



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 1, 2011

REPORT NO: 0003

ATTENTION: Land Use and Housing Committee Chairman and Committee Members
Agenda of March 9, 2011

SUBJECT: Request for Exclusive Lease Negotiations – Mission Bay Yacht Club,
City-owned property at 1215 El Carmel Place, San Diego, CA 92109

REQUESTED ACTION:

Should the Real Estate Assets Department be authorized to enter into exclusive negotiations with the Mission Bay Yacht Club to renew the lease for the City-owned property at 1215 El Carmel Place, San Diego, CA 92109?

STAFF RECOMMENDATION:

Authorize exclusive lease negotiations with the Mission Bay Yacht Club to renew the lease for the City-owned property at 1215 El Carmel Place, San Diego, CA 92109.

BACKGROUND:

The Mission Bay Yacht Club (“lessee”) has been in Mission Bay since 1927. In August 1961, the lessee, which is a non-profit 401 (c) organization, leased 11.82 acres (6.14 acres of land and 5.68 acres of water) at El Carmel Point from the City for a 50-year term. The current lease expires on July 31, 2011.

The purpose of the lease is to construct and operate a yacht club, parking and boat storage facilities. Primarily the lessee is involved in organizing sail boating activities for its members and guests in Mission Bay. Those activities include 24 weekend regattas, 18 Thursday night races and 35 invitational regattas annually, as well as regional, national and international championships. In addition, racing to anyone with a boat without having to belong to a yacht club are organized twice a month. Lessee provides boats, equipment and support staff for over 100 regattas and races annually.

Lessee also provides boating experience for youth through Voices and Children and the Inner City Youth Games and for at-risk youth through YMCA, for military families and physically challenged individuals. All activities are carried by lessee’s volunteers. The lessee improvements are also used by the Coast Guard, City lifeguards, bay users committees, school groups, civic and business groups. Current membership is approximately 838 families or about 2,000 individuals from San Diego County.

Current rent to the City is 33% percent of the average total annual commercial sq.ft rent paid for leases in Mission Bay. Following is a recent revenue history:

<u>FISCAL YEAR</u>	<u>AMOUNT</u>
FY2010	\$262,543
FY2009	\$261,693
FY2008	\$290,917 (additional rent is paid for FY06- FY08)
FY2007	\$221,360
FY2006	\$218,127

During the lease term, the lessee has built two club house buildings, a maintenance building, an administrative building, a boat storage area, landscaped parking and replaced a dock at approximate cost of \$2.5M. The lessee submitted unsolicited proposal to renew the lease for additional 50 years, with commitment to invest more than \$7M in capital improvements during the term of the lease.

SUMMARY:

City Council Policy 700-41 directs the staff the use the RFP process in all cases for the lease of City-owned land, unless an exception is granted by the applicable Council Committee, or the City Council. Staff recommends that exclusive lease negotiations to be granted for the following reasons:

- Lessee is a proven non-profit operator who promotes the recreational and sports boat activities in Mission Bay for more than 84 years:
- Lessees activities, such as competitive or recreational events are conducted in accordance with the City Council Policy 700-08 (Mission Bay Park). Those activities cannot be provided by commercial or municipal enterprises;

The new lease will be presented to the City Council for approval.

FISCAL CONSIDERATIONS:

Minimum rent of \$231,695 per year will be deposited into the General Fund.

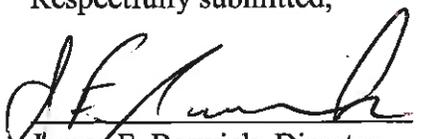
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

NONE

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

General public who participates in boating activities in Mission Bay Park. Mission Bay Yacht Club members, City Park and Recreation Department.

Respectfully submitted,


James F. Barwick, Director
Real Estate Assets Department


Jay M. Goldstone
Chief Operating Officer

COPY

DUPLICATE ORIGINAL

FOURTH AMENDMENT TO LEASE

This Fourth Amendment to Lease ("Fourth Amendment") is executed by and between THE CITY OF SAN DIEGO ("CITY") and MISSION BAY YACHT CLUB, a nonprofit California corporation ("LESSEE") based upon the following:

RECITALS

- A. CITY and LESSEE are parties to the Lease dated July 10, 1961, on file in the Office of the City Clerk as Document No. RR-626984, as amended by that certain First Amendment to Lease Agreement entered into February 19, 1962, and filed as City Clerk Document No. RR-635478, that certain Second Amendment to Lease Agreement enter into on October 24, 1963, and filed as City Clerk Document No. R-662527, and the Third Amendment to Lease Agreement executed on April 18, 1988, and filed as City Clerk Document No. RR-270773 (collectively, the "Lease"), whereby CITY has leased a portion of CITY'S property commonly known as Mission Bay Park (as defined in the Lease) to LESSEE to construct, operate and maintain a yacht club, together with the right to construct buildings, auto parking areas, bulkheads, walks, boat storage areas, piers, docks, floats and slip, and such allied uses as may be first approved in writing by the City Manager.
- B. A land boundary survey of Mission Bay Park completed on March 9, 2001 (the Survey), which included surveys of all existing leaseholds, indicated that portions of the LESSEE's dock area were outside the leasehold boundary as determined by the Survey.
- C. CITY and LESSEE desire to revise the lease boundary to include LESSEE's existing facilities and to be consistent with the Survey.
- D. Modification of the leasehold boundary to conform with the Survey will not result in a net gain or loss of land or water acreage to the leasehold area.

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and LESSEE agree:

1. Amendment of Legal Description. The second paragraph of Section A of the Lease, amended by the Second Amendment to Lease Agreement is deleted in its entirety and the following substituted therefor: The City leases to Lessee and Lessee hires from the City those certain premises with the appurtenances situated in the County of San Diego, State of California, and more particularly described on the attached Exhibit A to this Fourth Amendment.

DOCUMENT NO. RR 297373

FILED NOV 25 2002
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

2. Nothing contained herein is intended to alter or amend any other covenant or condition of the Lease.

This Fourth Amendment to Lease is executed by CITY, acting by and through its City Manager, pursuant to Resolution No. R 297373, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 12/02/02

By 
Real Estate Assets Director

MISSION BAY YACHT CLUB, a nonprofit California corporation ("LESSEE")

Date June 27, 2002

By Edna Johnson

Title Commodore

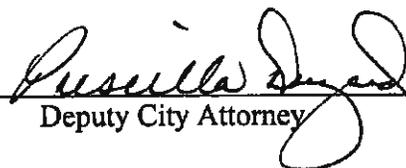
By RHS Brown

Title Vice Commodore

Approved as to form and legality:

CASEY GWINN, City Attorney

Date December, 2002

By 
Deputy City Attorney

JPA

5/8/02 Fourth Amendment-Mission Bay Yacht Club,5-7-02.wpd

R 297373

EXHIBIT 'A'
LEGAL DESCRIPTION FOR
MISSION BAY YACHT CLUB

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LAND OF FALSE BAY ALSO KNOWN AS MISSION BAY, AND INCLUDING ANY PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION #999, THE CCS 83 COORDINATES OF SAID STATION BEING NORTH 1861952.14 AND EAST 6261038.58, AS SHOWN ON ROS 16891, THENCE NORTH 34°39'08" WEST 8701.14 FEET TO THE CITY OF SAN DIEGO GPS STATION PT #1904, THE CCS 83 COORDINATES OF SAID STATION BEING NORTH 1869109.87 AND EAST 6256091.18 PER ROS 14492; THENCE SOUTH 17°27'51" WEST 4792.79 FEET TO THE **TRUE POINT OF BEGINNING**; THE CCS 83 COORDINATES OF SAID POINT BEING NORTH 1864538.01 AND EAST 6254652.82; THENCE

1. SOUTH 08°17'20" EAST 113.89 FEET; THENCE
2. NORTH 81°42'40" EAST 28.34 FEET; THENCE
3. SOUTH 08°17'20" EAST 126.75 FEET; THENCE
4. SOUTH 87°58'00" WEST 400.71 FEET; THENCE
5. SOUTH 08°17'20" EAST 316.97 FEET; THENCE
6. NORTH 81°42'40" EAST 559.18 FEET; THENCE
7. NORTH 08°17'20" WEST 57.00 FEET; THENCE
8. NORTH 81°42'40" EAST 121.79 FEET TO THE BEGINNING OF A NON-TANGENT 215.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 00°04'51" WEST; THENCE ALONG THE ARC OF SAID CURVE
9. NORTHEASTERLY 269.48 FEET THROUGH A CENTRAL ANGLE OF 71°48'49"; THENCE
10. NORTH 72°30'50" EAST 164.00 FEET; THENCE
11. NORTH 17°29'10" WEST 475.19 FEET; THENCE
12. SOUTH 72°30'50" WEST 102.77 FEET; THENCE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS DRAWING IS THE C.C.S. 83 ZONE 6 GRID BEARING BETWEEN STATION #1904 AND #999 PER ROS 16891

I.E. S 34°39'08" E

THE COMBINED SCALE FACTOR AT STATION #999 IS 1.0000063. GRID DISTANCE = GROUND DISTANCE x COMBINED SCALE FACTOR.

