to the Premises and Parking Area all as set forth in Exhibit B hereof, said works of improvement are therefore considered a Public Work pursuant to California Labor Code, Division 2, Part 7, Chapter 1 and therefore subject to the payment of prevailing wage to all workers engaged to perform said work. Lessee shall be separately responsible for any and all additional tenant improvements proposed to be performed and funded by Lessee. Lessee shall be solely responsible for any and all liability arising from any claims regarding the payment of prevailing wage for any and all work performed on the Premises or the Parking Area and shall defend, indemnify, and hold harmless Lessor from any claims, actions, or proceedings as set forth in Section 18 hereof.

Section 6. Possession.

Lessee acknowledges that the Premises are currently utilized on a month-to month basis by various other parties. Delivery of Possession of the Premises to Lessee will occur following the delivery of a thirty day notice to all existing users of the Premises that the month-to month tenancies currently in effect are terminated. Any delay in delivery of possession of the Premises to the Lessee shall postpone the commencement of rent accordingly, but shall not otherwise affect this Lease.

Section 7. Insurance.

Lessee agrees to and shall at its own cost and expense procure and maintain during the entire Lease Term and any extension thereof the following insurance which Lessee shall obtain at its own cost and expense:

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Premises and Parking Area or the general aggregate limit shall be twice the required occurrence limit.

2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **$1,000,000** per accident for bodily injury or disease.

3. **Property insurance** against all risks of loss to any tenant improvements or betterments to the Premises and Parking Area, and any tenant contents, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains higher limits than the minimums shown above, Lessor shall be entitled to coverage for the higher limits maintained.

All such insurance coverages are to contain, or be endorsed to contain, the following provisions:

1. For Commercial General Liability, Lessor, its officers, officials, employees, and volunteers are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of the Premises and Parking Area.
2. The Lessee's insurance coverage shall be **primary insurance** as respects the Lessor, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against Lessor.
4. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the Entity.
5. The Property insurance shall **name the Lessor as Loss Payee** as its interests may appear.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by Lessor, in writing.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by Lessor, in writing. At the option of Lessor, either: the Lessee shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects the Lessor, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Lessor guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Verification of Coverage

Lessee shall furnish the Lessor with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Lessor before the Commencement Date. However, failure to obtain the required documents prior to the Commencement Date shall not waive the Lessee's obligation to provide them. The Lessor

reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Waiver of Subrogation

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

Lessor reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances relating to additional activities which Lessee may wish to undertake at the Premises.

Lessee shall release, defend and indemnify Lessor its officials, employees, representatives and agents, from any claims for damage to any person or to the Premises, Parking Area, or to the Lessee's personal property contained therein caused by, or that result from, risks insured against under any insurance policies carried by Lessor and in force at the time of any such damage. Lessor shall not be liable to Lessee for any damage caused or any of the risks insured against under any insurance policy required by Section 7.

Section 8. Default.

Each of the following shall be an Event of Default under this Lease:

(a) If Lessee fails to make any payment required by the provisions of this Lease, when due;

(b) If Lessee fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Lease;

(c) If Lessee vacates, abandons, or surrenders the Premises prior to the end of the Term; and

(d) If all or substantially all of Lessee's assets are placed in the hands of a receiver or trustee, and that receivership or trusteeship continues for a period of thirty (30) days, or if Lessee makes an assignment for the benefit of creditors or is adjudicated a bankrupt, or if Lessee institutes any proceedings under any state or federal bankruptcy act by which Lessee seeks to be adjudicated a bankrupt or seeks to be discharged of debts, or if any voluntary proceeding is filed against Lessee under any bankruptcy laws, and Lessee consents or acquiesces by pleading or default.

Section 9. Remedies.

Upon the occurrence of an Event of Default under this Lease by Lessee, Lessor is entitled at Lessor's option to the following:

(a) to reenter and take exclusive possession of the Premises and the Parking Area;

(b) to collect immediately the present value of the unpaid rent reserved for the entire term, or to collect each installment of rent as it becomes due;

(c) to continue this Lease in force or to terminate it at any time;

(d) to relet the Premises and Parking Area for any period on Lessee's account and at Lessee's expense, including real estate commissions actually paid, and to apply the proceeds received during the balance of Term to Lessee's continuing obligations under this Lease;

(e) to take custody of all personal property on the Premises and Parking Area and to dispose of the personal property and to apply the proceeds from any sale of that property to Lessee's obligations under this Lease;

(f) to recover from Lessee the damages described in Civil Code § 1951.2(a)(1), 1951.2(a)(2), 1951.2(a)(3), and 1951.2(a)(4), the provisions of which are expressly made a part of this Lease;

(g) to restore the Premises and Parking Area to the same condition as received by Lessee, or to alter the Premises and/or Parking Area to make them suitable for re-letting, all at Lessee's expense; and

(h) to enforce by suit or otherwise all obligations of Lessee under this Lease and to recover from Lessee all remedies now or later allowed by law.

Any act that Lessor is entitled to do in exercise of Lessor's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Lessor in Lessor's sole discretion, and Lessee irrevocably authorizes Lessor to act in all things done on Lessee's account.

Section 10. Maintenance and Repairs.

Lessee acknowledges and accepts the Premises and Parking Area in their “as is” condition as of the Commencement Date and agrees and acknowledges that Lessor makes no representations or warranties, either express or implied, as to the condition of the Premises or Parking Area, the absence or presence of Hazardous Materials, located thereon, or the fitness of the Premises or the Parking Area for any particular purpose. Lessor shall not be responsible for the condition or repair of the Premises, except for maintenance, repairs and services to be furnished by Lessor, as designated in **Exhibit D,** attached hereto and incorporated herein by reference. Lessee agrees to maintain the Premises, and all portions thereof, in good and safe

condition, including, but not limited to, all plumbing and drainage, drain, waste and vent piping inside the building on the Premises; all weather protection, including but not limited to all roofing and any leaks associated therewith; all electrical wiring inside the building on the Premises, all heating, ventilation and air conditioning systems, including all appliances and venting therefore; all fixtures on the interior of the building on the Premises, including plumbing and bathroom fixtures; all interior surfaces of walls, windows, plate glass, doors, and ceilings; Lessee's required permanent access ramps, ADA parking, parking stalls, and any Lessee-constructed sidewalks or pathways; and all other items of maintenance not specifically assumed by Lessor pursuant to the terms of this Lease and as set forth in Exhibit D. Lessee promises to surrender the Premises at termination of this Lease in at least the same condition as after completion of the Alterations described in **Exhibit B**, except for normal wear and tear and except for changes authorized by Lessor and not required to be removed pursuant to the terms of this Lease. Lessee agrees to make no repairs at the expense of Lessor. Lessor shall charge and Lessee shall pay all of the City of Martinez's usual and customary fees for any licenses or permits required in connection with such maintenance and repair work.

Lessor and Lessee agree that the maintenance, repairs and services to be furnished by the Lessor are solely as designated in **Exhibit D** and that Lessor shall have no other responsibility whatsoever for the maintenance and repair of the Premises or the Parking Area. All responsibility for maintenance and repair of the Premises or Parking Area not specifically designated as the responsibility of the Lessor in accordance with **Exhibit D** shall be the responsibility of Lessee. Lessee specifically waives the right to make any repairs or cause to be made any repairs or maintenance at Lessor's expense under any law, statute or ordinance now or hereafter in effect.

Lessee shall not cause, maintain or permit any nuisance in, on or about the Premises or Parking Area or commit or suffer to be committed any waste in or upon the Premises or Parking Area. Lessee shall not permit garbage or other refuse to accumulate or to gather in or about the Premises or Parking Area except in suitable covered garbage receptacles. All parts, equipment, garbage, refuse and other debris shall be stored or discarded in such a manner so as not to be visible by persons located off the Premises.

Section 11. Estoppel Certificate.

At any time within ten (10) days after request by Lessor, Lessee shall execute, acknowledge, and deliver to Lessor, without charge, a written statement certifying that this Lease is unmodified and in full force, or if there have been modifications, that it is in full force as modified. The statement shall also contain the date of commencement of this Lease, the dates to which the rent and any other charges have been paid in advance, and any other information Lessor reasonably requests. It is acknowledged by Lessee that any statement is intended to be delivered by Lessor to and relied upon by prospective purchasers, mortgagees, deed of trust beneficiaries, and assignees.

Section 12. Severability.

The invalidity of any portion of this Lease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

Section 13. Assignment or Subletting.

(a) Lessee shall not assign the Lease or any interest hereunder, and shall not sublet the Premises, Parking Area or any part thereof, or any right or privilege appurtenant thereto, or suffer any person other than the agents and employees of Lessee to occupy the Parking Area, Premises, or any portion thereof without the prior written consent of the Lessor, which consent may be withheld for any reason or no reason whatsoever, it being expressly understood that the Rent to be paid hereunder is not a market rate Rent and that said Rent is expressly to compensate Lessee for the Alterations and improvements set forth in **Exhibit B**. Lessee shall notify Lessor in writing of its intent to sublease any portion of the Premises and/or Parking Area and Lessor shall have thirty (30) working days to grant or withhold its consent to such sublease. In the event that Lessor has not, on or before the thirty first day after Lessor's receipt of the notice of intent to sublease, provided to Lessee written notice of its consent, such consent to sublease shall be presumed to be denied. Notwithstanding the preceding sentence, no consent to assignment of this lease, or any portion hereof, shall be presumed. Lessor shall have the right to review and approve any sublease or assignment document relating to the Premises, Parking Area or any portion thereof and no notice of intent to sublease shall be considered delivered to Lessor in accordance with this paragraph unless said notice contains a full and complete copy of any sublease document. Lessee will reimburse Lessor for any legal fees or for any other expense incurred as a consequence of any such assignment. The consent of Lessor to one assignment, subletting or occupation by another person or entity shall not be deemed to be a consent by Lessor to any subsequent assignment, subletting or occupation by another person or entity. Any such assignment or subletting without such consent shall be void and shall, at the option of Lessor, be deemed to be an Event of Default under the provisions of this Lease. Notwithstanding any provision hereof to the contrary, neither this Lease nor any interest herein shall be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of Lessor. Lessor consent pursuant to this paragraph shall not be required for Lessee to enter into temporary use agreements with Lessee's customer clientele (group or individual) end users of the Lessee's facilities located in the Premises.

