

RESOLUTION NUMBER R-275068

ADOPTED ON FEB 05 1990

WHEREAS, in connection with the acquisition of Sea World's stock by Busch Entertainment, Inc., issues arose with regard to payment to the City for a mitigation area required by Sea World and with regard to the issue of changed use of the Atlantis Restaurant site; and

WHEREAS, in connection with a 25-acre expansion of the Sea World lease and in connection with the City's South Shore development in Mission Bay, the State has required the setting aside of 1.6 acres for mitigation of Sea World's expansion and 7.6 acres for mitigation for the City's South Shore Park; and

WHEREAS, the total of 9.2 acres of mitigation property has been improved as wetland area by Sea World at a cost of approximately \$133,000; and

WHEREAS, the City Manager has recommended that the 1.6 acres of City property needed for Sea World mitigation be permanently set aside in consideration of Sea World's expenditures for improvement of the 7.6-acre South Shore Park mitigation site; and

WHEREAS, the City Manager has also recommended that the Council approve the change in use of the Atlantis Restaurant facility to a banquet, meeting, and in-park catering center; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to

permanently set aside 9.2 acres of land southerly of Sea World Drive as a salt marsh mitigation area, 7.6 acres of which are to serve as mitigation for the City's South Shore Park project, and 1.6 acres as mitigation for the Sea World lease expansion.

BE IT FURTHER RESOLVED, that as consideration to the City for setting aside the 1.6 acres for the Sea World expansion, the City accepts the \$133,000 previously expended by Sea World for grading and construction of the total mitigation area, with additional consideration of approximately \$6,000 to be spend by Sea World to complete the mitigation site.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes Sea World, Inc. to use the former Atlantis Restaurant site as a banquet/conference center to be available to the general public, and as a commissary for the catering, preparation and serving of food at the restaurant site and within the confines of the balance of the Sea World Park leasehold.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
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Or.Dept:Prop.
R-90-1077
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*Decks
Rondolph
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File - Legal
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(R-90-657)

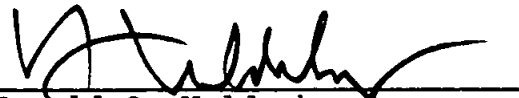
RESOLUTION NUMBER R- 274591

ADOPTED ON OCT 17 1989

BE IT RESOLVED, by the Council of The City of San Diego, that
the City Council hereby approves the sale of Sea World stock to
BUSCH ENTERTAINMENT CORPORATION.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
10/12/89
Or.Dept:Prop.
Job:220387
R-90-657
Form=r.none



THE CITY OF
SAN DIEGO

CITY OPERATIONS BUILDING • 1222 FIRST AVENUE, M.S. 503
SAN DIEGO, CALIFORNIA 92101-4155

PROPERTY
DEPARTMENT
(619) 236-6020

November 15, 1984

File: Leases - Sea World, Inc.

Sea World, Inc.
1720 South Shores Road
San Diego, CA 92109

Attention Frank A. Powell, Jr., Executive Vice-President

Gentlemen:

Re: Shoreline Repair

We have agreed that the shoreline rock revetment (riprap) in City-owned Mission Bay Park adjacent to Sea World is in need of repair to avoid further erosion and loss of property.

Inasmuch as a portion of the shoreline lies inside a Sea World water lease area wherein maintenance is the responsibility of the lessee, and a portion of the shoreline lies adjacent to Sea World's leasehold where the legal description is to the top of the rock, it is agreed that Sea World and the City, subject to the prior approval of the City Council, jointly undertake to effect the required repair of approximately 3,000 lineal feet of shoreline, as generally shown on Exhibit A hereto as follows:

A. Sea World will:

1. Describe the work and obtain proposals from competent engineers to conduct the investigation required, complete the engineering design, cost estimate, contract documents for bidding and conduct inspections during construction.
2. Review the design with a designated City staff member for approval prior to bidding.
3. Submit plans and obtain permits for the work from all governmental councils and agencies having jurisdiction.
4. Obtain competitive bids from contractors having experience in this type of construction. Review bids with City staff member.
5. Award construction contracts and monitor construction in conjunction with design engineers.
6. Pay all costs involved for the engineering design and construction along with associated costs for permits, processing and insurance.

DOCUMENT NO. RR-262370

FILED JAN 22 1985

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

B. The City of San Diego will:

1. Assign a staff member to work closely with Sea World on all phases of the work.
2. Provide staff assistance in obtaining permits from governmental agencies.
3. Grant a rent credit to Sea World for:
 - a. 50 percent of the paid engineering design fee as approved by the City Manager.
 - b. 50 percent of paid cost for permits, insurance and other incidental costs as approved by the City Manager.
 - c. The portion of City-approved construction cost for the work outside Sea World's leasehold.

The total rent credit shall not exceed \$150,000. Any costs in excess of said amount shall be borne and paid by Sea World.

C. Assignment of Construction Costs:

The engineering design will depict the extent of repair required in each area of responsibility so that assignment of costs can be accurately determined from the contractor's bids.