REFERENCE DRAWINGS

ROS 16891, ROS 14492

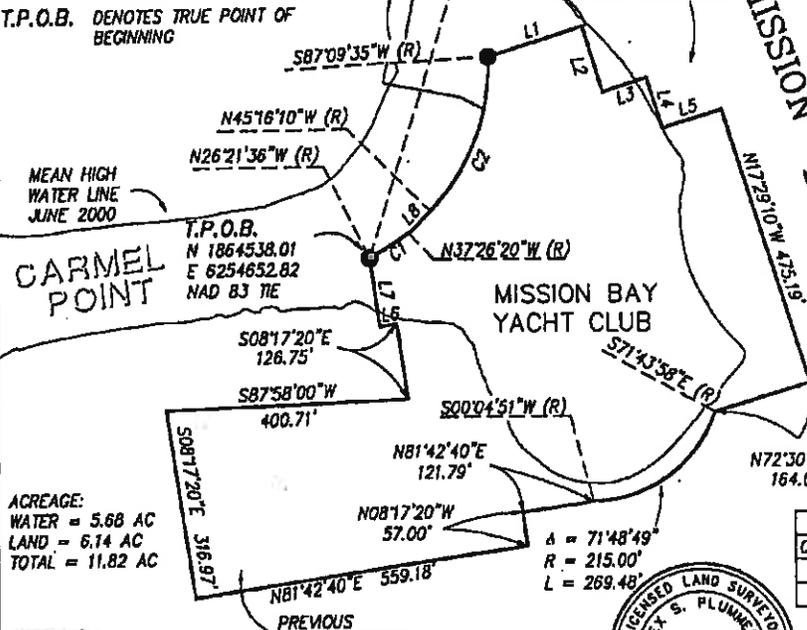
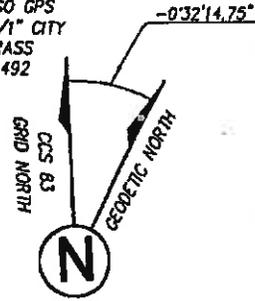
LEGEND

● DENOTES FOUND 2" IRON PIPE W/ DISC. MARKED "L.S. 6641" PER ROS 16891 UNLESS OTHERWISE NOTED

T.P.O.B. DENOTES TRUE POINT OF BEGINNING

P.O.B. FD 2 1/2" IRON PIPE W/ DISC. STAMPED "L.S. 6641" STA #999 PER ROS 16891 N 1861952.14 E 6261038.58 NAD 83

CITY OF SAN DIEGO GPS PT #1904, FD 2 1/4" CITY OF SAN DIEGO BRASS DISC PER ROS 14492 N 1869109.87 E 6256091.18 NAD 83



LINE TABLE		
LINE	LENGTH	BEARING
L1	166.56	S72°30'50"W
L2	115.00	N17°29'10"W
L3	77.23	S72°30'50"W
L4	88.90	N17°29'10"W
L5	102.77	S72°30'50"W
L6	28.34	N81°42'40"E
L7	113.89	S08°17'20"E
L8	52.00	S44°43'50"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	77.35	400.00	110°44'
C2	281.46	339.00	47°34'15"

ACREAGE:
WATER = 5.68 AC
LAND = 6.14 AC
TOTAL = 11.82 AC

Δ = 71°48'49"
R = 215.00'
L = 269.48'



PROJECT DESIGN CONSULTANTS
PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEY/GPS
701 B Street, Suite 800, San Diego, CA 92101
619-235-6471 FAX 619-234-0349



[Signature] 7/31/01
REX S. PLUMMER L.S. 6641 DATE
MY REGISTRATION EXPIRES 12-31-03

LEASE DESCRIPTION
FOR MISSION BAY YACHT CLUB

DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA	W.O. NO.
ORIGINAL	PDC				SHEET 1 OF 1 SHEET	1864-6253, 1862-6253
					FOR CITY ENGINEER	CCS '83 COORDINATES
						222-1692, 224-1692
						LANBERT COORDINATES

RESOLUTION NUMBER R- 297373

ADOPTED ON NOV 25 2002

WHEREAS, the City and Mission Bay Yacht Club have negotiated a lease amendment for City-owned property in Mission Bay, at the rental rate of approximately \$139,449 per annum, the fair market rate as determined by City valuation staff; and

WHEREAS, the current estimated value of the 6.14 acres of land and 5.7 acres of water area included in this leasehold is approximately \$2,500,000, as determined by City valuation staff; and

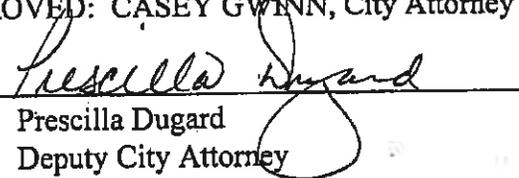
WHEREAS, the amendment is for modification of the legal description of Mission Bay Yacht Club's leasehold boundary; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a Fourth Amendment to Lease with Mission Bay Yacht Club, for modification of the legal description of the leasehold boundary, at an estimated rent of \$139,449 per annum, under the terms and conditions set forth in that Fourth Amendment to Lease on file in the office of the City Clerk as Document No.

RR- 297373

APPROVED: CASEY GWINN, City Attorney

By


Prescilla Dugard

Deputy City Attorney

PD:cdk

11/08/02

Or.Dept:REA

R-2003-673

Passed and adopted by the Council of the City of San Diego on November 25, 2002 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHEN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R-297373 passed and adopted by the Council of The City of San
Diego, California on November 25, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego,

California

(SEAL)

By:  Deputy

THIRD AMENDMENT
TO LEASE AGREEMENT

THIS AMENDMENT is executed by and between the CITY OF SAN DIEGO, a municipal corporation, "CITY", Lessor and MISSION BAY YACHT CLUB, INC., a non-profit California Corporation, "LESSEE."

WHEREAS, the rental rate under Paragraph (c) was reviewed and established every 2½ years during the first 25 years of the term, based upon a minimum rent of 50 percent of the then existing average contractual annual minimum commercial rental rate for leases in Quivira Basin;

WHEREAS, City Council adopted a new policy with regard to establishing rental rates for nonprofit LESSEES in Mission Bay:

WHEREAS, CITY and LESSEE wish to conform the new policy to the consideration provision of the lease;

NOW, THEREFORE, CITY and LESSEE hereby agree:

1. That Section C is hereby deleted in its entirety and the following substituted therefore:
 - c. The rent which shall be computed on an annual basis as hereinafter described and is payable in 12 equal monthly installments on or before the first day of each month at the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165.

For the period beginning August 1, 1986 and ending September 30, 1987, the rent shall be Sixty-two Thousand Nine Hundred Fifty-two Dollars (\$62,952) per year or Five Thousand Two Hundred and Forty-six Dollars (\$5,246) per month.

Beginning October 1, 1987 and annually thereafter, during the remainder of the lease term, the rental rate will be adjusted, by multiplying the total square footage of the leasehold including land and water (511,830 sq.ft.) by a number representing 33-1/3 percent of the average actual total annual commercial square foot rent paid (including land and water) during the immediately preceding fiscal year (July 1 through June 30) for leases in Mission Bay Park. It is understood that "commercial square foot rent" excludes leases with nonprofit lessees.

If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is

DOCUMENT NO. RR 270773

D APR 18 1988

OFFICE OF THE CITY CLERK



hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

- 2. This amendment shall be effective upon execution by City Manager of City.
- 3. Nothing contained herein is intended to alter or amend any other covenants or conditions of said lease agreement.
- 4. This reduced rent shall be in effect only so long as the Council Policy provides for such reduced rent. In the event that the Council Policy is again revised during the lease term to provide for higher rent, this lease shall be subject to any such increases that Council policy allows.