(b) Without limiting the instances in which Lessor may withhold consent to an assignment or subletting, Lessor and Lessee acknowledge that Lessor may in its absolute discretion withhold consent in the following instances:

(i) if at the time consent is requested or at any time prior to the granting of consent, an Event of Default has occurred under this Lease;

(ii) if, in the Lessor's sole and absolute discretion, the use of the Premises or Parking Area by the proposed assignee or sublessee would not be

compatible with or comparable to the uses by Lessee as set forth herein or would entail alterations that would materially lessen the value of the leasehold improvements in the Premises;

(iii) if, in Lessor's sole and absolute discretion, it determines that circumstances warrant a consideration of the financial worth of a proposed assignee and the financial worth, in Lessor's sole and absolute discretion, does not meet the credit standards applied by Lessor for other Lessees under leases with comparable terms;

(iv) if, in Lessor's sole and absolute discretion, it determines that under the circumstances of the proposed assignment or sublease, Lessee will be unjustly enriched by the financial terms of the sublease in a manner to the detriment of Lessor in light of the below market rate Rent set forth herein.

(c) Irrespective of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. In the event of default by an assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against such assignee or successor.

Section 14. Entry.

Lessor reserves the right, upon the delivery of reasonable notice, to enter the Premises and/or Parking Area at reasonable times to carry out any building management or business purpose in or about the building, without any abatement of rent. The requirement to provide notice as specified herein shall not be interpreted or construed in any way to limit any right of entry or inspection that Lessor may have in its capacity as a local governmental entity.

Section 15. Signs.

Lessee shall not place or permit to be placed in, upon, about, or outside the Premises or Parking Area any sign, notice, drapes, shutters, blinds, or display of any kind, without the prior written consent of Lessor.

Section 16. Holding Over.

This Lease shall terminate without further notice at the expiration of the Term. Any holding over shall not constitute a renewal or extension. If Lessee remains in possession of the Parking Area, the Premises or any part thereof after the termination of the term of this Lease with the express written consent of the Lessor: (1) such occupancy shall be deemed a tenancy from month-to-month with rent payable at the rate of Two Dollars and Fifty Cents ($2.50) per month per square foot of gross floor area of the building located on the Premises, plus all other charges

payable hereunder, and upon all the terms applicable hereof and (2) Lessee shall defend, hold harmless and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation, claims made by any succeeding lessee founded on or resulting from Lessee's surrender.

Section 17. Destruction and Condemnation.

(a) If the Premises and/or Parking Area are damaged to an extent that cannot be lawfully repaired within sixty (60) days after the date of damage, this Lease may be terminated by written notice of either party. If the Premises and/or Parking Area can be repaired within the sixty (60) day period, or if this Lease is not terminated in accordance with this provision, Lessor shall proceed with repairs as necessary, subject to a proportionate reduction in the rent, based on the extent to which the damage and repairs shall interfere with the business of Lessee on the Premises. In case of damage to one-third (1/3) or more of the building on the Premises, Lessor may elect to terminate this Lease, regardless of whether the Premises may be repaired within said sixty (60) day period. Lessee waives the benefits of Civil Code §§ 1932(2) and 1933(4).

(b) If all or any portion of the Premises are condemned or are transferred in lieu of condemnation, Lessor or Lessee may, upon written notice given within sixty (60) days after the taking or transfer, terminate this Lease. Lessee shall not be entitled to share in any portion of the award, and Lessee expressly waives any right or claim to any part of the award. Lessee shall, however, have the right to claim and recover, from the condemning authority only, but not from Lessor, any amounts necessary to reimburse Lessee for the cost of removing the personal property of Lessee.

Section 18. Indemnity.

(a) Lessee shall indemnify, defend and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises and/or the Parking Area or from any activity, work, or other thing done, permitted or suffered by the Lessee in or about the Premises and/or the Parking Area and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of the Lessee, or any officer, agent, employee, contractor, guest, or invitee of Lessee, and from and against all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, any action or proceeding brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. Lessor or its agents shall not be liable for any damage to property entrusted to Lessee's employees, nor for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from Lessee's use of the Premises and/or the Parking Area.

(b) Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises and/or the Parking Area in violation of any law or regulation and Lessee shall indemnify and hold harmless Lessor, its officers, agents and

employees from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) arising from or as a result of a breach of this warranty and representation or as a result of the, disposal, storage, generation or release on the Premises and/or Parking Area at any time during the term of this Lease of any Hazardous Materials, except to the extent caused by the gross negligence or willful misconduct of Lessor or any Lessor indemnitee regardless of whether such liability, cost or expense arises during or after the Lease Term. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises and/or the Parking Area due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby to the satisfaction of Lessor and any governmental body having jurisdiction thereover.

(c) Lessor shall indemnify, hold harmless, and defend Lessee from and against all losses, liabilities, claims, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by Lessee as a result of the presence, disposal, storage, generation or release on the Premises and/or the Parking Area at any time prior to Lessee's possession of the Premises of any Hazardous Materials, except to the extent caused by the gross negligence or wilful misconduct of Lessee or any officer, agent, employee, contractor, guest, or invitee of Lessee regardless of whether such liability, cost or expense arises during or after the Lease Term.

As used in this paragraph, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous material, hazardous substance, hazardous waste or toxic substance in any federal, state or local law or regulation. Lessee acknowledges that Lessee is not looking to or relying upon Lessor to disclose any matters which Lessor might be required to disclose under California Health and Safety Code Section 25359.7 and that all such matters have been investigated by Lessee to Lessee's satisfaction. In this regard, Lessee specifically waives any and all rights it may have pursuant to the provisions of California Health and Safety Code Section 25359.7.

(d) The indemnifications provided pursuant to this Section 18 shall survive the termination of this Lease.

Section 19. Lessor's Right to Perform for Lessee.

If Lessee fails to perform any obligation under this Lease, Lessor shall be entitled to make reasonable expenditures to cause proper performance on Lessee's behalf and at Lessee's expense, against which the Security Deposit will be charged. Lessee promises to reimburse Lessor for any expenditures not fully satisfied by the Security Deposit within ten (10) days after written notice from Lessor requesting reimbursement, and failure of Lessee to make the reimbursement shall be deemed to be a default the same as a failure to pay an installment of rent when due. All obligations of Lessee to pay money are payable without abatement, deduction, or offset of any kind.

Section 20. Notices.

All notices, payments, or other communications by either party to the other under this Lease shall be deemed to have been given on the date of service if served personally or on the second business day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Lessor: City of Martinez
525 Henrietta Street
Martinez, CA 94553
ATTN: City Manager

To Lessee: Universal Sports Academy
_____
_____

Either party may change its address by providing written notice to the other as provided herein.

Section 21. Attorney Fees.

In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and all other costs incurred.

Section 22. Legal Effect.

All obligations of Lessee are expressly made conditions of this Lease, any breach of which shall, at the option of Lessor, terminate this Lease. The parties agree that nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the Parties. Lessee shall at no time represent itself as an agent, employee, or representative of Lessor.

Section 23. Titles.

The titles or headings to paragraphs shall have no effect on interpretation of provisions.

Section 24. Successors.

The provisions of this Lease shall apply to and bind the heirs, successors, and assigns of the parties.

Section 25. Waiver.

Any waiver given hereunder by Lessor must be in writing and shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition herein waived. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, irrespective of Lessor's knowledge of such preceding breach at the time of the acceptance of such rent. The failure of Lessor to enforce a provision of this Lease shall not be deemed a waiver for any purpose.

Section 26. Services and Utilities.

Lessee shall provide gas, electricity, heating, water, telephone, cable, garbage and janitorial services to the Premises at Lessee's sole cost and expense. Lessor shall not be liable for, and Lessee not be entitled to any reduction of rent by reason of the unavailability of any utility service to the Premises.

Section 27. Entire Agreement.

This Lease, together with each attached exhibits, shall constitute the entire agreement of the parties, and may be modified only by a writing signed by the parties.

Section 28. Taxes.

Lessee shall pay all personal property taxes assessed against the Lessee's property located on the Premises. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 that the interest granted to Lessee pursuant to this Lease to occupy the Premises and Parking Area may create a possessory interest in Lessee subject to property taxation and Lessee may be subject to the payment of property taxes levied on such interest.

Section 29. Parking Area and Subsequent Improvements

(a) Lessee acknowledges that the primary use of the Parking Area is for parking of vehicles associated with the Intermodal Facility owned by Lessor and located at 601 Marina Vista Avenue, Martinez, California. Lessee shall take no action at any time that will interfere or otherwise preclude Lessor's use of the Parking Area for said transportation purposes and in this regard Lessee understands and acknowledges that said transportation use of the Parking Area shall be superior at all times to the non- exclusive use by Lessee of the Parking Area. Lessee further expressly understands that Lessor may take action which will, from time to time and at any time or duration during the Term of this Lease, temporarily or permanently preclude use of the Parking Area by Lessee. Lessor will make reasonable efforts to notify Lessee in advance of any activity of Lessor's which Lessor anticipates will temporarily or permanently preclude use of the Parking Area by Lessee. Said notice to Lessee shall occur no less than thirty (30) days prior to the interruption of use, except in emergency circumstances or where shorter notice is consented to by Lessee.

