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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

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. 662527
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 $89^{\circ}55'56''$ West (record North $89^{\circ}59'56''$ West) 25 feet to a point of tangent curve in the boundary of said Lot; thence South $0^{\circ}04'04''$ 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 $89^{\circ}55'56''$ East 249.70 feet; thence North $5^{\circ}30'02''$ 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 $32^{\circ}45'02.845''$ Longitude $117^{\circ}11'07.200''$) 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 $72^{\circ}00'00''$ 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 $117^{\circ}42'40''$; thence South $81^{\circ}11'50''$ West 700.97 feet; thence North $08^{\circ}48'10''$ West 270.00 feet; thence North $81^{\circ}11'50''$ East 390.00 feet; thence North $08^{\circ}48'10''$ 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 $19^{\circ}02'42''$ West from said point; thence Northeasterly along the arc of said curve 77.93 feet through an angle of $26^{\circ}44'18''$; thence North $44^{\circ}13'00''$ 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 $45^{\circ}47'00''$ West from said point; thence Northeasterly and Northerly along the arc of said curve 281.46 feet through an angle of $47^{\circ}34'12''$; thence North $72^{\circ}00'00''$ East 166.56 feet; thence South $18^{\circ}00'00''$ East 115.00 feet; thence North $72^{\circ}00'00''$ East 180.00 feet; thence South $18^{\circ}00'00''$ 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.

(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.

deleted
See 1st Amend. Doc 6354383 dated 2/14/62
→ (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:

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 \$.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 (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.

*Selected
See last
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 demised 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
1st
amendment*

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 in 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 any 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, then 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.

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See
1st amendment

(c) 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 hereinbefore 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 clients 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 claims therefore.

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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.

*See
1st
amend*
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

* 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
1st
amend
28. LEASE ENCUMBRANCE. The City does hereby consent and agree that the Lessee may encumber the 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 his 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
1st
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. Coha
Commodore

R. Daryl 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. Teeze
Chief Deputy

POOR QUALITY DOCUMENT

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. 634923.

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.