THE CITY OF SAN DIEGO

Date APR 18 1988



By Donald Van Wanselle
ASSISTANT TO THE City Manager

LESSEE - MISSION BAY YACHT CLUB, INC.

Date 12-3-87

By Helen D. Bedford

By Quentin Hogan

APPROVED as
to form by JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

RJC:MB:baa(4)108
7-31-87

R 270773

(R-88-1915)

RESOLUTION NUMBER R- 270773

ADOPTED ON APR 18 1988

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Third Amendment to Lease Agreement with MISSION BAY YACHT CLUB, INC., a nonprofit California corporation, for the use of a portion of El Carmel Point in Mission Bay, with rental being based upon 33-1/3 per cent of commercial rents paid by lessees in Mission Bay Park, under the terms and conditions set forth in that Third Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 270773.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/25/88
Or.Dept:Prop.
Job:200003.
R-88-1915
Form=r.none

Passed and adopted by the Council of The City of San Diego on

April 18, 1988 by the following vote:

YEAS: Wolfsheimer, Roberts, McColl, Pratt, Struiksma, Henderson,

McCarty, Filner, O'Connor

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 270773, passed and adopted by the Council of The City of San Diego, California on APR 18 1988.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Ellen Bovard, Deputy

POOR QUALITY DOCUMENT

Ben T. Pk + Pico

177635

RESOLUTION No.

OCT 24 1963

ADOPTED ON

BE IT RESOLVED by the Council of The City of San Diego as follows:

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an amendment to lease agreement with the Mission Bay Yacht Club, Inc., amending a lease agreement covering a portion of El Carusel Point by revising the lease limits to permit construction of additional slip facilities and better utilization of the lease premises, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document

No. 662462

Presented by _____

APPROVED: ALAN M. FIRESTONE, City Attorney,

BY _____

Chief Deputy.

11/10/15/63

POOR QUALITY DOCUMENT

2nd Amendment
AMENDMENT TO LEASE AGREEMENT

DOCUMENT NO. 662527

FILED OCT 29 1963
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS AMENDMENT, made and entered into this 24 day of October, 1963, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and MISSION BAY YACHT CLUB, INC., a non-profit California corporation, whose address is 1215 El Carmel Place, San Diego, California 92109, hereinafter designated "LESSEE," WITNESSETH:

WHEREAS, the parties heretofore have entered into a Lease Agreement covering a portion of El Carmel Point, lying within Mission Bay Park, more particularly described in Lease Agreement, which said Lease Agreement and Amendments are filed in the office of the City Clerk as Documents Nos. 626984, 635478; and

WHEREAS, the parties hereto desire to revise the lease limits to permit construction of additional slip facilities and better utilization of the Lease Premises; NOW THEREFORE, for and in consideration of the mutual covenants herein contained, CITY and LESSEE hereby agree to amend and modify said Lease Agreement to provide as follows:

I THAT THE SECOND PARAGRAPH OF SECTION A IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

The City hereby leases to the Lessee and the Lessee hires from the City, those certain premises with the appurtenances situated in the County of San Diego, State of California, and more particularly described as follows:

That portion of the tidelands and submerged or filled lands of Mission Bay (formerly False Bay), and a portion of the Pueblo Lands of San Diego according to Map thereof made by James Pascoe in 1870, a copy of which said Map was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A" Inspiration Heights, according to Map thereof No. 1700, filed in the office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South 89°55'56" West, (Record = South 89° 59' West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South-00°04'04"-East, 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North 89°55'56" East, 249.70 feet; thence North 05°30'02" West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" (The Lambert Grid Co-ordinates, California Zone 6, for said Station "Old Town" are X = 1,712,415.17 and Y = 213,819.22) and said Triangulation Station is located at Latitude 32°45'02.45" North and Longitude 117°11' 07.200" West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System; thence North 9993.62 feet and West 18,554.53 feet to the TRUE POINT OF BEGINNING; the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 9993.62 feet and West 18,554.53 feet; thence South 72°00'00" West 90.00 feet to the beginning

of a non-tangent 215.00 foot radius curve concave Northwesterly; thence Southerly and Southwesterly along the arc of said curve 441.70 feet through an angle of 117°42'40"; thence South 81°11'50" West 248.97 feet; thence South 08°48'10" East 12.50 feet; thence South 81°11'50" West 432.00 feet; thence North 08°48'10" West 282.50 feet; thence North 81°11'50" East 370.00 feet; thence North 08°48'10" West 196.97 feet to the beginning of a non-tangent 167.00 foot radius curve concave Northwesterly, a radial of which said curve bears North 19°02'42" West from said point; thence Northeasterly along the arc of said curve 77.93 feet through an angle of 26°44'18"; thence North 44°13'00" East 52.00 feet to the beginning of a tangent 339.00 foot radius curve concave Northwesterly, a radial of which said curve bears North 45°47'00" West from said point; thence Northeasterly and Northerly along the arc of said curve 281.45 feet through an angle of 47°34'12"; thence North 72°00'00" East 166.56 feet; thence South 18°00'00" East 115.00 feet; thence North 72°00'00" East 180.00 feet; thence South 18°00'00" East 463.00 feet to the TRUE POINT OF BEGINNING and containing 6.1 acres of land area and 5.65 acres of water area.

Reserving therefrom all rights, title and interest in any and all gas, oil, mineral and water, upon or beneath said Leased Premises.

NOTE: The parcel described above is delineated on City of San Diego Engineering Department Drawing No. 8624-D dated June 23, 1961 and is designated thereon as Mission Bay Yacht Club Lease, El Carmel Point.

IN WITNESS WHEREOF, this Lease Amendment is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager, pursuant to Resolution No. 177635 authorizing such execution, and LESSEE has caused this Agreement to be executed and its corporate name and seal to be affixed by the proper officers, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By Walter Hahn W.
Acting City Manager

MISSION BAY YACHT CLUB, INC.

By R. C. Harris

By R. Daryl Collins

I HEREBY APPROVE the form and legality of the foregoing Lease Amendment this 16 day of October, 1963.

ALAN M. FIRESTONE, City Attorney

By Robert S. Lopez
Deputy

FILED FEB 27 1962

AMENDMENT TO LEASE AGREEMENT

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

* THIS AMENDMENT, made and entered into this 19th day of _____, 1961, by and between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and MISSION BAY YACHT CLUB, INC., a non-profit California corporation, whose address is 1215 El Carmel Point, San Diego 6, California, hereinafter designated "Lessee," WITNESSETH:

WHEREAS, the parties heretofore have entered into a Lease Agreement covering a portion of the tidelands and submerged or filled lands of False Bay, also known as Mission Bay, and that portion of the Public Lands of San Diego, according to Miscellaneous Map No. 36 thereof by James Pascoe, which said Lease Agreement is filed in the Office of the City Clerk as Document No. 626984; and

WHEREAS, said lease agreement provides for the leasing of said area for the purpose of: Construction, operation, and maintenance of a yacht club, together with the right to construct buildings, auto parking areas, bulkheads, walks, boat storage areas, piers, docks, floats and slips, and other allied uses as must first be approved in writing by the City Manager; and for no other purpose; and

WHEREAS, City and Lessee now desire to amend and modify said Lease Agreement as more particularly hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, City and Lessee hereby agree to amend and modify said Lease Agreement to provide as follows:

THAT SECTION (C) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(C) The rent which shall be computed on an annual basis as hereinafter described is payable in twelve equal monthly installments beginning on the 1st day of August, 1961 at the office of the City Treasurer, Room 162 Civic Center, San Diego 1, California, and shall be:

For the first TWO AND ONE-HALF YEARS (2½) beginning on the 1st day of August, 1961, the rent shall be FOUR THOUSAND, FIVE HUNDRED FIFTY-TWO and NO/100 DOLLARS (\$4,552.00) per year, based upon 265,716 square feet of land area at \$.0125 per square foot per year and 246,114 square feet of water area at \$.005 per square foot per year.

For the next TWO AND ONE-HALF YEARS (2½) the rent shall be SIX THOUSAND, THREE HUNDRED SEVENTY-THREE and NO/100 DOLLARS (\$6,373.00) per year based upon 265,716 square feet of land area at \$.0175 per square foot per year and 246,114 square feet of water area at \$.007 per square foot per year.