(b) Lessee acknowledges and understands that Lessor will, at an undetermined future time, be improving the Parking Area by reconstructing, repaving, striping or any and all other improvements deemed necessary by Lessor in its sole and absolute discretion. Lessor will make reasonable efforts to notify Lessee of the Lessor's impending construction schedule, which shall in no event be less than thirty (30) days prior to the commencement of construction unless shorter notice is consented to by Lessee. Lessor will make reasonable efforts to minimize the impact to the Lessee during said future construction, to the extent practically and economically feasible as determined by Lessor in its sole and absolute discretion. Lessee understands and acknowledges that Lessee's use of the Parking Area may be impaired, substantially or completely eliminated during construction and that such impairment or elimination may require Lessee to cease operation of the Permitted Use at the Premises for the period of time necessary to undertake said improvements to the Parking Area.

(c) In connection with the interruption of Lessee Use of the Parking Area or Premises as set forth in (a) and/or (b) above, Lessee hereby releases and discharges Lessor from each and every claim, demand, action, cause of action, damage, cost, expense, attorney's fee, obligation and liability of whatever kind or nature, in law or equity, arising or to arise in favor of the undersigned, whether known or unknown, including, but not limited to, claims for damages to property, loss of business or services, or special damage of any character, by reason of or growing out of said action of Lessor. It is expressly understood and agreed that this release is expressly intended to cover and include all claims, several or otherwise, past, present or future, known or unknown, which can or may ever be asserted by Lessee, its successors and assigns as the result of said action on the part of Lessor and that this paragraph constitutes a full and final release of any claims relating thereto of every kind or nature, past, present or future, known or unknown, suspected or unsuspected, and all claims or rights pursuant to Section 1542 of the Civil Code of the State of California are hereby expressly waived. Lessee understands that said Section 1542 provides:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

In this regard, Lessee expressly understands and agree that it is possible that other or unanticipated injuries or consequences resulting from the herein described and referred to matters and events which are not now known, will occur or be discovered by the undersigned and the undersigned agree and understand that this paragraph constitutes a full and final release of any such claims and is intended to cover and does cover and include all such future damages and/or injuries or their effects, consequences or results, including all causes of action therefor. Lessee has taken these possibilities into account in determining to enter into this Lease and acknowledges that the risk of such loss is included in the reduction of Rent to by paid by Lessee as set forth herein.

Section 30. Time of the Essence.

Time is of the essence in the performance of Lessee's obligations under this Lease.

Section 31. Subordination.

This Lease, at Lessor's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions; provided, however, that as to the lien of any deed of trust or mortgage, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee pays the rent and observes and performs all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground Lessor elects to have this Lease prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Lessee, this Lease shall be deemed prior to that mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of that mortgage, deed of trust, or ground lease or the date of recording.

Section 32. Governing Law.

This Lease shall be governed by and construed in accordance with California law. Venue shall be in the County of Contra Costa.

Section 33. Sale of Premises By Lessor.

In the event of any sale of the Premises, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties and their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Lessor under this Lease. In the event of sale of the Premises to any non-governmental entity, the provisions of Section 2, (c) (iii) and (d) shall be of no further force and effect.

Section 34. Guarantee.

By execution hereof, the undersigned principals of Lessee hereby absolutely and unconditionally, jointly and severally, personally guarantee to Lessor the full, faithful, and timely performance by Lessee of this Lease, and any extension, renewals or modifications thereof. If Lessee shall default at any time in the performance of any covenant or obligation under this Lese, then the undersigned Guarantors, at Guarantors expense, shall on demand by Lessor fully and promptly perform all covenants and obligations to be performed by Lessee pursuant to this Lease.

The parties have executed this Lease on the date first written above.

Lessee:

Universal Sports Academy,
a California General Partnership

Attest:

By:_____

_____

Lessor:

City of Martinez, a Municipal Corporation

Attest:

By: _____
Philip Vince, City Manager

_____
City Clerk

EXHIBIT A
Project Area (to be inserted)

EXHIBIT B
Alterations to be completed by Lessee (Universal Sports Academy)

Lessee Alterations:

Lessee will, at Lessee's sole cost and expense, complete the following Alterations in accordance with all applicable City standards, including but not limited to City Planning Design Standards, City Engineering Standards, and City Building Standards, within 180 days of possession per Lease Section 5 (c), except as otherwise provided:

Structural Reinforcements:
Structural reinforcements to the Premises in conformance with International Building Code (IBC) and/or California Building Code (CBC) regulations. All work is subject to the review and approval of the Lessor's Chief Building Official.

ADA Parking/Accessibility Improvements:
Lessee will install all improvements upon and in the Premises and Parking Area necessary to comply with the accessibility requirements of state and federal law, including, but not necessarily limited to, installation of permanent handicapped accessible parking spaces, access ramps and paths of travel from the Parking Area to the Premises.

Windows:
Lessee will replace all broken glass and repair all exterior windows to render them operational and weather tight, if applicable.

Drainage:
Lessee will modify downspouts to divert water away from foundation of the Premises. Lessee will establish earth clearance between siding of structure and adjacent grade, where applicable.

Exterior Access:
Lessee will modify the entrance to the Premises to provide disabled accessibility.

Lessee will construct sidewalks or other pathways, subject to Lessor review and approval, to create a clear and continuous pathway from the Parking Area to the Premises as required to be in compliance with accessibility/ADA standards.

Exterior:
Lessee will repair or replace exterior to render the structure weather tight as deemed necessary by Lessor.

Lessee will do all structural modifications to the exterior of the building, including installation/construction of entryways/reception areas and doors, as required in the City Planning Design Standards, attached hereto as Exhibit E and incorporated herein by reference.

Lessee will paint the Premises within four years of the Commencement Date.

Lessee will install exterior safety/security light fixtures in an amount to be determined by Lessor at the exterior of the Premises and at locations to be determined by Lessor.

Trash Enclosure:
When required by Lessor, Lessee will provide a trash enclosure to accommodate three (3) fifty (50) gallon trash cans, or in a sufficient capacity as needed to accommodate the demand. Trash enclosure will be subject to all County Health and National Pollution Discharge Elimination System/Clean Water Act regulations, which may require a covered enclosure.

Parking Area:
Lessee will stripe the Parking Area located adjacent to the Premises to delineate parking spaces as determined appropriate by Lessor in its sole and absolute discretion.

Plumbing & Electrical:
Lessee will inspect and make any and all necessary repairs and or replacements/upgrades to the plumbing and electrical systems of the Premises from the location of the meters to and throughout the interior of the structure.

Structure Interior:
Lessee will repair or replace all damaged or deteriorated interior dry wall and paneling.

Lessee will be responsible for any painting of the interior of the structure.

Lessee will replace floor covering throughout, including the replacement of underlayment where necessary, not including turf and sport court flooring as set forth in Exhibit C.

Lessee will replace floor covering and plumbing fixtures in the bathrooms, including the replacement of underlayment and pipe where necessary.

Lessee will build out a minimum of two ADA compliant restrooms.

EXHIBIT C
Alterations to be Property of Lessee on Termination

The following alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, shall remain the property of Lessee upon termination of this Lease (excepting Termination for Default) and may be removed by Lessee at its sole cost and expense.

All turf and sport court flooring
Netting and all frames and hardware
Pitching machines and associated equipment
Bats, balls, and helmets
Protective screens and goals
Scoreboards, bleachers, special lighting
Exercise equipment
Speed and conditioning equipment
Computers, office furniture and supplies
Signs
Lockers and benches
Retail merchandise

EXHIBIT D
Maintenance Responsibilities of Lessor and Lessee

Lessor Responsibilities

General structural repairs to the building on the Premises, not otherwise the responsibility of Lessee as set forth herein, as determined reasonable in the sole and absolute discretion of Lessor, not related to weather protection, siding and painting, roof leaks or ADA improvements. The determination of reasonableness includes but is not limited to economic feasibility. The parties expressly understand and agree that Lessor may terminate this Lease in accordance with Section 2 (c) (ii) rather than make any structural repairs to the building.

Sewer laterals running to building.

Maintenance of electrical and water/plumbing services from the public street to the meter. Lessor shall not be responsible for maintenance of these services from the meters to the structure.

Maintenance of the Parking Area, excluding Lessee's required permanent access ramps, ADA parking, parking stalls, and any Lessee-constructed sidewalks or pathways.

Lessee Responsibilities

Maintenance and structural of building exterior, including roof, windows and doors, and painting of exterior of structure to insure weather tightness and aesthetics; repair and maintenance of all roofing material and roof structural members; and all accessibility improvements installed by Lessee.

All building interior including, but not limited to, drywall, paneling, paint, carpet, floor coverings, and electrical fixtures shall be maintained, repaired and/or replaced by Lessee.

All plumbing and drain, waste and vent piping within the building on Premises, including all fixtures.

All electrical, gas, and water systems from the meters into the building and phone, cable and any other wiring system within the building shall be maintained, repaired and/or replaced by Lessee.

Trash enclosure and all Trash and recycling collection receptacles and services.

Maintenance of any Lessee-installed landscape improvements, including mowing of all lawns and trimming of all bushes and plant materials, and replacement of planting materials.

Maintenance, repair or replacement of Heating, Ventilating and Air Conditioning supply unit(s), any ducting, electrical, or other Heating, Ventilating and Air Conditioning system components.

All Heating, Ventilating and Air Conditioning system components other than the Heating, Ventilating and Air Conditioning supply unit(s) itself/themselves, including, but not limited to electrical and ducting shall be maintained, repaired and/or replaced by Lessee.

All janitorial-related services.

All interior and exterior lighting systems to the Premises.

Lessee shall remove or paint over all graffiti which may be placed on the Premises or Parking Area during the Term of this Lease within 48 hours of the application of said Graffiti.

Any additional services required to maintain the health and safety of the users on or about the Premises, and the associated costs thereof, will be the sole responsibility of the Lessee.

All other terms of maintenance not specifically delegated to Lessor under this Lease.