D. Documentation:

All agreements, contracts, change orders, approvals, payments and other documentation will conform to standards of the construction industry.

E. Rent Credit:

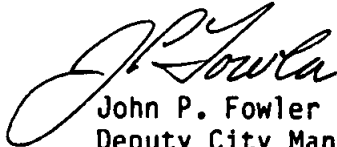
Payment of the rent credit will be accomplished through deductions from or omission of Sea World's regular rental payments until the entire amount of the credit has been exhausted. Payment credit would commence upon the first payment due the City after final completion of the shoreline repair and after full payment of all costs therefor.

- F. It is the City's position that Mission Bay lessees be responsible for the riprap and/or shore condition at its premises. Therefore, with the City's participation in this project, it is understood that maintenance of the riprap adjoining all the Sea World premises shall become the responsibility of Sea World upon completion of the project. The parties agree to so amend the lease in this regard at the first opportunity whenever it again goes before the City Council for any reason.

If the foregoing accurately sets forth the proposed understanding between the City of San Diego and Sea World, Inc., please have both copies executed on

behalf of Sea World, and return them to this office. We will process the document for proposed approval by the City Council. You may retain the extra copy for your records.

Very truly yours,


John P. Fowler
Deputy City Manager

JLS:GRR:jw-n(6)D6

Enclosures

ACCEPTED per City Council
Resolution R-262370

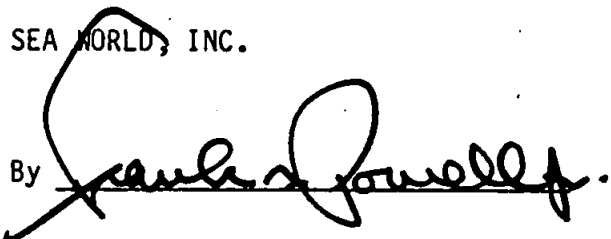
THE CITY OF SAN DIEGO

By 
ASSISTANT TO THE CITY MANAGER

Date JAN 22, 1985

ACCEPTED:

SEA WORLD, INC.

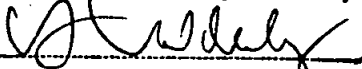
By 

Date 11-27-84

Approved as to form and legality

this 30 day of January, 1985

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

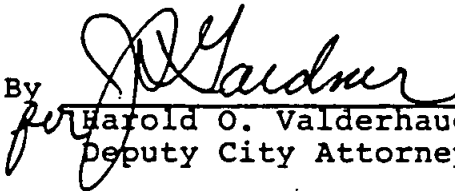
RESOLUTION NUMBER R- 282370

ADOPTED ON JAN 22 1985

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, an agreement with SEA WORLD, INC. for the repair of the shoreline on certain City-owned property adjacent to the Sea World leasehold, and provide Sea World, Inc. a one-time rent credit not to exceed \$150,000, representing the City's share of the total cost, under the terms and conditions set forth in that agreement on file in the office of the City Clerk as Document No. RR- 282370.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
01/08/84
Or.Dept:Prop.
R-85-1236
Form=r.none

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

January 22, 1985 by the following votes:

YEAS: Mitchell, Cleator, McColl, Jones, Gotch, Murphy,
Martinez.

NAYS: None.

NOT PRESENT: Struiksma, Hedgecock.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California

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

By BARBARA BAXTER
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 282370 passed and adopted by the Council of The City of San Diego, California, on January 22, 1985.

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

(SEAL)

By *Barbara Baxter*
Deputy

LEASE AGREEMENT

THIS LEASE, executed in duplicate, this _____ day of _____, 1966, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, hereinafter called "CITY", and WILLIAM D. EVANS and LUCY E. LAMOREAUX (formerly LUCY E. COOPER), whose address is 998 West Mission Bay Drive, San Diego, California, 92109, hereinafter called "LESSEE", WITNESSETH:

(A) DEMISE: The CITY hereby leases to the LESSEE and the LESSEE hires from the CITY, for the purpose of constructing, operating and maintaining a cottage resort area improved with cottages, apartments or motels, together with a restaurant and cocktail lounge, with facilities for the rental of boat slips, rental of boats, and such other complementary facilities as may be first approved in writing by the City Manager of CITY, and for no other purposes, those certain premises with the appurtenances situated in the City of San Diego, 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, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego, 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, described as follows:

PARCEL I

Beginning 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 North 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°30'00" 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 - East and Y = 213,819.22 - North) and said Triangulation Station is located at Latitude 32°45'02.845" 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 7,745.14 feet and West 19,146.93 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 7,745.14 feet and West 19,146.93 feet; thence North 15°33'49" East, 91.02 feet to Mission Bay Park Co-ordinates North 7,832.82 feet and West 19,122.51 feet, being also a point on the Mean High Tide Line of Mission Bay, as established on Miscellaneous Map No. 198 recorded in the Office of the County Recorder of San Diego County on June 17, 1948; thence continuing along said Mean High Tide Line as follows: South 76°42'39" East, 20.00 feet to Mission Bay Park Co-ordinates North 7,828.23 feet and West 19,103.05 feet; thence North 75°27'18" East 205.98 feet to Mission Bay Park Co-ordinates North 7,879.95 feet and West 18,903.67 feet; thence North 80°32'22" East 201.56 feet to Mission Bay Park Co-ordinates North 7,913.09 feet and West 18,704.85 feet; thence North 51°26'35" East 53.10 feet; thence North 37°18'49" East 100.98 feet; thence North 8°51'34" East 162.01 feet to a point hereby designated as Station "17" on said Mean High Tide Line; thence North 4°30'49" West, 203.19 feet to Mission Bay Park Co-ordinates North 8,389.13 feet and West 18,593.16 feet; thence North 16°54'27" West, 64.06 feet; thence North 25°25'48" West, 100.02 feet; thence

North 29°25'37" West, 100.40 feet; thence North 36°08'47" West, 102.17 feet to Mission Bay Park Co-ordinates North 8,710.70 feet and West 18,764.33 feet; thence leaving said Mean High Tide Line, North 65°52'30" East, a distance of 435.62 feet; thence South 25°16'00" East, 305.31 feet to a point on the arc of a tangent curve concave Westerly, having a radius of 705.0 feet; thence Southerly along the arc of said curve, through a central angle of 65°16', a distance of 803.08 feet to Mission Bay Park Co-ordinates North 7,858.57 feet and West 18,333.94 feet; thence South 40°00'00" West, tangent to said curve, 496.60 feet; thence North 50°00'21" West, 28.76 feet to the point of tangency of a curve concave Southwesterly, having a radius of 1260.0 feet; thence Northwesterly along the arc of said curve, through a central angle of 24°25'50", a distance of 536.01 feet to the TRUE POINT OF BEGINNING of this Parcel I.

PARCEL II

Beginning at said Station 17 of said Mean High Tide Line of Mission Bay according to said Miscellaneous Map No. 198 hereinbefore described in Parcel I; thence leaving said Mean High Tide Line, South 85°29'11" West a distance of 100.00 feet to a point; thence North 4°30'49" West, a distance of 100.00 feet to a point; thence North 85°29'11" East a distance of 100.00 feet to a point on aforesaid Mean High Tide Line; thence South 4°30'49" East, along said Mean High Tide Line, 100.00 feet to the Point of Beginning of this Parcel II.

(B) TERM: The term shall be fifty (50) years, beginning on the date of execution ~~hereof~~ *of this lease agreement by City.*

(C) RENT: The rent is payable monthly in arrears, except as otherwise provided herein, within thirty (30) days following the close of the calendar month in which the income was earned, at the office of the City Treasurer, City Administration Building, Community Concourse, San Diego, California 92101, and shall be as follows:

LESSEE agrees to pay to CITY a sum of money based upon a percentage of gross income and volume of units sold as listed below, or a minimum yearly rental herein-after set forth, whichever of the two is greater.

1. Beginning upon said date of execution hereof until January 31, 2003, LESSEE shall pay FIVE PER CENT (5%) of the gross income received by LESSEE from rental of rooms, cottages and other living accommodations. Beginning February 1, 2003, *for the remainder of said term*, LESSEE shall pay SEVEN PER CENT (7%) of gross income from said rental of rooms, cottages and other living accommodations. Provided, however, LESSEE may deduct from such gross income before computing the rent due CITY, any commission or fee paid to a travel agent or bureau, or reservation agent or agency, or other rental agent as a result of procurement or attempted procurement by said agent, bureau or agency of tenants for said rooms, cottages and other living accommodations; provided, further, that such deductions shall not exceed TEN PER CENT (10%) of such gross income and provided further, that no deductions shall be allowed with respect to fees paid to any such agency or bureau if LESSEE has any financial interest therein.
2. FIVE PER CENT (5%) of all gross income from operations of a cocktail lounge and bar dispensing alcoholic beverages, or from any other operation, concession or facility engaged in the sale of alcoholic beverages. The CITY hereby approves, insofar as it is able to do so, the right of LESSEE to engage in the sale of alcoholic beverages on the leased premises, both "on sale" and "off sale" as defined by the California Alcoholic Beverage Control Board; provided, however, that LESSEE shall build adequate facilities in keeping with the design of the leased premises for the dispensing of said alcoholic beverages.
3. ONE PER CENT (1%) of the gross income from operations involving the serving of meals, or the dispensing of food, including but not limited to the coffee shop, restaurant and food dispensed in the cocktail lounge.
4. TEN PER CENT (10%) of gross income from boat slip rental and boat storage.