During the remaining term of the lease, rental rates will be reviewed and established on or before the expiration date of each two and one-half year period by the City. The rate established will reflect a proper relationship in the value of Mission Bay Land; to the change in the economic level of the City of San Diego; to the degree of services performed by the lessee; and to the accomplishment of the intent and purposes for which this lease is let. Provided, however, that for the first twenty-five (25) years of this agreement, any increase in said rent shall not cause said rent to exceed 50% of the then existing average contractual annual minimum commercial rent rate for the lessee in Miramar Basin providing the operation conducted on the leased premises is in accordance with the intent of terms and conditions of this agreement.

/s/ B. W. Powers
/s/ R. D. Collins

*
THAT SUB-PARAGRAPH (D) (8) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (8) MECHANIC'S LIEN BOND. Lessee will save City free and harmless indemnify it against all claims for labor and materials in connection with improvements, repair or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs, or alterations are constructed on the leased premises by other than the City, the Lessee shall file with the City a bond, conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used, in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City Manager. The bond shall be acknowledged by the Lessee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the Lessee has failed to provide a bond as required by the preceding two sentences hereof, the City may terminate this lease at its option any time after 5 days after service of summons in such lawsuit upon the City and the City's compliance with the condition precedent to termination set forth below; provided however that the City Manager shall have the right to continue this lease in full force and effect by notifying the Lessee in writing of his election to do so; provided further, however, that in the event there is a deed of trust or mortgage on the leasehold given by Lessee with the prior consent of the City to secure a construction loan provided for in Section 37 herein, the City shall not terminate this lease until it shall have as a condition precedent notified in writing the mortgagee or beneficiary thereof of the failure of the Lessee to give the bond and said beneficiary or mortgagee shall have 30 days from service upon it of said written notice within which time to record a bond or to provide to the satisfaction of the City indemnification in an amount of not less than 150% of the lien claim, and the mortgagee or beneficiary may contact the claim provided that upon a final determination of the claim the mortgagee or beneficiary shall pay the claim together with any interest, costs, and penalties in connection therewith.

THAT SUB-PARAGRAPH (D) (12) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (12) REMEDIES OF CITY. In the event (a) that Lessee shall default in the performance or fulfillment of any covenant or condition herein contained on his part to be performed or fulfilled and shall fail to cure such default within thirty (30) days following the service on him of a written notice from the City specifying the default or defaults complained of and the date on which his rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, or (b) that Lessee shall file a voluntary petition in bankruptcy, or (c) that Lessee shall be adjudicated a bankrupt, or (d) that Lessee shall make a general assignment for the benefit of creditors, then and in either or any of said events, City may at its option, without further notice or demand upon Lessee or upon any person or persons claiming by, through or under Lessee except the performance and fulfillment by the City of the condition

precedent to termination of this lease as set forth below, immediately cancel and terminate this lease and terminate each, every, and all of the rights of lessee and of any and all persons claiming by, through, or under lessee in or to the leased premises and in or to the further possession thereof and may thereupon enter into and upon the leased premises and repossess the same and expel lessee and all persons claiming by, through, or under lessee. The rights and remedies of City as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to City any right or remedy at law or in equity which City may have or assert against lessee under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which City may have against said lessee. Provided, however, that in the event that there is a deed of trust or mortgage on the leasehold given by lessee with the consent of the City to secure a construction loan provided for in Section 57 herein, the City shall not terminate this lease until it shall have as a condition precedent served upon the mortgagee or beneficiary written notice of the default or defaults complained of and if said defaults are curable, the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary, and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter and said thirty (30) day period shall be extended during the time required for said mortgagee or beneficiary to perfect through litigation its right to cure, provided further that if mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation, then City shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

(a) City may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by City in enforcing this provision) to the account of the lessee as rent which shall be due and payable on the date that the rent is next due after presentation by City of a statement of all or part of said costs.

(b) City may correct or cause to be corrected said default or defaults and pay the costs thereof (including costs incurred by City in enforcing this provision) from the funds of any Faithful Performance Surety Bond on deposit with City, or City may call on Bonding Agent to correct said default or defaults or to pay the cost of such correction performed by or at the direction of the City.

(c) City may terminate this lease with respect to the lessee by either assuming liability for any trust deed or mortgage theretofore approved by City, or City may substitute for said terminated lessee a new lessee satisfactory with mortgagee or with beneficiary.

Should said default or defaults be of a noncurable type or nature, then the mortgagee or beneficiary shall have the absolute right to substitute itself to the estate of the lessee hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to do so substitute itself and commence performance within said thirty (30) day period after service upon it of said written notice of default by the City. In the event of the election by the mortgagee or beneficiary to substitute itself to lessee's estate hereunder, the City expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights and privileges of the original lessee hereunder, subject to cure of the default, and lessee expressly assigns all its interest in and to its leasehold estate in that event.

* THAT SUB-PARAGRAPH (D) (19) (d) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

INSURANCE

(D) (19) (d) Lessee also agrees to take out and maintain during the entire term of this agreement, fire and extended coverage insurance on all property of an insurable nature belonging to Lessee located upon the leased premises. Said insurance shall be written by an insurance carrier satisfactory with City and in an amount sufficient to cover the replacement cost of said property. Lessee shall require that a certificate of such insurance be filed with City and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the certificate without prior written notice to City. Lessee shall pay the premium for such insurance and shall require that any such insurance proceeds resulting from a loss under said policy are payable jointly to City and Lessee in order that said proceeds will be reinvested in rebuilding or repairing the damaged property; (or said proceeds may be disposed of as specified in Section D, Paragraph 16,) provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of the City securing a construction loan provided for in Section D, Paragraph 26 herein, then and for that period all policies of fire insurance shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to the said mortgagee or beneficiary, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes: (1) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to Lessee or (2) In the event that this lease is terminated with consent of City and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary fully to discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability for City and Lessee as their interests may appear.

City reserves the right to increase the limits of Public Liability and or the amount of Physical Damage to property, when, in the opinion of the City, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

THAT SUB-PARAGRAPH (D) (16) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (16) WASTE, DAMAGE OR DESTRUCTION OF PREMISES. Lessee shall give prompt notice of any fire or damage that may occur from any reason whatsoever. Lessee shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the leased premises shall be damaged by any cause so as to render the premises untenable, unsightly, or unfit for the uses or purposes for which the same are hereby let and said damages are repairable within a reasonable time in the opinion of the City Manager, Lessee shall make or cause to be made full repairs to said damages so as to restore the premises to the condition which existed prior to said damages, or Lessee shall clear and remove from the said leased premises all debris resulting from said damages and rebuild the premises in accordance with plans and specifications previously submitted to City Manager and approved in writing by him in order to replace the operation in kind and scope which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Part 1 of clause (1) of Section D, Paragraph (19) hereof marked "Insurance." Preliminary steps

* with a view toward performing repairs, restoration or replacement of the premises shall be commenced by Lessee within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

In the event Lessee fails to commence and/or complete said repairs, restoration or replacement within the time specified herein, then City shall have the option to do any of the followings:

(a) City may terminate this agreement by the giving of notice of such termination in writing to the mortgagee or trust deed beneficiary holding the proceeds of insurance as set forth in Section D, Paragraph (13) hereof entitled "Insurance", and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part 2 of clause (d) thereof; or (b) City may make or cause to be made said repairs, restoration or replacement and charge the costs therefor (including costs incurred by City and enforcing this provision) to the account of the Lessee, and Lessee authorizes City to use the insurance proceeds for said repairs, restoration or replacement, in accordance with Part 1 of clause (d) of Section D, Paragraph (13) hereof entitled, "Insurance", and held in trust by a mortgagee or trust deed beneficiary, and Lessee hereby waives any right in said insurance proceeds.

In the event City selects said option (b) City may have the additional options of either (i) continuing this lease in full force and effect; or (ii) terminating this agreement with respect to the Lessee by either assuming liability for any trust deed or mortgage theretofore approved by City, or City may substitute for said terminated Lessee a new Lessee satisfactory with mortgagee or beneficiary.