EXHIBIT E
City Planning Design Standards

1. **Structural Modifications to Exterior of Buildings**
   - Each building shall have one clearly identified main customer entry shelter and/or lobby projecting from the existing building. Materials of construction shall be limited to metal (with masonry veneers, if desired by tenants) and in a style similar to those of the exterior train/bus shelters at Multimodal Station. Glass enclosure of the projecting lobby (matching the required treatment for the role up door openings described below) may be permitted.
   - If existing opening(s) w/roll up door(s) are to be used as either a main entry or secondary access, the door(s) shall be placed in a "rolled up" position and the entire opening shall be fully enclosed with a glass storefront, with powder coated or anodized aluminum frames.
   - New emergency exit "service doors" (if any are required by Building official) may be installed into existing rollup doors, or placed through the existing concrete walls. Doors shall be metal to match existing.
   - The addition of any rooftop mechanical equipment requires City approval prior to installation, and shall be located and/or screened to minimize visibility from public view.

2. **Building Colors**
   - Paint colors shall generally be medium earth tones that are compatible with Multimodal Station and Park District buildings. Limited accent colors, subject to City approval, may be used at main entry doors and at glass storefronts.

3. **Signs**
   - No off-site signage is permitted, except for integrated non-commercial "directional signs," (to be coordinated with City, EBRPD and other waterfront civic organizations) to direct visitors to Station parking lot and all public/private recreational facilities north of railroad tracks.
   - One primary business identification wall sign is permitted for each building; any additional primary signage may be added at the City's sole discretion. Sign sizes and design shall comply with sign regulations of Downtown Specific Plan, Chapter 11, Signs. Secondary signs shall be limited to window signs within new storefront(s).
   - Murals and other graphic representations depicting activity and not advertisement copy must be approved by City staff.

4. **Other Exterior Improvements**
   - Any other exterior improvement, including but not limited to ramps, decks and/or landscaping, subject to City approval. Such possible improvements many not interfere with primary operation of parking lot as facility for Multimodal Station users. Any fencing or railing shall be painted metal - chain link or wood fencing shall not be permitted.

ATTACHMENT C

RESOLUTION NO. – 11

AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH NORCAL COURTS, LLC, FOR USE OF CITY REAL PROPERTY LOCATED AT 360 FERRY STREET

WHEREAS, the City of Martinez used a combination of funding from local, regional, and State transportation agencies to acquire two parcels totaling 6.3 acres and consisting of various buildings and surrounding parking located north of the Intermodal Station in November 2007; and

WHEREAS, the site is commonly known as the "Zocchi property"; and

WHEREAS, the primary purpose of acquiring the Zocchi property was to provide additional Amtrak overflow parking on the site; and

WHEREAS, the City removed several substandard and hazardous metal, Quonset-style structures from the Zocchi property in 2009; and

WHEREAS, two concrete "tilt up" warehouse facilities remain on the site, at 330 and 360 Ferry Street, respectively; and

WHEREAS, the City desires to lease the 330 and 360 Ferry Street facilities for recreational reuse as indoor sports facilities; and

WHEREAS, the City selected Norcal Courts ("NCC") as the developer for the building located at 360 Ferry Street ("the Premises") and entered into a formal Letter of Intent with NCC on May 23, 2011, to begin negotiations for leasing of the Premises; and

WHEREAS, an Initial Study was conducted to evaluate any potential adverse impacts of the recreational reuse of the facilities; and

WHEREAS, the City Planning Commission on October 25, 2011, recommended approval of the Initial Study and adoption of a Mitigated Negative Declaration, and approved within its purview the addition of "indoor field and sports court facilities" to the list of permitted uses within the Light Industrial District on which the subject facilities are located, and found that the proposed use and the leasing of the facilities therefore were consistent with the General Plan; and

WHEREAS, the City Council approved the Initial Study and adopted a Mitigated Negative Declaration by the adoption of separate resolution on even date herewith; and

WHEREAS, the City believes that NCC's proposed reuse of the Premises will provide a benefit to the health and welfare of the people of Martinez and its neighboring cities; and

WHEREAS, the City and NCC have reached agreement on the terms and conditions of the lease for the Premises, attached hereto as Exhibit C; and

WHEREAS, as a condition of the lease, NCC will be required to perform numerous alterations and improvements to the Premises and portions of the parking area adjacent to the Premises at its own expense; and

WHEREAS, the City desires to enter into a Lease Agreement to provide NCC use of the Premises.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute a Lease Agreement with Norcal Courts, LLC, upon the mutually agreeable terms, considerations, covenants, and conditions substantially as set forth in the form attached to this resolution, with any non-substantive modifications subject to the review and approval of the City Manager and City Attorney's Office, for use of the City's Real Property located at 360 Ferry Street.

* * * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at a Regular Meeting of said Council held on the 16th day of November, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT C

LEASE

Section 1. Premises
Section 2. Term and Termination
Section 3. Rental Terms
Section 4. Use
Section 5. Alterations
Section 6. Possession
Section 7. Insurance
Section 8. Default
Section 9. Remedies
Section 10. Maintenance and Repairs
Section 11. Estoppel Certificate
Section 12. Severability
Section 13. Assignment or Subletting
Section 14. Entry
Section 15. Signs
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Section 17. Destruction and Condemnation
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Section 19. Lessor's Right to Perform For Lessee
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Section 28. Taxes
Section 29. Lessor Subsequent Improvements
Section 30. Time of the Essence
Section 31. Subordination
Section 32. Governing Law
Section 33. Sale of Premises By Lessor
Section 34. Guarantee

****

This Lease (Lease) dated as of the ___ day of _____, 2011 is entered into by and between the City of Martinez, a Municipal Corporation (Lessor) and NorCal Courts, LLC, a California Limited Liability Company (Lessee).

Recitals

A. WHEREAS, Lessor owns a building consisting of approximately 30,000 square feet located upon that certain real property located at 360 Ferry Street, Martinez, California, commonly known as APN # 373-030-019-5, as more particularly described in Exhibit A, attached hereto and incorporated by reference. Said building is hereafter referred to as the "Premises."

B. WHEREAS, Lessor desires that the Premises be used in a manner that benefits the health and welfare of the people of the City of Martinez and its neighboring cities.

C. WHEREAS, Lessor believes that Lessee's indoor sports business will provide such a benefit to the people of the City of Martinez and its neighboring cities.

D. WHEREAS, Lessee has agreed to bear all costs related to the Alterations (defined herein) and tenant improvements described herein, and the City of Martinez will expend no monies in furtherance of Lessee's use of the Premises.

E. WHEREAS, Lessor and Lessee have negotiated in good faith the terms of the lease as set forth herein and wish to reduce such terms to writing.

Section 1. Premises.

Lessor leases to Lessee and Lessee leases from Lessor the "Premises", together with a non-exclusive right to use up to 50 spaces within the adjacent parking area located primarily to the south, east and west of the Premises (the "Parking Area") as set forth in **Exhibit A,** between the hours of 10:00 a.m. and 11 p.m., Monday through Friday, and 8 a.m. and 11 p.m. on weekends, on a first-come, first-served, space available basis. The Parties hereto acknowledge that no specific number of parking spaces is guaranteed by this Lease and the City reserves the right to allocate parking spaces within the Parking Area for the exclusive use of commuter parking Monday through Friday.

Section 2. Term and Termination.

(a) The term of this Lease is for fifteen (15) years (Term), commencing on the ___ day of ____, 2011 (Commencement Date) and ending on the ____day of ____ 2026, unless sooner terminated as herein provided.

(b) Lessee shall have the right upon written notice to this Lessor, delivered at least thirty (30) days prior to the expiration of the Lease Term or any Renewal Term, to extend the

Term of this Lease for five (5) additional one (1) year periods (the Renewal Terms) on the same terms and conditions as set forth herein, provided that Lessee is not otherwise in default under the Lease.

(c) Notwithstanding the foregoing, this Lease shall be terminable by Lessor (i) immediately upon the occurrence of an Event of Default as provided in Section 8 hereof, (ii) immediately if upon the determination of the Lessor's Chief Building Official that the building located on the Premises does not meet the required Health and Safety Standards of the City or in the event of an emergency, (iii) upon three hundred sixty five (365) days written notice if the Premises and/or Parking Area are needed for City governmental purposes, as determined by the City Council in its reasonable discretion, (iv) immediately, upon a determination by Lessor that such termination is required by state or federal law; (v) upon written notice, as and if required by Caltrans, the Contra Costa County Transportation Authority (CCTA), or other State or Federal agency, in order for Lessor to comply with the terms of the grants, loans, or other funds which were used to purchase the Premises; and (vi) as otherwise expressly provided in this Lease. City governmental purposes include any public uses by the City or other Governmental entity for any purpose but shall not include lease to any other third party private entity.

(d) If this lease is terminated within fifteen (15) years from the date of execution of this Lease for City governmental purposes, as provided in section (c) (iii) above, Lessor shall reimburse Lessee for the unamortized value of all Alterations as required in Exhibit B to be property of the Lessor upon termination hereof, determined on a fifteen (15) year straight line basis from the date of completion of the Alterations. A fifteen (15) year depreciation table shall be prepared by the parties and appended to this Lease within thirty (30) days of completion of the Alterations described in Exhibit B.

Section 3. Rental Terms.

(a) Lessee shall establish a Maintenance Reserve Fund to which Lessee shall annually deposit the sum of Four Percent (4%) of the gross profits of Lessee's operations at the Premises as shown in the Annual Profit and Loss Statement of preceding 12 month period. Said Maintenance Reserve Fund shall be kept in a segregated bank account for the benefit of the Premises, and funds deposited into the Maintenance Reserve Fund by Lessee shall be used only for extraordinary repairs to or major preventative maintenance projects for the Premises as determined by the Lessor, outside of normal and routine maintenance, which, if left unrepaired or uncompleted, would shut down or otherwise require modification to the Premises and/or cause material damage to fixtures or equipment. Lessee shall provide to Lessor within 45 days following one year after the commencement date hereof and annually thereafter, a copy of Lessee's Financial Statements, including, but not limited to a Profit and Loss Statement and Balance Sheet and copies of all Bank Statements for the Maintenance Reserve Fund. Lessee shall continue to maintain the Maintenance Reserve Fund during the entire Term of this Lease. Lessee shall not at any time use any funds deposited into the Maintenance Reserve Fund for operational, routine maintenance or any other purpose without the express written consent of Lessor, which consent may be withheld for any reason or no reason whatsoever. Lessor, in the sole discretion of the City Manager, or his/her designee, may require a financial audit of Lessee

once every three (3) years at the sole expense of Lessee. At the expiration or earlier termination of this Lease, the funds in the Maintenance Reserve Fund, less any amounts necessary to complete any project previously requested by Lessee and authorized by Lessee and Lessor, shall be released to Lessee.