5. FIVE PER CENT (5%) of gross income from any boat rentals or from fares in conjunction with the operation of any excursion, sightseeing, or shuttle boat and as first approved in writing by the City Manager.
6. FIVE PER CENT (5%) of gross income per month from the operation of a Health Club.
7. a. FOUR PER CENT (4%) of gross income from operation of a Gift Shop; and
 - b. FIVE PER CENT (5%) of gross income from any other source not hereinabove stated resulting from occupancy of said premises, excluding therefrom, income derived by LESSEE in payment of telephone and telegraph calls made by and charged to LESSEE'S patrons on said premises; OR
 - c. LESSEE may, with prior written approval of City Manager, pay a flat monthly rental in lieu of the percentage rents prescribed in aforesaid subparagraphs a. and b. of this Section (C) 7, in an amount mutually estimated to be equivalent to that amount of rent which said percentage rents would produce.

PROVIDED, HOWEVER, either CITY, acting by and through its City Manager, or LESSEE, may at any time request a review of the rental rates and/or items included for computation of rents provided in this Section (C) 7. Following such review, in the event City Manager and LESSEE agree in writing upon a revision of the rental provisions of this Section (C) 7, then such revision shall become effective immediately, and shall remain in effect for a minimum period of twelve (12) months. In the event that City Manager and LESSEE cannot agree upon a revision following such review, then the provisions of this Section (C) 7, as then in effect, shall remain effective.

8. The minimum annual rental during the first five (5) years of this lease agreement shall be Twenty Thousand and No/100 Dollars (\$20,000.00) per year. Commencing on the fifth (5th) anniversary of the effective date of this lease, and on every fifth (5th) anniversary thereafter, for the duration of this lease, the minimum annual rental to be paid to CITY shall be adjusted to Sixty-six and Two-Thirds Per Cent ($66\frac{2}{3}\%$) of the annual average of actual rents paid, including any rents computed to have been payable, during the preceding five (5) year period. LESSEE shall pay said minimum rent, if applicable, annually in arrears, within thirty (30) days following each anniversary of the commencement date of this lease.
9. Provided further, in addition to the rents provided hereinabove, LESSEE shall pay to CITY within thirty (30) days following the anniversary date of this lease, additional rent computed as follows:
 - a. When LESSEE'S annual gross income under this lease exceeds the sum of \$1,500,000.00, then LESSEE shall pay to CITY One-Half Per Cent (.5%) of said excess gross income up to a maximum gross income of \$2,000,000.00;
 - b. When LESSEE'S annual gross income under this lease exceeds the sum of \$2,000,000.00, then LESSEE shall pay to CITY One Per Cent (1%) of gross income exceeding said \$2,000,000.00.

On the anniversary date of every fifth (5th) year of the duration of this lease, said sums of \$1,500,000.00 and \$2,000,000.00 shall be adjusted upward or downward in the same percentage proportion that the Consumer Price Index of the U.S. Department of Labor, Bureau of Labor Statistics for the San Diego Area shall be increased or decreased over the said price index of February, 1965, which price index of February, 1965, is hereby agreed to be 100%.

10. It is expressly understood and agreed that in all cases where a percentage is required to be calculated and paid on gross income received from any operation, concession or facility, such percentage shall be calculated and paid, whether the income be received by the LESSEE or by any sublessee, and that all income received by a sublessee shall be considered as gross income of the LESSEE for the purposes of calculating any percentage hereunder to be paid by LESSEE to the CITY. *(add # - # attached)*

11. In the event LESSEE fails to pay the applicable rents when due as previously provided herein, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to Three Per Cent (3%) of said delinquent rent. In the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to Eight Per Cent (8%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sum for loss resulting from such delinquency including costs to CITY of servicing the delinquent account. Provided, however, *non-payment* ~~in the event~~ *of* that any such delinquent rents ~~remain unpaid~~ after forty-five (45) days of becoming delinquent, shall constitute a default which, at the option of City Manager, shall be grounds for termination of this lease by CITY under the provisions of Section (D) 14 hereof. Provided further, City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE prior to the delinquent period.

(D) COVENANTS AND CONDITIONS:

1. RECORDS. Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, during all of the interval concerned, the LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books in a manner and form satisfactory to CITY, such records to show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes and purchase invoices. All sales shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip and provides financial controls satisfactory to CITY. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or be made available at the demised premises or at such other location as is agreeable to CITY, and shall not be destroyed or disposed of within three (3) years following dates of aforesaid original entry, without prior CITY consent. Not later than the last day of each calendar month, LESSEE will render to CITY a detailed statement as to the source of income showing all moneys accrued and sales made during the preceding month, together with the amount payable to CITY as hereinabove provided and will accompany same with a remittance of the amount so shown to be due CITY; provided however, that CITY shall through its duly authorized agents or representatives have the right at any and all reasonable times to examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said premises.

Gross income as used in this lease shall include all income resulting from occupancy of the demised premises from whatever source derived whether received or to become due (except such income as shall be specifically excluded elsewhere in this agreement), including the amount of any manufacturer's or importer's excise tax included in the prices of goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Such gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency as required by such agency. The amount of such taxes, however, shall be shown on the books and records ~~elsewhere~~ *above* herein, required to be maintained. In the event a portion of the rent herein required to be paid is

based on units of products received or units of products sold and the remainder is subject in whole or in part to a percentage as additional rent, the amount representing actual sales of units of such products shall be excluded from gross income for purposes of applying percentage to such remainder or any portion thereof.