THAT SUB-PARAGRAPH (D) (26) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (26) CANCELLATION. If at any time during the term of this lease or any extension thereof, City by resolution of City Council, determines the uses of the leased premises provided by Paragraph "A" hereof are then inconsistent with public convenience and necessity and further that the leased premises shall not be used for said purposes during the then remaining term of this lease, then City shall have the right to terminate the lease upon one year's written notice to Lessee and upon payment to the Lessee of compensation for the improvements placed upon the leased premises by the Lessee. Provided however, in the event of cancellation of this lease in accordance with the terms of this section, any amount due from City for payment of compensation for the improvements placed on the leased premises shall be used first to pay the financial institution or lending agency or person who is a beneficiary under a trust deed or mortgage recorded with the prior consent of City any unpaid balance of the loan. Any amount after payment by City to said beneficiary shall then be paid to Lessee. The amount of compensation shall be the approved construction cost, as defined in this agreement, depreciated as hereinafter defined, and in ratio to the time of approval of construction costs to the time of termination and adjusted to the Purchasing Power of the Dollar as reflected by the U.S. Department of Commerce Consumer Price Index of Commodity Prices using 1947-49 equal to 100%. Depreciation shall be computed by dividing the approved construction costs by the number of years remaining in the term of this agreement after the date of completion of such improvements, prorated for any portion of a year. No compensation shall be paid by the City for any costs not approved in accordance with the provisions of Section D, Paragraph (18) of this agreement, provided, however, that should said cancellation occur during a period within which there is in existence a mortgage or deed of trust on the leasehold given by Lessee with the consent of the City to secure any construction loan provided for in Section D, Paragraph (28) herein, then in no event shall the amount payable by the City on cancellation of this lease be less than the amount sufficient to fully discharge all such loans if all periodic payments thereon had been made when due under the terms of such loans, approved by City, and as they may have been modified or extended with the consent in writing of the City other than payments not actually made which fell due within one year prior to the date of such termination by the City.

THAT SUB-PARAGRAPH (D) (28) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (28) LEASEE KNOWLEDGE. The City does hereby consent and agree that the Lessee may encumber this lease, leasehold estate and the improvements thereon, with by deed of trust, mortgage, or other security type instrument to assure the payment of a promissory note or notes of the Lessee in accordance with the approved financial plan as outlined in Paragraph (D) (29) of this agreement upon the expressed condition that the net proceeds of such loan or loans received by the Lessee be devoted exclusively to the purpose of developing the leased premises and for the primary purpose of constructing the facilities in accordance with the said Master Plan for the leased premises; however a reasonable portion of the loan proceeds may be disbursed for, or applied to payment of incidental costs of such construction including but not limited to, any one or more or all of the following: office improvements for service of the leased premises, or site improvements, access charges, premiums for hazard insurance or other insurance or bonds required by City, title insurance premiums and reasonable loan costs such as discounts, interest, and commissions; also architectural, engineering and attorneys fees or such other normal expenses. Any subsequent encumbrances on the real property or to any permanent improvements thereon, must first have the approval in writing of City Manager. The City further consents and agrees that in the event said deed of trust, mortgage or other security instrument should at any time be in default and be foreclosed that the City will accept the mortgagee or beneficiary thereof as its new tenant under this lease with all the rights and privileges of the original Lessee, and that in the event that it is desired thereafter by said mortgagee or beneficiary to assign this lease to its nominee, and said nominee is a reputable and financially responsible operator in the opinion of the City, the City hereby agrees that upon the filing of an application for consent to such assignment the City will give its consent thereto, and agrees not to unreasonably withhold such consent. In the event Lessee is in default under any provision of this lease, the City agrees to serve written notice thereof upon said mortgagee or beneficiary to cure said default if said default is curable or to allow said mortgagee or beneficiary to substitute itself to Lessee's estate hereunder and to operate the leasehold premises if said default is non-curable, all as set forth hereinafter in detail.

THAT SUB-PARAGRAPH (D) (29) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

(D) (29) APPROVAL OF FINANCING. Within 60 days of the effective date of this agreement, Lessee shall submit to City a financial statement setting forth the projected method of financing the proposed development on the leased premises, showing the equity capital to be invested and its source, and the borrowed capital and its source; Lessee will also show the amount of investment in improvements and furnishings, the schedule of such expenditure, and the amount of capital available for operating upon commencement of operations on the leased premises. If in the opinion of the City Manager, the financial structure of the Lessee is insufficient to reasonably insure the fulfillment of the terms of this agreement and the success of the operation thereunder, then City shall specify in what particulars Lessee is deficient and Lessee shall comply with City's requirements within 30 days of the date of notice by City that such deficiency exists. In the event of Lessee's failure to cure the deficiency specified by City within said 30 day period, then this agreement shall not become effective and Lessee shall pay to City rent as set forth in Section (C) of this agreement.

*
IN WITNESS WHEREOF, this lease agreement is executed by the City, acting
by and through the City Manager of said City, under and pursuant to Resolution
No. 169517 authorizing such execution, and the Lessee has caused
this agreement to be executed and its corporate name and seal to be affixed by
the proper officers, the day and year first above written.

THE CITY OF SAN DIEGO

By /s/ E. W. Blom
City Manager

Acting

MISSION BAY YACHT CLUB, INC.,
A Non-Profit California Corporation

By /s/ Bradford W. Powers
Pres.

By /s/ R. D. Collins
Secy.

I HEREBY APPROVE the form and legality of the foregoing lease agreement
this 5 day of Feb., 1962.

ALAN M. FINESTONE, City Attorney

By /s/ Robert S. Tezzo
Deputy

MB/WRK
*

RESOLUTION No. 169517

FEB 13 1962

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an Amendment to Lease Agreement with the Mission Bay Yacht Club, Inc., covering construction, operation and maintenance of a yacht club on a portion of the tidelands of False Bay, also known as Mission Bay, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 634073.

Presented by _____

Approved as to form by ALAN M. FIRESTONE, City Attorney,

By _____
Chief Deputy.

M/1/23/62

I HEREBY CERTIFY the above to be a full, true, and correct copy of Resolution No. _____ of the Council of the City of San Diego, as adopted by said Council _____

City Clerk

By _____
Deputy.

DOCUMENT NO. 626984

FILED JUL 19 1961

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PROPERTY
LEASE AGREEMENT

This LEASE AGREEMENT, executed in duplicate, this 10th
day of July 1961, by and between THE CITY OF SAN DIEGO, a
municipal corporation in the County of San Diego, State of California and

MISSION BAY YACHT CLUB, INC., a non-profit

California Corporation

whose address is 1215 El Carmel Point

San Diego 8, California

hereinafter called respectively the "City" and the "Lessee" without regard
to number or gender, WITNESSETH:

(A) That property hereinafter described is leased for the purpose of:

construction, operation and maintenance of a yacht club, together
with the right to construct buildings, auto parking areas, bulk-
heads, walks, boat storage areas, piers, docks, floats and slips
and such allied uses as may be first approved in writing by the
City Manager.

and for no other purpose.

The City hereby leases to the Lessee and the Lessee hires from the City
those certain premises with the appurtenances situated in the County of San
Diego, State of California, and more particularly described as follows:

*See 2nd
amendment
Doc. 66252
dated 10/29/63*

That parcel of land in the City of San Diego, County of San Diego, State of California, being a portion of the tidelands and submerged or filled lands of False Bay, also known as Mission Bay and that portion of the Pueblo Lands of San Diego, according to Map thereof by James Pascoe, a copy of which is on file in the office of the County Recorder of said County and is known as Miscellaneous Map No. 36, described as follows:

Beginning at the Southeast corner of Lot 21 of Block 10 in the Re-subdivision of Blocks 7, 8, 10, and a portion of Block 9 and Lot "A" of Inspiration Heights, according to Map thereof No. 1700 filed in the office of the County Recorder of said County; thence along the Southerly line of said Lot South 89°55'56" West (record North 89°59' West) 25 feet to a point of tangent curve in the boundary of said Lot; thence South 0°04'01" East 2 feet to a line which is parallel with and 2 feet Southerly at right angles from the Southerly line of said Block 10; thence along said parallel line North 89°55'56" East 249.70 feet; thence North 5°30'02" West 104.06 feet to the United States Coast and Geodetic Survey, Triangulation Station "Old Town", (the Lambert Grid Co-ordinates California Zone 6 for said Station "Old Town" are X equals 1,712,415.17 and Y equals 213,819.22 and said Triangulation Station is located at Latitude 32°45'02.845" Longitude 117°11'07.200") said Station "Old Town" being the point of origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System; thence North 9993.62 feet and West 18,554.53 feet to the TRUE POINT OF BEGINNING; the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 9993.62 feet and West 18,554.53 feet; thence South 72°00'00" West 90.00 feet to the beginning of a non-tangent 215.00 foot radius curve concave Northwesterly; thence Southerly and Southwesterly along the arc of said curve 441.70 feet through an angle of 117°42'40"; thence South 81°11'50" West 700.97 feet; thence North 08°48'10" West 270.00 feet; thence North 81°11'50" East 390.00 feet; thence North 08°48'10" West 196.97 feet to the beginning of a non-tangent 167.00 foot radius curve concave Northwesterly, a radial of which said curve bears North 19°02'42" West from said point; thence Northeasterly along the arc of said curve 77.93 feet through an angle of 26°44'18"; thence North 44°13'00" East 52.00 feet to the beginning of a tangent 339.00 foot radius curve concave Northwesterly; a radial of which said curve bears North 45°47'00" West from said point; thence Northeasterly and Northerly along the arc of said curve 281.46 feet through an angle of 47°34'12"; thence North 72°00'00" East 166.56 feet; thence South 18°00'00" East 115.00 feet; thence North 72°00'00" East 180.00 feet; thence South 18°00'00" East 463.00 feet to the TRUE POINT OF BEGINNING and containing 6.1 acres of land area and 5.65 acres of water area.