(b) On or before the Commencement Date, Lessee shall pay to Lessor a Security Deposit in the amount of ten thousand dollars ($10,000.00). Said Security Deposit shall be held in a separate fund by Lessor. Said Security Deposit shall not bear interest in favor of Lessee. Said Security Deposit shall be replenished in full by Lessee within thirty (30) days of any drawdown of the Security Deposit by Lessor due to Lessee's failure to perform any obligation for which an expenditure is required pursuant to Section 19 herein. Said Security Deposit shall be returned to Lessee upon the expiration or termination of Lease, less any amounts due to Lessor at that time.

(c) Lessee shall offer discounts of no less than ten percent (10%) for Martinez-based sports teams, leagues and Martinez residents to encourage local participation in the use of the Premises.

Section 4. Use.

The Premises are to be used for the operation of an indoor sports court facility, consisting of up to 5 basketball or 6 volleyball courts or any combination thereof, to be used for practices, training, games and tournaments, incidental accessory office and snack bar use to support said field and sports court activities (Permitted Use) and no part of the Premises shall be used for any different purpose at any time except as may be permitted by the issuance of a temporary use permit by the City for events from time to time. The Parking Area is to be used for Parking for the customers and employees of the business to be located on the Premises during the Operating Hours as described herein and for no other purpose at any time. Operating Hours shall be defined as 10:00 a.m. to 11:00 p.m. Monday through Friday, and 8 a.m. to 11 p.m. on weekends or as expressly permitted by advance written permission of Lessor. Lessee shall not do or permit any act to be done that will increase the existing rate or cause cancellation of insurance on the Premises. Lessee shall not use the Premises or the Parking Area or permit anything to be done in or about the Premises or Parking Area which will in any way conflict with any statutes, law, ordinances, regulations and rules now in force or which may hereafter be promulgated. Lessee shall at its sole cost and expense promptly comply with all statutes, law, ordinances, regulations and rules and other requirements of all governmental entities that pertain to the occupancy or use of the Premises and Parking Area, and shall at all time maintain the Premises and Parking Area in a good order with all due care for the safety and cleanliness of the Premises. Lessee shall not use the Premises for the conduct of the Permitted Use or any other occupation of the Premises or the Parking Area until completion of the Preliminary Alterations set forth in Exhibit B have been completed and a certificate of occupancy has been issued by Lessor.

Section 5. Alterations.

(a) Lessor and Lessee agree that the alterations described on **Exhibit B** and **Exhibit C**, attached hereto and incorporated herein by reference, shall be completed at the expense of the Lessee. Lessee shall not make or suffer to be made any alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, without the prior written consent of Lessor, which consent may not be unreasonably withheld. Any alteration to the Premises or Parking Area without the prior written consent of Lessor shall be a breach of this Lease and, at the option of Lessor, shall cause a termination of this Lease. Lessee shall keep the Premises, Parking Area and any improvements located thereon free and clear from any and all liens and claims arising out of any work performed, materials furnished or obligations incurred by or for the account of Lessee.

(b) All alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, shall be at the sole cost and expense of Lessee, including all design, construction, engineering, permitting, inspection and other costs and fees associated therewith. Unless Lessor shall indicate in writing at any time during the term of this Lease and except as set forth in **Exhibit C** hereof, any alterations, additions or improvement made or suffered to be made by Lessee with respect to the Premises or Parking Area shall on the termination of the Lease become a part of the Premises and the property of Lessor. Upon notice to Lessee, Lessee shall at its sole cost and expense forthwith and with all due diligence remove any alterations, additions or improvements made by or on behalf of Lessee which improvements were not approved by Lessor in accordance with section 5(a) above. Upon removal of any alterations, addition, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area removed by Lessee pursuant to the terms hereof, Lessee shall forthwith and with all due diligence at its sole cost and expense repair any damage to the Premises or Parking Area caused by such removal and restore the Premises to a broom clean and tenant ready condition.

(c) Any and all work to be performed by or through Lessee relating to the Premises or Parking Area shall be performed in a good and workmanlike manner and in accordance with the applicable laws and regulations and the industry standard of customs and care applicable to such work. Lessor shall have no responsibility for any work performed by Lessee under this Agreement. Lessee shall defend, indemnify, and hold harmless Lessor as set forth in Section 18 hereof for any liability or claims made in connection with such work.

(i) Before any work of construction, alteration, or repair is commenced on the Premises or Parking Area, and before any building materials have been delivered to the Premises or Parking Area by Lessee or under Lessee's authority, Lessee shall comply with all the following conditions:

(1) Notify Lessor of Lessee's intention to commence a work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Lessor shall have the right to post and maintain on the Premises any notices of nonresponsibility provided for under applicable law.

(2) Furnish Lessor with a true copy of Lessee's contract with the general contractor. The contract shall give Lessor the right but not the obligation to assume Lessee's obligations and rights under that contract if Lessee should default.
(3) Furnish Lessor payment and performance bonds naming Lessor as beneficiary. Said bonds shall be issued by a responsible surety company, licensed to do business in California, and approved by Lessor, and shall be in an amount not less than 100% of the estimated cost of the improvement and shall remain in effect until the entire cost of the work shall have been paid in full and the new improvements shall have been insured as provided in this Lease.
(4) Furnish Lessor with a project budget that includes all cost estimates for work to be performed on the Premises or Parking Area.
(5) Deliver to Lessor certificates and endorsements of insurance as set forth below with insurers with a Best rating of no less than A:XI:

a. Workers' Compensation Insurance to cover the employees of contractor and all subcontractors as required by the Labor Code of the State of California for all of the contractor/subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to Lessor.

Said Worker's Compensation policy shall have the following endorsement:

"All rights of subrogation are hereby waived against the City of Martinez, its officers and employees when acting within the scope of their appointment or employment."

b. Commercial General Liability Insurance including personal injury and property damage insurance for all activities of the Lessee, the contractor and subcontractors arising out of or in connection with the Premises, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, products liability and completed operations, X,C,U hazards, vehicle coverage and non- owned auto liability coverage in an amount no less than $2 million dollars combined single limit personal injury and property damage for each occurrence.

Each such policy shall be endorsed with the following specific language:

(1) The City of Martinez is named as additional insured for all liability arising out of the work performed by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, in the performance of the contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided is primary and no insurance held or owned by the City shall be called upon to contribute to a loss.

(4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the City.

c. Any deductible or self-insured retentions must be declared to and approved in writing by City. At the option of City, insurer shall reduce or eliminate such deductible or self-insured retention as respects City, its officers and employees or Lessee and contractor shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

d. Certificates of insurance evidencing coverage for "builder's all risk,"

e. Lessee shall maintain, keep in force, and pay all premiums required to maintain and keep in force all insurance above at all times during which such work is in progress.

(6) The provision to the Lessor of all necessary permits from all governmental agencies having jurisdiction over the work of improvement, including but not limited to, the City, Contra Costa County Fire District, Contra Costa County Environmental Health, and Central Contra Costa Sanitary District.

(d) Within 180 days after the date that Lessee takes possession of the Premises, Lessee shall complete construction of the Alterations set forth in **Exhibit B.** Failure, regardless of cause, to complete construction within said 180 day period shall, at Lessor’s election exercised

by notice, terminate this Lease. Completion of said Alterations shall be in compliance with any and all approval standards of Lessor as may be submitted in writing to Lessee as part of Lessor's approval of said work and shall generally be in compliance with the City Planning Design Standards set forth in **Exhibit E**.

(e) In consideration of the favorable rental terms established in Section 3, Lessee has agreed to perform certain improvements and alterations to the Premises and Parking Area all as set forth in Exhibit B hereof, said works of improvement are therefore considered a Public Work pursuant to California Labor Code, Division 2, Part 7, Chapter 1 and therefore subject to the payment of prevailing wage to all workers engaged to perform said work. Lessee shall be separately responsible for any and all additional tenant improvements proposed to be performed and funded by Lessee. Lessee shall be solely responsible for any and all liability arising from any claims regarding the payment of prevailing wage for any and all work performed on the Premises or the Parking Area and shall defend, indemnify, and hold harmless Lessor from any claims, actions, or proceedings as set forth in Section 18 hereof.

Section 6. Possession.

Lessee acknowledges that the Premises are currently utilized on a month-to month basis by various other parties. Delivery of Possession of the Premises to Lessee will occur following the delivery of a thirty day notice to all existing users of the Premises that the month-to month tenancies currently in effect are terminated. Any delay in delivery of possession of the Premises to the Lessee shall postpone the commencement of rent accordingly, but shall not otherwise affect this Lease.

Section 7. Insurance.

Lessee agrees to and shall at its own cost and expense procure and maintain during the entire Lease Term and any extension thereof the following insurance which Lessee shall obtain at its own cost and expense:

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Premises and Parking Area or the general aggregate limit shall be twice the required occurrence limit.

2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **$1,000,000** per accident for bodily injury or disease.

3. **Property insurance** against all risks of loss to any tenant improvements or betterments to the Premises and Parking Area, and any tenant contents, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains higher limits than the minimums shown above, Lessor shall be entitled to coverage for the higher limits maintained.

