

Amendment: LEASE AGREEMENT RE: *Niña*

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This amendment is made to the Lease Agreement: RE *Niña* entered into by and between the CITY OF CORPUS CHRISTI, a Texas Home-Rule Municipal Corporation, and the Columbus Sailing Association, a Texas 501(c) 3 Nonprofit Corporation. All other terms and conditions that are not hereby amended are to remain in full force and effect. It is mutually understood and agreed by and between the undersigned contracting parties to amend that previously executed agreement.

TERM AND PAYMENT OF RENT: The lease term for the *Niña* shall be the "Lease Term" set forth in the original lease agreement. In lieu of payment, CSA agrees to maintain the *Niña*.

RENEWAL: Upon mutual agreement between both parties, CSA shall have the option to renew this lease for a period of 15 years under the same terms and conditions as contained in the original lease agreement with amendments. CSA shall give City written notice of CSA's intention to renew at least 90 days prior to the expiration of this lease.

SEVERABILITY: If any article, section, subsection, paragraph, sentence or clause of this Agreement shall be deemed to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Agreement. If any change occurs during the term of this Agreement with respect to any laws, rules, regulations or ordinances which affect the rights or obligations of CSA or the City under this Agreement, CSA and the City shall negotiate in good faith to bring this Agreement into conformance with such change or changes.

PHASE ONE

The repair, restoration, and maintenance of the *Niña*

ADDITIONAL CITY PAYMENT FOR REPAIR: The CITY shall pay an additional \$8,800 to CSA for the cost associated with the repair and restoration of the *Niña*, which includes finishing the main deck caulking, setting the mizzen mast on the upper deck, bringing down the foremast and bowsprit to refurbish, replacing the foredeck, refurbishing the foremast & bowsprit, replacing the cap rail on starboard side, cutting notches into the main mast for pulleys & shrouds, removing the old main mast, setting a new main mast, and removing the anchors. The CSA is also to purchase four mooring cleats with bolts for the mooring location. The funds may be used to pay for labor and equipment. The funds may be used for insurance cost during phase one. CSA will provide paid invoices to the CITY to account for the funds.

COMPLETION OF PHASE ONE: Phase one is to be completed within 365 days from execution of this agreement. Upon completion of restoration of the *Niña*, CSA will notify the City in writing of completion of phase one. Completion of phase one will begin phase two.

PHASE TWO

Staging facilities to conduct *Niña* operations

PLAN FOR FUNDING: Within 90 calendar days of the entering phase two, the CSA will provide the CITY an up to date itemized plan for funding with evidence of actual monetary commitments or materials that will be donated to the CSA for maintenance and operation of the Niña. CSA will provide the CITY with an updated itemized plan for funding with evidence of actual monetary commitments or materials in 90 calendar day intervals following initial itemized plan. If the CITY finds that the actual monetary commitments or materials is insufficient to continue phase two, the CITY shall notify the CSA in writing of this deficiency. Deficiency may occur due to credibility of commitment or shortage of commitment. In the notice, the CITY shall identify the deficiency in actual monetary commitments or materials. The CSA has 90 calendar days from the date of notification to obtain actual monetary commitments or materials in the amount of the deficiency illustrated by the CITY.

REQUIRED INSURANCE: As a condition of phase two, the CSA shall obtain, carry and pay the premiums for the insurance of the types and in the limits stated below in the inserted provisions. The CSA shall include the CITY as an additional named insured party on all insurance policies required. The CSA coverage must also include both paid employees and unpaid volunteers.

INSURANCE REQUIREMENTS

I. COLUMBUS SAILING ASSOCIATION'S LIABILITY INSURANCE

- A. Columbus Sailing Association must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City. The Columbus Sailing Association must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Columbus Sailing Association must furnish to the City's Risk Manager or designee, two (2) copies of Certificates of Insurance, showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be named as an additional insured for the General Liability policy and a waiver of subrogation is required for the Workers' Compensation policy.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day written notice of cancellation, material change, non-renewal or termination is required on all certificates	Bodily Injury and Property Damage Per occurrence / aggregate limit
Commercial General Liability to include 1. Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Broad Form Property Damage 6. Personal Injury & Advertising Injury 7. Fire Legal Liability	\$300,000 per occurrence

Business Auto Liability to include Hired and Non-owned Auto Liability	\$300,000 Combined Single Limit
Commercial Property	CSA is responsible for their own insurable interests in their property and equipment
Workers' Compensation to include volunteers (Applicable if any paid employees)	Which complies with the Texas Workers Compensation Act and Section II of this exhibit
Employers Liability to include United States Longshore and Harbor Workers Act (USL&H)	\$500,000, / \$500,000 / \$500,000
Protection & Indemnity (P & I) Including Hull	\$ 300,000 per occurrence Current value of <i>NINA</i> \$100,000

- C. In the event of accidents of any kind, Columbus Sailing Association must furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. As stated in Section I-B, Table, Columbus Sailing Association must obtain the applicable workers' compensation coverage or maritime exposure protection for its employees through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and with endorsements approved by the Texas Department of Insurance. The coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by Columbus Sailing Association will be promptly met.
- B. Columbus Sailing Association shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at its' sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII).
- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Columbus Sailing Association shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Columbus Sailing Association shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-4555- Fax #

- D. Columbus Sailing Association agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Columbus Sailing Association shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Columbus Sailing Association's lease agreement should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- F. In addition to any other remedies the City may have upon Columbus Sailing Association's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Columbus Sailing Association to stop work hereunder, and/or withhold any payment(s) which become due to Columbus Sailing Association hereunder until Columbus Sailing Association demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Columbus Sailing Association may be held responsible for payments of damages to persons or property resulting from Columbus Sailing Association's or its subcontractors' performance of the work covered under this agreement.
- H. It is agreed that Columbus Sailing Association's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

NOTE: The limits and types of coverages are subject to adjustment if upon review, it is determined that the activity requires increased levels and types of coverages.