Reserving therefrom all rights, title and interest in any and all gas, oil, mineral and water, upon or beneath said leased premises.

NOTE: The parcel described above is delineated on City of San Diego Engineering Department Drawing No. 862h-D dated June 23, 1961 and is designated thereon as Mission Bay Yacht Club Lease, El Carmel Point.

(B) The term shall be FIFTY YEARS (50) beginning on the day, month and year the Lessee shall obtain financing for the construction of improvements to be placed upon the leased premises. Provided, however, that in the event Lessee does not obtain financing within 180 days from the execution date of this agreement, then this agreement shall terminate and be of no further force or effect.

(C) The rent which shall be computed on an annual basis as hereinafter described is payable in twelve equal monthly installments beginning on the first day of the month following the effective date of this agreement as set forth hereinabove, at the office of the City Treasurer, Room 162, Civic Center, San Diego 1, California, and shall be:

*deleted
See 1st
amend.
Doc 635438
dated 2/14/68*

For the first TWO AND ONE-HALF YEARS (2 1/2) beginning with the execution date of this agreement, the rent shall be FORTY FIVE HUNDRED, FIFTY TWO and NO/100 DOLLARS (\$ 4,552.00) per year based upon 265,716 feet of land area at \$.0175 per square foot per year and 246,114 square feet of water area at \$.005 per square foot per year.

For the next TWO AND ONE-HALF YEARS (2 1/2) the rent shall be SIXTY THREE HUNDRED, SEVENTY THREE and NO/100 DOLLARS (\$ 6,373.00) per year based upon 265,716 square feet of land area at \$.0175 per square foot per year and 246,114 square feet of water area at \$.007 per square foot per year.

During the remaining term of the lease, rental rates will be reviewed and established on or before the expiration date of each two and one-half year period by the City. The rate established will reflect a proper relationship in the value of Mission Bay land; to the change in the economic level of the City of San Diego; to the degree of service performed by the Lessee; and to the accomplishment of the intent and purposes for which this lease is let. Provided, however that for the first twenty five (25) years of this agreement, any increase in said rent shall not cause said rent to exceed 50% of the then existing average contractual annual minimum commercial rent rate for leases in Quivira Basin providing the operation conducted on the leased premises is in accordance with the intent of terms and conditions of this agreement.

(D) It is further mutually agreed by the parties as follows; that:

1. RENT PAYMENT. The rent is due and payable in accordance with the terms stated in Section C hereinabove and Lessee agrees to remit to City the rent promptly upon the date upon which said rent becomes due. Failure of Lessee to pay said rent in accordance with the terms hereof shall constitute a breach of contract and City shall have the right to immediately terminate this contract.

2. QUIET POSSESSION. Lessee, paying the said rent and performing the covenants and agreements aforesaid, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term aforesaid. If City for any reason whatsoever cannot deliver possession of the said premises to Lessee at commencement of said term as hereinbefore specified or, if Lessee is dispossessed through action of a title superior to City's, then and in either of such events, this lease shall not be void or voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom; but there shall be determined and stated in writing by the City Manager of City a proportionate deduction of the rent covering the period or periods during which Lessee is prevented from having the quiet possession of the demised premises.

3. INSURANCE RISKS. The Lessee shall not use, or permit said premises or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the said premises are hereby leased. Unless included within the said purposes or necessarily

* incident thereto, no use shall be made or permitted to be made of the said premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings, if any, belonging to City which may be located on the leased premises or in which said premises may be located, or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, used, or sold in or about said premises. The Lessee shall, at his sole cost and expense, comply with any and all requirements, pertaining to said premises of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

*Deleted
see
amend.* 4. MECHANIC'S LIEN BOND. Lessee will save City free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repair or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs, or alterations are constructed on the leased premises by other than the City, the Lessee shall file with the City a bond, conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used, in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City Manager. The bond shall be acknowledged by the Lessee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien-holder attempts to perfect such lien by a lawsuit and the Lessee has failed to comply with the requirements of this paragraph, this lease shall automatically terminate five (5) days after service of summons in such lawsuit upon the City; provided, however, that the City Manager shall have the right to continue this lease in full force and effect by notifying the Lessee in writing of his election to do so.

Provided however, that in the event Lessee fails to file said bond and a mechanic's lien is recorded and an action is commenced to foreclose such lien, then any financial institution or lending agency or person who is a beneficiary under a trust deed or mortgage recorded with the prior consent of City shall be notified of the failure of the Lessee to give the bond and it shall have 30 days to remove any such mechanics lien and foreclosure action from the records and if such financial institution or lending agency or person does so remove such lien and action from the records then the Lease shall continue in force.

5. ENTRY AND INSPECTION. City reserves, and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted on said premises. In the event that such entry or inspection by City discloses, in the opinion of the City Manager, that said premises are not in a safe, healthy and satisfactory condition or a violation of any Municipal, State or Federal ordinance, statute or law, or any breach of condition of lease, City shall have the right, after ten (10) days written notice to Lessee, to have any necessary maintenance work done for and at the expense of the Lessee. Lessee agrees to pay promptly any and all costs incurred including reasonable expenses of City in having such necessary work done in order to keep said premises in a safe, healthy and satisfactory condition and to cure any violations or breach of conditions of lease. Repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which said rent becomes due. Upon demand by City, Lessee shall file a faithful performance bond in an

* amount equal to one-half of the annual rent paid to City based on the previous twelve month period. The rights reserved in this and the following section shall not create any obligations on City or increase obligations elsewhere in this lease imposed on City.

6. ASSIGNMENT. Lessee shall not assign this lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officer and employees of City excepted) to occupy or use the said premises, except as consistent with the purpose of this agreement, without the prior written consent of the City Manager of City. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void. This lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of the City Manager.

7. COMPLIANCE WITH LAW. The Lessee shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon the Lessee or the leased premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the said leased premises. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sub-lessee or permittee in any action or proceeding against them or any of them, whether the City be a party thereto or not, that the Lessee, sub-lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between City and Lessee.

8. ASSIGNS. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sub-Lessees of Lessee.

9. WAIVER. The waiver by City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by City 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 failure of Lessee to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent, nor shall any failure on the part of City to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease be construed as in any manner changing the terms hereof or to stop City from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of the City and Lessee.

10. MERGER. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall at the option of City, terminate all or any existing sub-leases or subtenancies, or may, at the option of City, operate as an assignment to it of any or all such subleases or subtenancies.

11. NOTICES. Control and administration of this lease is under the jurisdiction of the Property Department of the City of San Diego.

and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon City may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention: Property Supervisor, Property Department, Civic Center, San Diego 1, California. Any notice or notices provided for by this lease or by law to be given or served upon Lessee may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said Lessee at the address stated at the commencement hereof, or may be personally served upon said Lessee (or any one of them), or any person hereafter authorized by Lessee to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

See list amended
12. REMEDIES OF CITY. In the event (a) that Lessee shall default in the performance or fulfillment of any covenant or condition herein contained on his part to be performed or fulfilled and shall fail to cure such default within thirty (30) days following the service on him of a written notice from the City specifying the default or defaults complained of and the date on which his rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, or (b) that Lessee shall file a voluntary petition in bankruptcy, or (c) that Lessee shall be adjudicated a bankrupt or (d) that Lessee shall make a general assignment for the benefit of creditors then and in either or any of said events, City may at its option, without further notice or demand upon Lessee or upon any person or persons claiming by, through or under Lessee, immediately cancel and terminate this lease and terminate each, every and all of the rights of Lessee and of any and all persons claiming by, through, or under Lessee in or to the leased premises and in or to the further possession thereof and may thereupon enter into and upon the leased premises and repossess the same and expel Lessee and all persons claiming by, through or under Lessee. The rights and remedies of City as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to City any right or remedy at law or in equity which City may have or assert against Lessee under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which City may have against said Lessee. Provided, however, that prior to, or in the event of any occurrence as specified in a, b, c, and d, hereinabove, the financial institution or lending agency or person who is a beneficiary under a trust deed or mortgage recorded with the prior consent of City may cure and default or defaults of Lessee under a, and may enter and operate the leased premises in the event of any occurrence under b, c, or d, during the period the deed of trust or mortgage is in existence, and the lease agreement shall not be terminated.