2. QUIET ENJOYMENT. LESSEE, paying the said rent and performing the covenants and agreements ^{hereof}, 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 LESSEE is dispossessed through action of a title superior to CITY's, then 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 by mutual agreement 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, without the prior written approval of City Manager.

4. 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 any 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 CITY and approved in writing by him. 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 rights 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. If, in the opinion of the City Manager, said premises are not being maintained in reasonably good order and condition, CITY shall give LESSEE written notice to make such repairs or perform such maintenance as is deemed necessary by City Manager. Failure of LESSEE to do such work within thirty (30) days shall give CITY the right to enter upon the premises, to do or cause to be done such work, and LESSEE hereby agrees to pay CITY's cost thereof within thirty (30) days of demand.

5. DISPOSITION OF IMPROVEMENTS. All fixtures and improvements heretofore and hereafter installed on said premises by LESSEE in accordance with the provisions hereof, except landscaping and any underground utilities, and except any fixtures and improvements installed to replace or repair any improvements belonging to CITY, shall be and remain the property of LESSEE. Upon expiration or other termination of this lease for any reason, LESSEE shall remove all said fixtures and improvements belonging to LESSEE from said premises (other than such fixtures and improvements which are two (2) feet or more below the ground surface) without cost to CITY or damage to CITY's remaining property and premises, within ninety (90) days following said expiration or earlier termination of this lease. In the event LESSEE does not so remove said fixtures and improvements, then CITY may remove, or sell, or destroy same at LESSEE's expense, and LESSEE agrees to pay to CITY the reasonable cost of such removal, sale or destruction; or, at CITY's option any property, real or personal, not so removed shall be deemed abandoned. Provided, however, CITY may elect to purchase from LESSEE at any time prior to expiration or earlier termination of this lease, or within thirty (30) days thereafter, all of LESSEE's fixtures and improvements, at a purchase price therefor, mutually agreed upon between CITY and LESSEE. In the event that CITY and LESSEE cannot agree upon said purchase price within thirty (30) days following expiration or earlier termination of this lease, then LESSEE shall remove said fixtures and improvements as hereinabove provided.

6. 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 interest 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 the condition of said premises is not safe, healthy or satisfactory, or is in violation of any Municipal, County, State or Federal ordinance, statute or law, or is in breach of any condition of this Lease, CITY shall have the right to cause any such condition to be rectified at the expense of the LESSEE upon ten (10) days written notice to LESSEE. LESSEE agrees to pay promptly any and all costs incurred, including reasonable expenses of CITY in having such necessary work done. Repayment thereof shall be paid on the next day upon which rent becomes due. Further, after the determination of the City Manager as hereinabove provided, CITY may, at its option, without additional notice, demand that LESSEE file a faithful performance bond in an amount not to exceed one-half of the annual rent paid to CITY based on the previous twelve month period ~~or from date operations begin if less than twelve months~~, to assure correction of said condition and/or violation. The rights reserved in this and the following section shall not create any obligations on CITY, ~~nor increase obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.~~

7. MINERAL AND WATER RIGHTS. CITY hereby reserves all rights, title and interest in any and all gas, oil, mineral and water upon or beneath said leased premises. CITY hereby reserves the right to grant such easements or establish such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good.

Provided, however, CITY shall not unreasonably interfere with LESSEE's use of said premises or invalidate the purposes for which this lease is granted and any physical damages to LESSEE's improvements resulting from CITY's exercising the rights herein reserved, shall be reimbursed to LESSEE by CITY.

8. COMPLIANCE WITH LAW. The LESSEE shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, county, state and federal authorities, now in force, or which may hereafter be in force, pertaining to the said premises, the operations conducted thereon, and the construction, maintenance and removal of improvements 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 sublessee 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, sublessee 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.

9. 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.

CITY shall have the right to supply electrical power to a public comfort station on Bahia Point from an existing connection to the electrical system of the leased premises. As consideration for the use of such electrical power, CITY shall pay to LESSEE the sum of One Hundred Twenty-Five and No/100 Dollars (\$125.00) on each September 1, yearly in arrears. Provided, however, said consideration shall be subject to annual review and adjustment upon the written demand of either CITY or LESSEE. Provided further, CITY shall have the right to terminate this provision at any time upon ten days' written notice to LESSEE.

10. 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 without the prior written consent of the City Manager of CITY, *except as otherwise provided in Sections (D) 26 and 30 hereof.* 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, and shall, at the option of CITY, terminate this lease. 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.

CITY agrees, however, that its ^{required} prior consent to any assignment of leasehold interest herein shall not be unreasonably withheld.

11. 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 sublessees of LESSEE.

12. 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 of this lease, other than the 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~~ ^{in any manner} changing the terms hereof or to estop 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.

13. 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 subleases or subtenancies, or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.