Columbus Sailing Association
NINA Repair Revised ins. req.
2-13-13 ds Risk Mgmt

Such insurance policies shall not be cancelled, materially changed, or not renewed, without 30 calendar days' prior written notice to the CITY. A certificate of such insurance coverage, reflecting the foregoing cancellation provision shall be furnished to the CITY, and copies of the insurance policies shall be promptly furnished to the CITY upon its written request. Failure of the CSA to maintain said insurance for the term of this AGREEMENT shall be grounds for the termination of this AGREEMENT by the CITY.

OPERATIONS AND TOURS: CSA may facilitate tours. Facilitation of tours must follow the following safety rules and regulations:

Safety Manager. CSA shall provide a Captain or officer to oversee the safety of persons aboard the Niña including security. The Captain or officer of the Niña must be present at all times during tours.

Staff Requirements Regarding Visitor Safety Aboard. CSA shall provide two staff personnel for touring of the Niña. All staff guides will be provided a safety lecture concerning general marine safety related to visitors aboard the Niña. Safety location requirements for Niña staff are:

- (a) One safety person to be provided at top of gangway staircase to ensure and provide all visitors with a helping hand so as not to fall nor sustain injury.
- (b) One safety person to be provided at the bottom of (upper) quarter deck staircase to ensure and provide all visitors with a helping hand so as not to fall nor sustain injury.

Required Safety Equipment. The Niña shall at all times be equipped with the following safety equipment:

- (a) Two throw-able life rings: one to be placed and visible on upper quarter deck and a second throw-able life ring to be placed and visible on starboard side lower deck.
- (b) A fire extinguisher to be placed in an accessible location aboard the Niña.

Tour Rules. CSA will enforce the following rules for safety of the public.

- (a) No visitors allowed upon raised foreword deck.
- (b) No visitors are allowed below decks nor companion way.
- (c) No visitors are allowed in the tiller room.

The City reserves the right to deny operation and tours upon failure of CSA to comply with all safety rules and regulations. CSA must cease tours upon notification by the City of failure to comply with safety rules and regulations. The City will send written notice of default upon becoming aware of CSA failure to comply with the safety rules and regulations. Upon removal of right to operate tours, CSA must obtain consent in writing from the City to continue tours.

ALARM SYSTEMS: CSA shall pay all costs associated with the operation of the fire detection system and electronic intrusion alarm, including the electric bill, the monitoring and maintenance fees and the telephone bill, while under this AGREEMENT. CSA be responsible for assuring that the fire detection system alarm and electronic intrusion alarm onboard Niña are activated.

MOORING OF NIÑA: Niña may remain moored in her current location.

PRESERVATION OF NIÑA: The CSA shall ensure the engine in the Niña is operational at all times. The CSA shall run the engine once a week to verify operational status and maintain the engine. The Niña shall be washed down once a month to aid in preserving the wooden ship.

MOVING OF NIÑA: CSA shall not move Niña without prior written consent of the Marina Director.

HURRICANE PLAN: The CITY Hurricane Plan currently in effect for Niña will continue under the supervision of the City Marina Superintendent. To this end, CSA shall keep Niña ship-shape and ready to be moved at a moment's notice in the event of an approaching hurricane. The CSA CSA crew members are to assist the Marina Patrol in towing including mooring operations in preparation of a storm, hurricane or inclement weather.

End of provisions specific to Phase Two.

PHASE THREE

Disposition of the Pinta and the Santa Maria

DISPOSITION: Due to significant disrepair, the Pinta and the Santa Maria will not be repaired by the CSA and is not subject to this lease. The City will consequently dispose of the Pinta and Santa Maria. The Pinta and the Santa Maria are the sole property of the City of Corpus Christi and CSA has no interest in the Pinta and the Santa Maria.

SALVAGE: Upon execution of this amendment, the CSA will provide the City with an inventory of items to be salvaged from the Pinta and the Santa Maria. Items include all parts and material associated with the Pinta and the Santa Maria that can be used to repair and restore the Niña. Upon approval by the City Manager or designee, the CSA has 30 days to salvage any parts or material approved by the City Manager or designee. The CSA may not remove any items from the Pinta or the Santa Maria without City Manager or designee approval. The City is not obligated to provide the CSA with any salvageable items. CSA may seek additional items prior to final disposition. All requests for additional items must be approved by the City Manager or designee.

PROCEEDS: The City shall reserve the funds received from the sale of lead ballast from the Santa Maria during the term of this lease agreement. The funds reserved will be used for payment to the CSA for repair, restoration, and maintenance of the Niña, including insurance

and utility payments. Reserved funds may also be used for staging facilities (Phase 2) for the Niña. CSA will provide paid invoices and/or documented quotations to the CITY to account for the funds. The disbursement of funds to cover documented expenses will be paid within two weeks of the date of City approval. Such approval shall not be reasonably withheld. The City may cease to reserve the funds upon termination of this lease agreement.

End of provisions specific to Phase Three

PHASE FOUR AND FIVE

Amendment: Phase four and five are deleted from the lease agreement.

End of provisions specific to Phase Four and Five

EXECUTED IN TRIPLICATE ORIGINALS this ____ day of _____, 2013, at Corpus Christi, Nueces County, Texas.

Columbus Sailing Association

CITY OF CORPUS CHRISTI

By John E. Torrey
John Torrey, President

By _____
Ronald L. Olson, City Manager

ATTEST:

Armando Chapa, City Secretary

Approved as to legal form: July 1, 2013

Buck Brice
Buck Brice
Assistant City Attorney
For City Attorney