13. INSURANCE. Lessee agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to City to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Lessee or any person acting for Lessee or under Lessee's control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Lessee or any person acting for Lessee or under Lessee's control or direction.

* Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease. Commencing with the execution of this lease, Lessee shall maintain the minimum amount of not less than

ONE HUNDRED THOUSAND and No/100 Dollars (\$100,000.00)

for one person injured in one accident and not less than

THREE HUNDRED THOUSAND and NO/100 Dollars (\$300,000.00)

for more than one person injured in one accident, and in the amount of not less than

TWENTY FIVE THOUSAND and NO/100 Dollars (\$25,000.00)

with respect to any property damage aforesaid. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, than the minimum limits hereinabove designated shall be changed accordingly. If Lessee does not keep such insurance in full force and effect, City may take out the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which rent becomes due. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities of any person or persons for which it is otherwise responsible.

During the term of this lease the Lessee agrees to defend in the name of and on behalf of the City all claims or suits for damages and all fixed costs and interests on all such legal proceedings and pay all sums which the City may become liable to pay as damages imposed upon him by law arising out of accidental bodily injury or death suffered or alleged to have been suffered by any person while within or upon the premises described in this lease or upon the sidewalks or other ways or premises adjacent thereto; and pay all sums which the City may become liable to pay as damages imposed upon him by law resulting from accidental injury to or destruction of property not owned, leased, occupied, or used by, or in the care, custody of, or control of the Lessee or of the City or of any employee of the Lessee or of the City subject to the following conditions:

- (a) This agreement shall not apply to any injury or death caused by any employee of the City;
- (b) The City shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of the Lessee;
- (c) The Lessee shall, on or before the effective date of this lease, deliver to the Property Department of the City a certificate of bodily injury and property damage liability insurance issued by a company licensed to transact such business in the State of California, indicating that the Lessee has in that company bodily injury and property damage liability insurance as required in Paragraph 17, and that the policy has been endorsed or does otherwise cover the contractual liability imposed by this agreement, and that the insurance company shall notify the Property Department if said policy be terminated or limited in any manner prior to the termination date specified in the certificate.

** See
Amendment*

(7) Lessee also agrees to take out and maintain during the entire term of this agreement, fire and extended coverage insurance on all property of an insurable nature belonging to Lessee located upon the leased premises. Said insurance shall be written by an insurance carrier satisfactory with City and in an amount sufficient to cover the replacement cost of said property. Lessee shall require that a certificate of such insurance be filed with City and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the certificate without prior written notice to City. Lessee shall pay the premium for such insurance and shall require that any such insurance proceeds resulting from a loss under said policy are payable jointly to City and Lessee in order that proceeds will be reinvested in rebuilding or repairing the damaged property. In the event Lessee does not desire to rebuild or repair said damage, then the proceeds from said insurance shall become the property of City without obligation. Provided however, at City's option, a portion of the proceeds may be used by Lessee to repair or rebuild a portion of the said damage and the unused portion of the proceeds from said insurance shall become the property of City without obligation.

14. **HOLDING OVER.** Any holding-over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding-over shall include any time employed by Lessee in removing fixtures and improvements as heretofore provided.

15. **HOLD HARMLESS.** City, its agents, officers and employees, shall not be, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee or any of the Lessee's representatives, agents, employees, guests, licensees, invitees, patrons or orientals or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any acts or omission of Lessee in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. Lessee further agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claim therefore.

*See
Amend*

16. **WASTE, DAMAGE OR DESTRUCTION OF PREMISES.** Lessee shall give prompt notice to City of any fire or damage that may occur from any reason whatsoever. Lessee shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions; and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the leased premises shall be damaged by any cause as to render the premises untenable or unfit for the use or purpose for which the same are hereby let and said damages are repairable within a reasonable time in the opinion of the City Manager, Lessee shall make full repairs to said damages so as to restore the premises to the condition which existed prior to said damages, or Lessee shall clear and remove from the said leased premises all debris resulting from said damages and rebuild the premises in accordance with plans and specifications previously submitted to City Manager and approved in writing by him. Repairs, clearance of debris and restoration of the premises shall commence

* within thirty (30) days and shall be completed within a reasonable time thereafter. Failure to commence such restorative work and clearance, or failure to complete such work clearance within said reasonable time shall constitute an abandonment of this lease by said Lessee. In the event Lessee does not elect to make repairs or to rebuild and continue operations, then either Lessee or City may after thirty (30) days from the date of damage terminate this agreement; provided, however, that Lessee to exercise this right to terminate must first remove all debris from the leased premises.

17. OWNERSHIP OF IMPROVEMENTS. All improvements except trade fixtures installed by Lessee in accordance with the provisions herein provided shall become the property of the City at City's option, upon expiration or sooner termination of this agreement. Trade fixtures installed by Lessee shall be and remain the property of Lessee. Lessee shall have the right to remove said trade fixtures prior to the termination of this agreement at Lessee's own expense, provided that any damage to the remaining improvements shall be repaired and the premises left in good order and condition. In the event Lessee does not so remove said trade fixtures or real property not reverting to City prior to the expiration of this agreement, City may remove, or sell, or destroy the same at the expense of Lessee, and Lessee shall pay to City the reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to City's property resulting from such removal, sale or destruction. At the option of the City, any property, real or personal, not reverting to City, not so removed by Lessee may be deemed abandoned, and may be removed.

18. IMPROVEMENTS, REPAIRS, ALTERATIONS. Lessee shall not make any major exterior alterations or changes in the leased premises or any building situated thereon, or cause to be made, built or installed thereupon any improvement (other than improvement, alteration or change to the interior of a building, the exterior design of which has theretofore been approved in writing by the City Manager of City), except in accordance with plans and specifications previously submitted to the City Manager of said City and approved, in writing, by him. Lessee shall submit to the City a realistic estimate of the cost of any improvements to be installed by the Lessee upon the leased premises prior to the commencement of construction. This estimate shall be subject to verification by the City upon completion of improvements. Such costs when approved by City Manager of City shall become the "Approved Construction Costs" of any improvements placed on the leased premises by the Lessee and shall become the basis for compensation to the Lessee in the event of termination of this agreement under Paragraph hereof entitled "Cancellation". Lessee agrees to take good care of the leased premises, fixtures and appurtenances, and of all alterations, additions and improvements to any of them and make all repairs in and about the same that may be necessary to preserve them in good order and condition (which repairs shall be equal to the original work in respect to quality), and promptly pay the expense of such repairs. City shall not be required to make any improvements, repairs or alterations not herein specifically required. Lessee hereby waives all right to make repairs at the expense of City as provided in Section 1942 of the Civil Code of the State of California and all rights provided for by Section 1941 of said Civil Code.

19. SIGNS. City and Lessee shall agree upon the type, size, and design of a sign or signs to be installed on the leased premises in accordance with the established sign policy for Mission Bay Park.

20. **DAMAGED EQUIPMENT.** Lessee agrees to salvage within 24 hours, any of Lessee's equipment within Mission Bay declared by City to be a menace to navigation or a nuisance and to salvage or cause to be salvaged any sunken vessel or equipment upon the leased premises irrespective of ownership. City may require that any boats not kept clean and orderly condition be removed from the leased premises.

21. **TAXES.** As further consideration for the execution of this agreement, Lessee shall pay and discharge before delinquency all taxes and assessments which may be levied during said term upon the demised premises.

22. **SCHEDULE OF PRICES.** Prices of merchandise, equipment and services which compete with commercial enterprise shall be comparable to the prices charged by commercial enterprise. Such services shall be offered only if it is a function necessary to the operation of the facilities. Upon written notice of the City Manager any or all prices thereafter charged by Lessee shall be approved in writing by City Manager, provided, however, that Lessee shall not be required to sell any merchandise at less than his cost.