14. 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 ^{LESSEE'S} ~~his~~ rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, provided, however, that with respect to LESSEE'S failure to pay rent upon date due, CITY shall be required to give only fifteen (15) days' notice; 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, ^{made by} given by LESSEE with the consent of the CITY to secure a construction or other loan provided for 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 or through foreclosure, 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 or through foreclosure, 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 ^{charge} 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 cash bond on deposit with CITY, or CITY may call on the 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 as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new LESSEE satisfactory to the mortgagee or beneficiary.

Should said default or defaults be of a non-curable 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 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 and duties of the original LESSEE hereunder, subject to abatement of the default insofar as possible and feasible by mortgagee or beneficiary, and LESSEE expressly assigns all its interest in and to its leasehold estate in that event.

15. HOLDING OVER. Any holding-over after the expiration of said term for any cause shall be deemed to be a tenancy from month to month at any rental applicable during any prior effective period of the lease selected by CITY, 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.

16. NOTICES. Control and administration of this lease is under the jurisdiction of the City Manager 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 Director, City Administration Building, ^{202 C Street} ~~Community Concourse~~, San Diego, California 92101. 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. A copy of any notice or notices sent to LESSEE shall also be sent by registered or certified mail to any lender whose loan has been approved by CITY.

17. 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 use or purposes for which the same are hereby let and said damages are reparable 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 Subparagraph (d) of Section (D)19 hereof. 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 following:

- (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)19 hereof, and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part (2) of Subparagraph (d) of said Section (D) 19.
- (b) CITY may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the premises to a clean and neat condition and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, and LESSEE authorizes CITY to use the insurance proceeds for said repairs, restoration or replacement of improvements, or to restore the premises to a clean and neat condition, in accordance with Subparagraph (d) of said Section (D)19, ~~and~~ ^{which insurance proceeds are to be} held in trust by a mortgagee or trust deed beneficiary, and LESSEE hereby waives any right of said insurance proceeds.

In the event CITY selects aforesaid option (b), CITY may have the additional options of either (1) continuing this lease in full force and effect; or (2) 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.

18. 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 clientele 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 act 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 therefor.

19. INSURANCE. LESSEE agrees to take out and maintain during the entire term of this agreement, 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 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.

LESSEE shall maintain during the entire term of this agreement, the minimum amount of not less than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for one person injured in one accident and not less than ONE MILLION DOLLARS (\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than FIFTY THOUSAND DOLLARS (\$50,000.00) with respect to any property damage aforesaid. If the operation under this agreement results in an increased or decreased risk, in the opinion of 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 or the activities of any person or persons for which it is otherwise responsible.

During the term of this lease LESSEE agrees to defend in the name of and on behalf of CITY all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which CITY may become liable to pay as damages imposed upon CITY 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, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY by law resulting from accidental damage to or destruction of property not owned, leased, occupied, or used, by or in the care, custody, or control of the LESSEE or of the CITY or of any employee of LESSEE or of CITY subject to the following conditions:

- (a) This agreement shall not apply to any injury or death caused by any employee of CITY;
- (b) CITY shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of LESSEE;
- (c) LESSEE shall deliver to the City Manager of CITY a policy of bodily injury and property damage liability insurance issued by a company satisfactory to CITY, licensed to transact such business in the State of California, indicating that LESSEE has in that company bodily injury and property damage insurance as required in this Section (D) 19, 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 City Manager if said policy be terminated or limited in any manner prior to the termination date specified in the policy;
- (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 policy 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 in excess of Ten Thousand Dollars (\$10,000.00) 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)17 hereof); 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 CITY, then and for that period all policies of fire insurance and extended coverage shall be made payable jointly to the mortgagee or beneficiary and the named insured and shall be surrendered to 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 mortgagee or beneficiary, or as provided in Subparagraph (a) of Section (D)17 hereof, 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, to restore the leased premises to a neat and clean condition and then for CITY and LESSEE as their interests may appear.

CITY reserves the right to increase the limits of liability of fire insurance and extended coverage 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.

20. DEVELOPMENT. LESSEE shall develop said premises in accordance with adequate plans and specifications submitted to CITY by LESSEE and approved in writing by the City Manager prior to any construction thereon, as follows:

- (a) LESSEE shall commence construction of a four (4) story seventy (70) unit hotel building and a lobby addition to the existing restaurant and lounge not later than May 1, 1966, and shall pursue said construction, including appurtenant parking and landscaping improvements, diligently to its completion on or before February 1, 1967. Provided, however, that City Manager shall have the right for good cause to extend said commencement and completion dates for an additional period not exceeding (60) days, upon prior written application thereof by LESSEE. Provided further, however, that in the event said hotel building and said lobby addition have not been completed by said February 1, 1967, the rent shall be proportionately increased to reflect any loss in revenue to CITY resulting from the extension of said completion date. In any event, however, failure by LESSEE to complete aforesaid improvements to CITY's satisfaction within a total period of eighteen (18) months following the effective date of this lease, shall give CITY the right, at its option, to accelerate the expiration date of this lease by deleting up to a maximum period of 13 years from the term hereof.