All such insurance coverages are to contain, or be endorsed to contain, the following provisions:

1. For Commercial General Liability, Lessor, its officers, officials, employees, and volunteers are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of the Premises and Parking Area.
2. The Lessee's insurance coverage shall be **primary insurance** as respects the Lessor, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against Lessor.
4. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the Entity.
5. The Property insurance shall **name the Lessor as Loss Payee** as its interests may appear.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by Lessor, in writing.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by Lessor, in writing. At the option of Lessor, either: the Lessee shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects the Lessor, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Lessor guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Verification of Coverage

Lessee shall furnish the Lessor with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Lessor before the Commencement Date. However, failure to obtain the required documents prior to the Commencement Date shall not waive the Lessee's obligation to provide them. The Lessor

reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Waiver of Subrogation

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

Lessor reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances relating to additional activities which Lessee may wish to undertake at the Premises.

Lessee shall release, defend and indemnify Lessor its officials, employees, representatives and agents, from any claims for damage to any person or to the Premises, Parking Area, or to the Lessee's personal property contained therein caused by, or that result from, risks insured against under any insurance policies carried by Lessor and in force at the time of any such damage. Lessor shall not be liable to Lessee for any damage caused or any of the risks insured against under any insurance policy required by Section 7.

Section 8. Default.

Each of the following shall be an Event of Default under this Lease:

(a) If Lessee fails to make any payment required by the provisions of this Lease, when due;

(b) If Lessee fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Lease;

(c) If Lessee vacates, abandons, or surrenders the Premises prior to the end of the Term; and

(d) If all or substantially all of Lessee's assets are placed in the hands of a receiver or trustee, and that receivership or trusteeship continues for a period of thirty (30) days, or if Lessee makes an assignment for the benefit of creditors or is adjudicated a bankrupt, or if Lessee institutes any proceedings under any state or federal bankruptcy act by which Lessee seeks to be adjudicated a bankrupt or seeks to be discharged of debts, or if any voluntary proceeding is filed against Lessee under any bankruptcy laws, and Lessee consents or acquiesces by pleading or default.

Section 9. Remedies.

Upon the occurrence of an Event of Default under this Lease by Lessee, Lessor is entitled at Lessor's option to the following:

(a) to reenter and take exclusive possession of the Premises and the Parking Area;

(b) to collect immediately the present value of the unpaid rent reserved for the entire term, or to collect each installment of rent as it becomes due;

(c) to continue this Lease in force or to terminate it at any time;

(d) to relet the Premises and Parking Area for any period on Lessee's account and at Lessee's expense, including real estate commissions actually paid, and to apply the proceeds received during the balance of Term to Lessee's continuing obligations under this Lease;

(e) to take custody of all personal property on the Premises and Parking Area and to dispose of the personal property and to apply the proceeds from any sale of that property to Lessee's obligations under this Lease;

(f) to recover from Lessee the damages described in Civil Code § 1951.2(a)(1), 1951.2(a)(2), 1951.2(a)(3), and 1951.2(a)(4), the provisions of which are expressly made a part of this Lease;

(g) to restore the Premises and Parking Area to the same condition as received by Lessee, or to alter the Premises and/or Parking Area to make them suitable for re-letting, all at Lessee's expense; and

(h) to enforce by suit or otherwise all obligations of Lessee under this Lease and to recover from Lessee all remedies now or later allowed by law.

Any act that Lessor is entitled to do in exercise of Lessor's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Lessor in Lessor's sole discretion, and Lessee irrevocably authorizes Lessor to act in all things done on Lessee's account.

Section 10. Maintenance and Repairs.

Lessee acknowledges and accepts the Premises and Parking Area in their “as is” condition as of the Commencement Date and agrees and acknowledges that Lessor makes no representations or warranties, either express or implied, as to the condition of the Premises or Parking Area, the absence or presence of Hazardous Materials, located thereon, or the fitness of the Premises or the Parking Area for any particular purpose. Lessor shall not be responsible for the condition or repair of the Premises, except for maintenance, repairs and services to be furnished by Lessor, as designated in **Exhibit D,** attached hereto and incorporated herein by

reference. Lessee agrees to maintain the Premises, and all portions thereof, in good and safe condition, including, but not limited to, all plumbing and drainage, drain, waste and vent piping inside the building on the Premises; all weather protection, including but not limited to all roofing and any leaks associated therewith; all electrical wiring inside the building on the Premises, all heating, ventilation and air conditioning systems, including all appliances and venting therefore; all fixtures on the interior of the building on the Premises, including plumbing and bathroom fixtures; all interior surfaces of walls, windows, plate glass, doors, and ceilings; Lessee's required permanent access ramps, ADA parking, parking stalls, and any Lessee-constructed sidewalks or pathways; and all other items of maintenance not specifically assumed by Lessor pursuant to the terms of this Lease and as set forth in Exhibit D. Lessee promises to surrender the Premises at termination of this Lease in at least the same condition as after completion of the Alterations described in **Exhibit B**, except for normal wear and tear and except for changes authorized by Lessor and not required to be removed pursuant to the terms of this Lease. Lessee agrees to make no repairs at the expense of Lessor. Lessor shall charge and Lessee shall pay all of the City of Martinez's usual and customary fees for any licenses or permits required in connection with such maintenance and repair work.

Lessor and Lessee agree that the maintenance, repairs and services to be furnished by the Lessor are solely as designated in **Exhibit D** and that Lessor shall have no other responsibility whatsoever for the maintenance and repair of the Premises or the Parking Area. All responsibility for maintenance and repair of the Premises or Parking Area not specifically designated as the responsibility of the Lessor in accordance with **Exhibit D** shall be the responsibility of Lessee. Lessee specifically waives the right to make any repairs or cause to be made any repairs or maintenance at Lessor's expense under any law, statute or ordinance now or hereafter in effect.

Lessee shall not cause, maintain or permit any nuisance in, on or about the Premises or Parking Area or commit or suffer to be committed any waste in or upon the Premises or Parking Area. Lessee shall not permit garbage or other refuse to accumulate or to gather in or about the Premises or Parking Area except in suitable covered garbage receptacles. All parts, equipment, garbage, refuse and other debris shall be stored or discarded in such a manner so as not to be visible by persons located off the Premises.

Section 11. Estoppel Certificate.

At any time within ten (10) days after request by Lessor, Lessee shall execute, acknowledge, and deliver to Lessor, without charge, a written statement certifying that this Lease is unmodified and in full force, or if there have been modifications, that it is in full force as modified. The statement shall also contain the date of commencement of this Lease, the dates to which the rent and any other charges have been paid in advance, and any other information Lessor reasonably requests. It is acknowledged by Lessee that any statement is intended to be delivered by Lessor to and relied upon by prospective purchasers, mortgagees, deed of trust beneficiaries, and assignees.

Section 12. Severability.

The invalidity of any portion of this Lease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

Section 13. Assignment or Subletting.

(a) Lessee shall not assign the Lease or any interest hereunder, and shall not sublet the Premises, Parking Area or any part thereof, or any right or privilege appurtenant thereto, or suffer any person other than the agents and employees of Lessee to occupy the Parking Area, Premises, or any portion thereof without the prior written consent of the Lessor, which consent may be withheld for any reason or no reason whatsoever, it being expressly understood that the Rent to be paid hereunder is not a market rate Rent and that said Rent is expressly to compensate Lessee for the Alterations and improvements set forth in **Exhibit B**. Lessee shall notify Lessor in writing of its intent to sublease any portion of the Premises and/or Parking Area and Lessor shall have thirty (30) working days to grant or withhold its consent to such sublease. In the event that Lessor has not, on or before the thirty first day after Lessor's receipt of the notice of intent to sublease, provided to Lessee written notice of its consent, such consent to sublease shall be presumed to be denied. Notwithstanding the preceding sentence, no consent to assignment of this lease, or any portion hereof, shall be presumed. Lessor shall have the right to review and approve any sublease or assignment document relating to the Premises, Parking Area or any portion thereof and no notice of intent to sublease shall be considered delivered to Lessor in accordance with this paragraph unless said notice contains a full and complete copy of any sublease document. Lessee will reimburse Lessor for any legal fees or for any other expense incurred as a consequence of any such assignment. The consent of Lessor to one assignment, subletting or occupation by another person or entity shall not be deemed to be a consent by Lessor to any subsequent assignment, subletting or occupation by another person or entity. Any such assignment or subletting without such consent shall be void and shall, at the option of Lessor, be deemed to be an Event of Default under the provisions of this Lease. Notwithstanding any provision hereof to the contrary, neither this Lease nor any interest herein shall be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of Lessor. Lessor consent pursuant to this paragraph shall not be required for Lessee to enter into temporary use agreements with Lessee's customer clientele (group or individual) end users of the Lessee's facilities located in the Premises.

(b) Without limiting the instances in which Lessor may withhold consent to an assignment or subletting, Lessor and Lessee acknowledge that Lessor may in its absolute discretion withhold consent in the following instances:

(i) if at the time consent is requested or at any time prior to the granting of consent, an Event of Default has occurred under this Lease;

(ii) if, in the Lessor's sole and absolute discretion, the use of the Premises or Parking Area by the proposed assignee or sublessee would not be compatible with or comparable to the uses by Lessee as set forth herein or

would entail alterations that would materially lessen the value of the leasehold improvements in the Premises;

(iii) if, in Lessor's sole and absolute discretion, it determines that circumstances warrant a consideration of the financial worth of a proposed assignee and the financial worth, in Lessor's sole and absolute discretion, does not meet the credit standards applied by Lessor for other Lessees under leases with comparable terms;

(iv) if, in Lessor's sole and absolute discretion, it determines that under the circumstances of the proposed assignment or sublease, Lessee will be unjustly enriched by the financial terms of the sublease in a manner to the detriment of Lessor in light of the below market rate Rent set forth herein.

(c) Irrespective of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. In the event of default by an assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against such assignee or successor.

Section 14. Entry.

Lessor reserves the right, upon the delivery of reasonable notice, to enter the Premises and/or Parking Area at reasonable times to carry out any building management or business purpose in or about the building, without any abatement of rent. The requirement to provide notice as specified herein shall not be interpreted or construed in any way to limit any right of entry or inspection that Lessor may have in its capacity as a local governmental entity.