23. **STANDARD OF EMPLOYEES.** The Lessee and its employees will at all times conduct themselves and the operations on the leased premises in a creditable manner. In the event the Lessee employs any persons in the exercise and use of the rights, licenses and privileges herein granted who do not conduct themselves in a creditable manner in the opinion of the City Manager of City, Lessee agrees to dismiss such persons from his employ within ten (10) days of receiving written notice from the City that such persons are not satisfactory to the City Manager.

24. **RESERVATION FOR CITY USE.** City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath said leased premises. City shall have the right to enter said leased premises for the purpose of making repairs to or developing the municipal services of the City. City hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities. The leased premises shall also be subject to the rights of the U. S. Government as they now or may hereafter appear to exert dominion over the water area of Mission Bay, such as dredging and other governmental purposes. Provided, however, City shall not unreasonably interfere with Lessee's use of the premises and will reimburse Lessee for physical damages done to the permanent improvements located on the leased premises resulting from City's exercising the rights retained in this paragraph.

25. **INTENT OF THE OPERATION.** It is the intentions of this lease that the entire demised premises shall be operated as a non-profit yacht club for the benefit of the general public without discrimination as race, creed or color. Membership shall be available to the general public under reasonable rules and regulations contained in the by-laws of said organization and that charges in connection therewith shall not be discriminatory, but, instead reflect a fair cost for providing the merchandise and services rendered. The purpose for which said organization is established and the by-laws of said organization or any changes thereto shall be subject to the written approval of the City Manager.

26. **CANCELLATION.** If at any time during the term of this lease or any extension thereof, City by resolution of City Council, determines the uses of the demised premises provided by Paragraph "A" hereof are then inconsistent with public convenience and necessity and further that the demised premises shall not be used for said purposes during the then remaining term of this lease, then City shall have the right to terminate the lease upon one year's written notice to Lessee and

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Amend.

* upon payment to the Lessee of compensation for the improvements placed upon the demised premises by the Lessee. Provided, however, in the event of cancellation of this lease in accordance with the terms of this section, all proceeds due for payment of compensation for the improvements placed on the leased premises shall be paid to the financial institution or lending agency or person who is a beneficiary under a trust deed or mortgage recorder with the prior consent of City as payment towards any unpaid balance of the loan. Any excess of said proceeds due, after payment to said beneficiary, shall then be paid to Lessee. The amount of compensation shall be the approved construction cost, as defined in this agreement, depreciated as hereinafter defined, and in ratio to the time of approval of construction costs to the time of termination and adjusted to the Purchasing Power of the dollar as reflected by the U. S. Department of Commerce Consumer Price Index of Commodity Prices using 1947-49 equal to 100%. Depreciation shall be computed by dividing the approved construction costs by the number of years remaining in the term of this agreement after the date of completion of such improvements, prorated for any portion of a year. No compensation shall be paid by the City for any costs not approved in accordance with the provisions of Paragraph (D) 21 of this agreement.

27. UTILITIES. Except for such installations or utilities as City herein expressly agrees to provide, Lessee shall order, obtain and pay for all utilities, and service and installation charges in connection therewith. All water, sewer, power and communication lines installed by the Lessee shall be installed underground at Lessee's expense according to specifications of said City. City shall have the right to connect to water, sewer, telephone, power, gas and other utility lines as are now or hereafter installed upon the leased premises, and shall have the right of access to make and maintain such connections. City agrees to pay the cost incidental to such connections and to provide separate metering devices as may be necessary in order that City may pay for the services used by it. Lessee shall install and maintain fire hydrants on the leased premises as recommended and approved by City, it being understood and agreed that City shall perform for the leased premises usual fire and police protection.

See list amend
28. LEASE ENCUMBRANCE. The City does hereby consent and agree that the Lessee may encumber this lease, leasehold estate and the improvements thereon by a deed of trust, mortgage, or other security type instrument to assure the payment of the promissory note of the Lessee upon the condition that the net proceeds of such loan received by Lessee be devoted to the expense of making the improvements required to be made by Paragraph 35 and Lessee covenants and agrees to devote said proceeds of said loan to such purpose. The City further consents and agrees that in the event said deed of trust, mortgage or other security instrument should at any time be in default and be foreclosed and it is desired thereafter to assign said lease to a reputable and financially responsible operator, in the opinion of the City, the City hereby agrees that upon the filing of an application for consent to such assignment the City will give its consent thereto. In the event Lessee is in default, City agrees to provide notice thereof to such financial institution. Said financial institution may correct default.

See list amend
29. APPROVAL OF FINANCING. Prior to the effective date of this agreement, Lessee shall submit to City a financial statement setting forth its projected method of financing the proposed development on the leased premises, showing the equity capital to be invested and its source, the borrowed capital and its source, Lessee will also show the amount of investment in improvements and furnishings, the schedule of such expenditure, and the amount of capital available for operating upon commencement of operations on the leased premises. If in the opinion of the City Manager, the financial structure of the Lessee is insufficient to reasonably insure the fulfillment of the terms of this agreement and the success of the operation thereunder, then City shall specify in what particulars Lessee is deficient and Lessee shall comply with City's requirements within 60 days of the date of notice by City that such deficiency exists. In the event

* of Lessee's failure to cure the deficiency specified by City within said 60 day period, then this agreement shall not become effective and Lessee shall pay to City rent for that period of time which the lease has been in effect based upon the rate of \$4,552.00 per year.

30. DEVELOPMENT. Prior to the effective date of this agreement, Lessee will submit to City a plot plan together with an architect's or artist's sketch showing all of the improvements to be constructed on the entire leased premises as now contemplated. Said plot plan and sketch will show location, architectural theme, schedule of construction, and general exterior design and uses for all such improvements including signs, buildings, docks, boat slips, parking areas, landscaped areas and appurtenant structures. Within 60 days after submittal of said plans to City, City will indicate approval or disapproval of said plot plan and sketch. If satisfactory with City, City will signify approval of said plot plan and sketch which will become the "Master Plan" for development of the leased premises and thereafter all construction on the leased premises will conform to said Master Plan. If disapproved City will notify Lessee what portion or portions said plans are unsatisfactory. Changes or alterations to the Master Plan may be made upon prior written approval of the City Manager. Upon approval by City of said Master Plan, Lessee agrees within 120 days to submit proper construction plans and specifications for the improvements to be built immediately, together with a realistic estimate of their costs. Construction shall commence within 120 days from approval of construction plans and shall be carried on in a continuous and diligent manner to its completion.

31. NON-PROFIT STATUS. Lessee must be incorporated as a non-profit organization under the laws of the State of California and must qualify as such under the statutes of the State of California and the Federal Department of Internal Revenue.

32. SCHEDULE OF EVENTS. A regular schedule of competitive events involving the major purpose for which this lease is granted shall be conducted within the organization itself and with other similar organizations. In order to facilitate this competition and give it status, the Lessee should maintain membership in leading California and/or national groups dedicated to furtherance of the major purpose of the lease.

33. MEMBERSHIP. Lessee shall maintain an active membership in its organization of not less than three hundred (300) members at all times during the term of the lease unless otherwise authorized by written permission of City Manager.

* 34. TERMINATION OF EXISTING LEASE. Upon the effective date of this lease, the lease agreement heretofore entered into between the City of San Diego and the Mission Bay Yacht Club, July 1, 1948, and on file in the office of the City Clerk of said City, under Document No. 390300, shall be cancelled and be of no further force or effect.

IN WITNESS WHEREOF, this Lease Agreement is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager, pursuant to Resolution No. 166707 authorizing such execution, and Lessee has caused this Lease Agreement to be executed and its corporate name and seal to be affixed by its proper officers, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By George E. Bean
City Manager

MISSION BAY YACHT CLUB

By Alfred P. Cohe
Commodore

R. Darul Collins
Secretary

I HEREBY APPROVE the form and legality of the foregoing Lease Agreement this 17th day of July, 1961.

J. F. DU PAUL, City Attorney

By Robert S. Teaze
City Deputy

prop

RESOLUTION No. 166707 JUL 6 1961

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, a Lease Agreement with Mission Bay Yacht Club, Inc., a non-profit California Corporation, covering the leasing of portion of El Carmel Point, Mission Bay, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 626407.

Presented by _____

APPROVED as to form by J. F. DuPAUL, City Attorney

By _____
Deputy City Attorney

Jv/6/27/61

I HEREBY CERTIFY the above to be a full, true, and correct copy of Resolution No. _____ of the Council of the City of San Diego, as adopted by said Council _____

City Clerk

By _____
Deputy.