(b) LESSEE may increase the total number of dwelling units to three hundred and two (302) during the balance of said term.

(c) LESSEE may increase the number of boat slips ^{on the premises} ~~to more than fifty (50)~~ ^(existing at the date of execution of this lease) with prior written approval of the City Manager. Provided, however, any repairs, modifications, changes or additions to existing docks and pier from and after the effective date of this lease shall be in accordance with CITY procedures and specifications.

Adequate water area for the construction of such additional boat slips approved by CITY, shall be allocated to LESSEE by CITY upon construction of said boat slips.

(d) LESSEE shall bring all exterior paint color of buildings, docks and floats to CITY's Mission Bay standards prior to June 16, 1966, or at such time as LESSEE undertakes major repainting, whichever date is sooner.

21. CONTINUOUS OPERATION. LESSEE will operate the leased premises and associated facilities continuously and without interruption after such premises are open for operation, and during the entire term of this agreement.

22. INTENT OF LEASE. It is the intent of the CITY to grant to the LESSEE the right to construct, operate and maintain a cottage and motel resort area, together with a restaurant and cocktail lounge.

Such other facilities, business or concessions as are established on the leased premises in accordance with the provisions of Section (A) of this agreement, shall be primarily for the convenience and patronage of the paying guests of the cottages and motel built upon the demised premises. In consideration of the

granting by CITY to LESSEE of additional facilities, businesses or concessions, LESSEE agrees that if the City Manager of CITY declares that a proposed or existing facility, business or concession conflicts with the intent for which this lease is granted, LESSEE will immediately discontinue such existing use, or abandon such proposed facility, business or concession.

23. RIGHTS OF WAY. CITY agrees to install and pay for sewer and water lines up to the leased premises, and to provide rights of way for underground installations of telephone, power and gas lines. Such installations and rights of way shall be provided on the same terms and conditions as provided to residents of adjacent areas. CITY further agrees to install a fire hydrant on or adjacent to the leased premises at a location designated by the ^{City Manager} ~~Fire Department of CITY~~. LESSEE agrees to install such additional fire hydrant or hydrants upon the leased premises as shall be designated

City Manager
by said ~~Fire Department~~. LESSEE further agrees that CITY shall have the right to connect to water, sewer, telephone, power, gas or other utility lines as are now or hereafter ~~may be~~ installed upon the leased premises, and shall have the right of access to make such connections. CITY agrees to pay the costs incidental to such connections by CITY and to provide such separate metering devices as may be necessary.

24. TAXES. LESSEE shall pay and discharge before delinquency all taxes and assessments which may be levied upon the leased premises during said term and any extension thereof.

25. PUBLIC USE OF BEACH. LESSEE agrees that the beach and water area outside of the leased premises shall at all times during the life of this lease, be open to the free and unrestricted use by the public and that no improvement by LESSEE nor activity of LESSEE on the leased premises shall in any way interfere with the public's right to use said beach and water area.

26. ASSIGNMENT TO FIRM CONTROLLED BY NAMED LESSEES. CITY agrees to give its consent to the assignment of this lease by the LESSEES herein named to any firm, partnership, or corporation, in which the said LESSEES have a controlling interest. In the event that such assignment is made and thereafter, while any such firm, partnership, or corporation is the LESSEE, the LESSEES herein named dispose of or lose their interest therein to the extent that they are no longer in control thereof, this lease may be terminated by CITY upon one hundred eighty (180) days' written notice to the LESSEE.

It is better to word these affirmatively or negatively with respect to the assignment.

The consent to the assignment required in Section (D)10 hereof shall not be unreasonably withheld. However, in the event that title to this lease passes by assignment or in any other manner ^(w/ the consent of CITY) to anyone other than either or both of the two named LESSEES (other than as provided for in the first paragraph of this section) and thereafter the operations pursuant to this lease are ^{J?} not conducted in a proper manner, in addition to any other remedies the CITY may have, the CITY may terminate this lease upon one year's written notice addressed to the assigned LESSEE or to any party authorized in writing to receive such notice, or, if such authorization is not filed in the office of the City Clerk, by publication of such notice at least twice in a newspaper of general circulation in the City ^{of San Diego;} provided, however, that this right of termination as to any particular assignee, or other party to whom this lease has passed, may be waived at CITY's option.

27. USE OF PARCEL II AND SEVERABLE TERMINATION THEREOF. It is anticipated that that portion of the premises herein described as Parcel II shall be used for the construction and operation of small boat docks or piers. It is also recognized that future changes in regulations or policy may make the retention of this area by LESSEE undesirable to CITY. In such event, CITY may terminate this lease as to Parcel II upon ninety (90) days written notice without any diminution in rent or liability on the part of CITY and the removal or purchase of the improvements thereon shall be made in accordance with Section (D)5 hereof.

After such termination LESSEE may continue to use such boat facilities only in accordance with the terms of any permission therefor which may be granted by CITY.