Section 15. Signs.

Lessee shall not place or permit to be placed in, upon, about, or outside the Premises or Parking Area any sign, notice, drapes, shutters, blinds, or display of any kind, without the prior written consent of Lessor.

Section 16. Holding Over.

This Lease shall terminate without further notice at the expiration of the Term. Any holding over shall not constitute a renewal or extension. If Lessee remains in possession of the Parking Area, the Premises or any part thereof after the termination of the term of this Lease with the express written consent of the Lessor: (1) such occupancy shall be deemed a tenancy from month-to-month with rent payable at the rate of Two Dollars and Fifty Cents ($2.50) per month per square foot of gross floor area of the building located on the Premises, plus all other charges payable hereunder, and upon all the terms applicable hereof and (2) Lessee shall defend, hold

harmless and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation, claims made by any succeeding lessee founded on or resulting from Lessee's surrender.

Section 17. Destruction and Condemnation.

(a) If the Premises and/or Parking Area are damaged to an extent that cannot be lawfully repaired within sixty (60) days after the date of damage, this Lease may be terminated by written notice of either party. If the Premises and/or Parking Area can be repaired within the sixty (60) day period, or if this Lease is not terminated in accordance with this provision, Lessor shall proceed with repairs as necessary, subject to a proportionate reduction in the rent, based on the extent to which the damage and repairs shall interfere with the business of Lessee on the Premises. In case of damage to one-third (1/3) or more of the building on the Premises, Lessor may elect to terminate this Lease, regardless of whether the Premises may be repaired within said sixty (60) day period. Lessee waives the benefits of Civil Code §§ 1932(2) and 1933(4).

(b) If all or any portion of the Premises are condemned or are transferred in lieu of condemnation, Lessor or Lessee may, upon written notice given within sixty (60) days after the taking or transfer, terminate this Lease. Lessee shall not be entitled to share in any portion of the award, and Lessee expressly waives any right or claim to any part of the award. Lessee shall, however, have the right to claim and recover, from the condemning authority only, but not from Lessor, any amounts necessary to reimburse Lessee for the cost of removing the personal property of Lessee.

Section 18. Indemnity.

(a) Lessee shall indemnify, defend and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises and/or the Parking Area or from any activity, work, or other thing done, permitted or suffered by the Lessee in or about the Premises and/or the Parking Area and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of the Lessee, or any officer, agent, employee, contractor, guest, or invitee of Lessee, and from and against all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, any action or proceeding brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. Lessor or its agents shall not be liable for any damage to property entrusted to Lessee's employees, nor for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from Lessee's use of the Premises and/or the Parking Area.

(b) Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises and/or the Parking Area in violation of any law or regulation and Lessee shall indemnify and hold harmless Lessor, its officers, agents and

employees from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) arising from or as a result of a breach of this warranty and representation or as a result of the, disposal, storage, generation or release on the Premises and/or Parking Area at any time during the term of this Lease of any Hazardous Materials, except to the extent caused by the gross negligence or willful misconduct of Lessor or any Lessor indemnitee regardless of whether such liability, cost or expense arises during or after the Lease Term. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises and/or the Parking Area due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby to the satisfaction of Lessor and any governmental body having jurisdiction thereover.

(c) Lessor shall indemnify, hold harmless, and defend Lessee from and against all losses, liabilities, claims, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by Lessee as a result of the presence, disposal, storage, generation or release on the Premises and/or the Parking Area at any time prior to Lessee's possession of the Premises of any Hazardous Materials, except to the extent caused by the gross negligence or wilful misconduct of Lessee or any officer, agent, employee, contractor, guest, or invitee of Lessee regardless of whether such liability, cost or expense arises during or after the Lease Term.

As used in this paragraph, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous material, hazardous substance, hazardous waste or toxic substance in any federal, state or local law or regulation. Lessee acknowledges that Lessee is not looking to or relying upon Lessor to disclose any matters which Lessor might be required to disclose under California Health and Safety Code Section 25359.7 and that all such matters have been investigated by Lessee to Lessee's satisfaction. In this regard, Lessee specifically waives any and all rights it may have pursuant to the provisions of California Health and Safety Code Section 25359.7.

(d) The indemnifications provided pursuant to this Section 18 shall survive the termination of this Lease.

Section 19. Lessor's Right to Perform for Lessee.

If Lessee fails to perform any obligation under this Lease, Lessor shall be entitled to make reasonable expenditures to cause proper performance on Lessee's behalf and at Lessee's expense, against which the Security Deposit will be charged. Lessee promises to reimburse Lessor for any expenditures not fully satisfied by the Security Deposit within ten (10) days after written notice from Lessor requesting reimbursement, and failure of Lessee to make the reimbursement shall be deemed to be a default the same as a failure to pay an installment of rent when due. All obligations of Lessee to pay money are payable without abatement, deduction, or offset of any kind.

Section 20. Notices.

All notices, payments, or other communications by either party to the other under this Lease shall be deemed to have been given on the date of service if served personally or on the second business day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Lessor: City of Martinez
525 Henrietta Street
Martinez, CA 94553
ATTN: City Manager

To Lessee: Nor Cal Courts, LLC
_____
_____

Either party may change its address by providing written notice to the other as provided herein.

Section 21. Attorney Fees.

In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and all other costs incurred.

Section 22. Legal Effect.

All obligations of Lessee are expressly made conditions of this Lease, any breach of which shall, at the option of Lessor, terminate this Lease. The parties agree that nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the Parties. Lessee shall at no time represent itself as an agent, employee, or representative of Lessor.

Section 23. Titles.

The titles or headings to paragraphs shall have no effect on interpretation of provisions.

Section 24. Successors.

The provisions of this Lease shall apply to and bind the heirs, successors, and assigns of the parties.

Section 25. Waiver.

Any waiver given hereunder by Lessor must be in writing and shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition herein waived. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a

waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, irrespective of Lessor's knowledge of such preceding breach at the time of the acceptance of such rent. The failure of Lessor to enforce a provision of this Lease shall not be deemed a waiver for any purpose.

Section 26. Services and Utilities.

Lessee shall provide gas, electricity, heating, water, telephone, cable, garbage and janitorial services to the Premises at Lessee's sole cost and expense. Lessor shall not be liable for, and Lessee not be entitled to any reduction of rent by reason of the unavailability of any utility service to the Premises.

Section 27. Entire Agreement.

This Lease, together with each attached exhibits, shall constitute the entire agreement of the parties, and may be modified only by a writing signed by the parties.

Section 28. Taxes.

Lessee shall pay all personal property taxes assessed against the Lessee's property located on the Premises. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 that the interest granted to Lessee pursuant to this Lease to occupy the Premises and Parking Area may create a possessory interest in Lessee subject to property taxation and Lessee may be subject to the payment of property taxes levied on such interest.

Section 29. Parking Area and Subsequent Improvements

(a) Lessee acknowledges that the primary use of the Parking Area is for parking of vehicles associated with the Intermodal Facility owned by Lessor and located at 601 Marina Vista Avenue, Martinez, California. Lessee shall take no action at any time that will interfere or otherwise preclude Lessor's use of the Parking Area for said transportation purposes and in this regard Lessee understands and acknowledges that said transportation use of the Parking Area shall be superior at all times to the non- exclusive use by Lessee of the Parking Area. Lessee further expressly understands that Lessor may take action which will, from time to time and at any time or duration during the Term of this Lease, temporarily or permanently preclude use of the Parking Area by Lessee. Lessor will make reasonable efforts to notify Lessee in advance of any activity of Lessor's which Lessor anticipates will temporarily or permanently preclude use of the Parking Area by Lessee. Said notice to Lessee shall occur no less than thirty (30) days prior to the interruption of use, except in emergency circumstances or where shorter notice is consented to by Lessee.

(b) Lessee acknowledges and understands that Lessor will, at an undetermined future time, be improving the Parking Area by reconstructing, repaving, striping or any and all other improvements deemed necessary by Lessor in its sole and absolute discretion. Lessor will make reasonable efforts to notify Lessee of the Lessor's impending construction schedule, which shall in no event be less than thirty (30) days prior to the commencement of construction unless

shorter notice is consented to by Lessee. Lessor will make reasonable efforts to minimize the impact to the Lessee during said future construction, to the extent practically and economically feasible as determined by Lessor in its sole and absolute discretion. Lessee understands and acknowledges that Lessee's use of the Parking Area may be impaired, substantially or completely eliminated during construction and that such impairment or elimination may require Lessee to cease operation of the Permitted Use at the Premises for the period of time necessary to undertake said improvements to the Parking Area.

(c) In connection with the interruption of Lessee Use of the Parking Area or Premises as set forth in (a) and/or (b) above, Lessee hereby releases and discharges Lessor from each and every claim, demand, action, cause of action, damage, cost, expense, attorney's fee, obligation and liability of whatever kind or nature, in law or equity, arising or to arise in favor of the undersigned, whether known or unknown, including, but not limited to, claims for damages to property, loss of business or services, or special damage of any character, by reason of or growing out of said action of Lessor. It is expressly understood and agreed that this release is expressly intended to cover and include all claims, several or otherwise, past, present or future, known or unknown, which can or may ever be asserted by Lessee, its successors and assigns as the result of said action on the part of Lessor and that this paragraph constitutes a full and final release of any claims relating thereto of every kind or nature, past, present or future, known or unknown, suspected or unsuspected, and all claims or rights pursuant to Section 1542 of the Civil Code of the State of California are hereby expressly waived. Lessee understands that said Section 1542 provides:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

In this regard, Lessee expressly understands and agree that it is possible that other or unanticipated injuries or consequences resulting from the herein described and referred to matters and events which are not now known, will occur or be discovered by the undersigned and the undersigned agree and understand that this paragraph constitutes a full and final release of any such claims and is intended to cover and does cover and include all such future damages and/or injuries or their effects, consequences or results, including all causes of action therefor. Lessee has taken these possibilities into account in determining to enter into this Lease and acknowledges that the risk of such loss is included in the reduction of Rent to by paid by Lessee as set forth herein.

Section 30. Time of the Essence.

Time is of the essence in the performance of Lessee's obligations under this Lease.

Section 31. Subordination.

This Lease, at Lessor's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions; provided, however, that as to the lien of any deed of trust or mortgage, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee pays the rent and observes and performs all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground Lessor elects to have this Lease prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Lessee, this Lease shall be deemed prior to that mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of that mortgage, deed of trust, or ground lease or the date of recording.

Section 32. Governing Law.

This Lease shall be governed by and construed in accordance with California law. Venue shall be in the County of Contra Costa.

Section 33. Sale of Premises By Lessor.

In the event of any sale of the Premises, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties and their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Lessor under this Lease. In the event of sale of the Premises to any non-governmental entity, the provisions of Section 2, (c) (iii) and (d) shall be of no further force and effect.

Section 34. Guarantee.

By execution hereof, the undersigned principals of Lessee hereby absolutely and unconditionally, jointly and severally, personally guarantee to Lessor the full, faithful, and timely performance by Lessee of this Lease, and any extension, renewals or modifications thereof. If Lessee shall default at any time in the performance of any covenant or obligation under this Lese, then the undersigned Guarantors, at Guarantors expense, shall on demand by Lessor fully and promptly perform all covenants and obligations to be performed by Lessee pursuant to this Lease.

The parties have executed this Lease on the date first written above.

Lessee:

NorCal Courts, LLC,
a California Limited Liability Corporation Attest:

By:_____ _____

Lessor:

City of Martinez, a Municipal Corporation Attest:

By: _____ _____
Philip Vince, City Manager City Clerk

EXHIBIT A
Project Area (to be inserted)

EXHIBIT B
Alterations to be completed by Lessee (Nor Cal Courts, LLC)

Lessee Alterations:

Lessee will, at Lessee's sole cost and expense, complete the following Alterations in accordance with all applicable City standards, including but not limited to City Planning Design Standards, City Engineering Standards, and City Building Standards, within 180 days of possession per Lease Section 5 (c), except as otherwise provided:

Structural Reinforcements:
Structural reinforcements to the Premises in conformance with International Building Code (IBC) and/or California Building Code (CBC) regulations. All work is subject to the review and approval of the Lessor's Chief Building Official.

ADA Parking/Accessibility Improvements:
Lessee will install all improvements upon and in the Premises and Parking Area necessary to comply with the accessibility requirements of state and federal law, including, but not necessarily limited to, installation of permanent handicapped accessible parking spaces, access ramps and paths of travel from the Parking Area to the Premises.

Windows:
Lessee will replace all broken glass and repair all exterior windows to render them operational and weather tight, if applicable.

Drainage:
Lessee will modify downspouts to divert water away from foundation of the Premises. Lessee will establish earth clearance between siding of structure and adjacent grade, where applicable.

Exterior Access:
Lessee will modify the entrance to the Premises to provide disabled accessibility.

Lessee will construct sidewalks or other pathways, subject to Lessor review and approval, to create a clear and continuous pathway from the Parking Area to the Premises as required to be in compliance with accessibility/ADA standards.

Exterior:
Lessee will repair or replace exterior to render the structure weather tight as deemed necessary by Lessor.

Lessee will do all structural modifications to the exterior of the building, including installation/construction of entryways/reception areas and doors, as required in the City Planning Design Standards, attached hereto as Exhibit E and incorporated herein by reference.

Lessee will paint the Premises within one year of the Commencement Date.

Lessee will install exterior safety/security light fixtures in an amount to be determined by Lessor at the exterior of the Premises and at locations to be determined by Lessor.

Trash Enclosure:
When required by Lessor, Lessee will provide a trash enclosure to accommodate three (3) fifty (50) gallon trash cans, or in a sufficient capacity as needed to accommodate the demand. Trash enclosure will be subject to all County Health and National Pollution Discharge Elimination System/Clean Water Act regulations, which may require a covered enclosure.

Parking Area:
Lessee will stripe the Parking Area located adjacent to the Premises to delineate parking spaces as determined appropriate by Lessor in its sole and absolute discretion.

Plumbing & Electrical:
Lessee will inspect and make any and all necessary repairs and or replacements/upgrades to the plumbing and electrical systems of the Premises from the location of the meters to and throughout the interior of the structure.

Structure Interior:
Lessee will repair or replace all damaged or deteriorated interior dry wall and paneling.

Lessee will be responsible for any painting of the interior of the structure.

Lessee will replace floor covering throughout, including the replacement of underlayment where necessary, not including wooden basketball/volleyball floors as set forth in Exhibit C.

Lessee will replace floor covering and plumbing fixtures in the bathrooms, including the replacement of underlayment and pipe where necessary.

Lessee will build out a minimum of two ADA compliant restrooms.

EXHIBIT C
Alterations to be Property of Lessee on Termination

The following alterations, additions, improvements, including the installation of fixtures, equipment, or signs in, upon or with respect to the Premises or Parking Area, shall remain the property of Lessee upon termination of this Lease (excepting Termination for Default) and may be removed by Lessee at its sole cost and expense:

Approximately 29,000 square feet of wooden basketball floors, baskets, volleyball nets, other sports equipment, café equipment, office equipment, office computers, air conditioning and heating equipment, special lighting and signage.

EXHIBIT D
Maintenance Responsibilities of Lessor and Lessee

Lessor Responsibilities

General structural repairs to the building on the Premises, not otherwise the responsibility of Lessee as set forth herein, as determined reasonable in the sole and absolute discretion of Lessor, not related to weather protection, siding and painting, roof leaks or ADA improvements. The determination of reasonableness includes but is not limited to economic feasibility. The parties expressly understand and agree that Lessor may terminate this Lease in accordance with Section 2 (c) (ii) rather than make any structural repairs to the building.

Sewer laterals running to building.

Maintenance of electrical and water/plumbing services from the public street to the meter. Lessor shall not be responsible for maintenance of these services from the meters to the structure.

Maintenance of the Parking Area, excluding Lessee's required permanent access ramps, ADA parking, parking stalls, and any Lessee-constructed sidewalks or pathways.

Lessee Responsibilities

Maintenance and structural of building exterior, including roof, windows and doors, and painting of exterior of structure to insure weather tightness and aesthetics; repair and maintenance of all roofing material and roof structural members; and all accessibility improvements installed by Lessee.

All building interior including, but not limited to, drywall, paneling, paint, carpet, floor coverings, and electrical fixtures shall be maintained, repaired and/or replaced by Lessee.

All plumbing and drain, waste and vent piping within the building on Premises, including all fixtures.

All electrical, gas, and water systems from the meters into the building and phone, cable and any other wiring system within the building shall be maintained, repaired and/or replaced by Lessee.

Trash enclosure and all Trash and recycling collection receptacles and services.

Maintenance of any Lessee-installed landscape improvements, including mowing of all lawns and trimming of all bushes and plant materials, and replacement of planting materials.

Maintenance, repair or replacement of Heating, Ventilating and Air Conditioning supply unit(s), any ducting, electrical, or other Heating, Ventilating and Air Conditioning system components.

All Heating, Ventilating and Air Conditioning system components other than the Heating, Ventilating and Air Conditioning supply unit(s) itself/themselves, including, but not limited to electrical and ducting shall be maintained, repaired and/or replaced by Lessee.

All janitorial-related services.

All interior and exterior lighting systems to the Premises.

Lessee shall remove or paint over all graffiti which may be placed on the Premises or Parking Area during the Term of this Lease within 48 hours of the application of said Graffiti.

Any additional services required to maintain the health and safety of the users on or about the Premises, and the associated costs thereof, will be the sole responsibility of the Lessee.

All other terms of maintenance not specifically delegated to Lessor under this Lease.

EXHIBIT E
City Planning Design Standards

1. **Structural Modifications to Exterior of Buildings**
   - Each building shall have one clearly identified main customer entry shelter and/or lobby projecting from the existing building. Materials of construction shall be limited to metal (with masonry veneers, if desired by tenants) and in a style similar to those of the exterior train/bus shelters at Multimodal Station. Glass enclosure of the projecting lobby (matching the required treatment for the role up door openings described below) may be permitted.
   - If existing opening(s) w/roll up door(s) are to be used as either a main entry or secondary access, the door(s) shall be placed in a "rolled up" position and the entire opening shall be fully enclosed with a glass storefront, with powder coated or anodized aluminum frames.
   - New emergency exit "service doors" (if any are required by Building official) may be installed into existing rollup doors, or placed through the existing concrete walls. Doors shall be metal to match existing.
   - The addition of any rooftop mechanical equipment requires City approval prior to installation, and shall be located and/or screened to minimize visibility from public view.

2. **Building Colors**
   - Paint colors shall generally be medium earth tones that are compatible with Multimodal Station and Park District buildings. Limited accent colors, subject to City approval, may be used at main entry doors and at glass storefronts.

3. **Signs**
   - No off-site signage is permitted, except for integrated non-commercial "directional signs," (to be coordinated with City, EBRPD and other waterfront civic organizations) to direct visitors to Station parking lot and all public/private recreational facilities north of railroad tracks.
   - One primary business identification wall sign is permitted for each building; any additional primary signage may be added at the City's sole discretion. Sign sizes and design shall comply with sign regulations of Downtown Specific Plan, Chapter 11, Signs. Secondary signs shall be limited to window signs within new storefront(s).
   - Murals and other graphic representations depicting activity and not advertisement copy must be approved by City staff.

4. **Other Exterior Improvements**
   - Any other exterior improvement, including but not limited to ramps, decks and/or landscaping, subject to City approval. Such possible improvements many not interfere with primary operation of parking lot as facility for Multimodal Station users. Any fencing or railing shall be painted metal - chain link or wood fencing shall not be permitted.