28. SIGNS. LESSEE may erect and maintain such advertising signs only as are consistent with the purposes of this lease, and as are approved in writing by the City Manager.

29. COMPETITIVE USES. LESSEE agrees that during the period of this lease, no other property owned by CITY lying within the following described area now existing or to be completed will be leased to other parties for hotel or cottage use, or for auto courts, trailer camps or motels.

Beginning at the most Northerly tip of El Carmel Point; thence Due West to the intersection of the Easterly line of Mission Boulevard as said Mission Boulevard is located or established as of the date of this instrument; thence Southerly along the Easterly line of said Mission Boulevard to a point Due West from the most Southerly tip of Ventura Point; thence Easterly to the most Southerly tip of Ventura Point; thence following the contour of said Ventura Point in a Northeasterly direction to its most Easterly point; thence Northwesterly in a direct line to the most Easterly point of El Carmel Point; thence following the contour of said El Carmel Point in a Northwesterly direction to the Point of Beginning.

30. LEASE ENCUMBRANCE. ~~CITY does hereby consent and agree that~~ LESSEE may encumber this lease, leasehold estate and the improvements thereon, within the first eighteen (18) months of the term hereof, by deed of trust, mortgage, or other security type instrument to secure payment of a promissory note or notes by LESSEE for an amount not to exceed ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00). ^{to a lender or lenders previously approved in writing by the City Manager.} Any subsequent encumbrance on the leasehold estate or lease improvements, including any extension, refinancing or other measure increasing in any manner the aggregate outstanding balance of said deed of trust, mortgage or other security type instrument, must first be approved in writing by the City Manager. ⁱⁿ

the event said deed of trust, mortgage or other security type instrument should at any time have the beneficial interest assigned, such assignment must be first approved by the CITY, and CITY agrees not to unreasonably withhold such consent. CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, CITY will accept the mortgagee or beneficiary thereunder as its new tenant under this lease, with all the rights and privileges of the original LESSEE; and 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, competent, and financially responsible operator, in the opinion of the CITY, the CITY hereby agrees that upon filing of an application for consent to such assignment, it 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, CITY agrees to serve written notice thereof upon said mortgagee or beneficiary to cure said default, if 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 not curable, all as set forth in Section (D)14 hereof.

31. TERMINATION OF PRIOR LEASE. It is mutually agreed that this lease agreement, upon execution hereof, shall supersede and terminate that certain prior agreement heretofore executed between the parties, a copy of which is filed in the Office of the City Clerk as Document No. 464084.

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. _____ authorizing such execution, and the LESSEE has caused this agreement to be executed ~~by the proper officers~~, the day and year first above written.

THE CITY OF SAN DIEGO

By _____
City Manager

LESSEE:

WILLIAM D. EVANS

LUCY E. LAMOREAUX

I HEREBY APPROVE the form and legality of the foregoing lease agreement this _____ day of _____, 1966.

EDWARD T. BUTLER, City Attorney

By _____

DOCUMENT NO. 694201

FILED DEC 16 1965

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AGREEMENT

PROPERTY DEPARTMENT
#81

The City of San Diego "City" and MARINE PARK CORPORATION, a California corporation, DBA SEA WORLD, 1720 South Shores Road, San Diego, California 92109
"Lessee"

parties to that certain Lease Agreement on file in the Office of the City Clerk as Document No. 658698 intend to delete that written "Amendment to Lease Agreement" on file in the Office of the City Clerk as Document No. 671033. The lease agreement and any amendments thereto shall remain in full force and effect except for the amendment thereto on file in the Office of the City Clerk as Document No. 671033 which is hereby deleted.

The effective date of such deletion shall be the date of execution of this agreement by the City.

Dec 16 1965
Date

THE CITY OF SAN DIEGO

By Walter Nelson Jr
City Manager

LESSEE: MARINE PARK CORPORATION, a
California corporation, DBA SEA WORLD

By: Stan O'Malley Title Pres
By: _____ Title De Treas

Date

APPROVED as to form and legality.

EDWARD T. BUTLER, City Attorney

By James O'Meara Jr
Deputy

Doc. No. 694201
Filed 12-27-65
185773
DEC 16 1965

FILED FEB 5 1965

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIAA G R E E M E N T

This is an AGREEMENT between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City," and MARINE PARK CORPORATION, a California corporation, hereinafter called "Sea World."

R E C I T A L S

A. A portion of the Mission Bay Park water area fronting on Sea World's lease has shoaled due in part to City's construction of a sewer sludge transmission line to Fiesta Island, and it is partially City's responsibility to clear such shoaling.

B. This shoaling has hampered Sea World's operation of hydrofoil boats and has created a turbulent condition in its lagoon, and Sea World desires to deepen this lagoon and do other sand removal in connection with its lagoon development.

C. It will be more economical for Sea World to remove the shoaling which fronts on its lease at the time of Sea World's other sand removal projects than for City to contract independently for the needed corrections; NOW, THEREFORE,

In consideration of the premises and the mutual premises herein contained, City and Sea World agree as follows:

1. The total cost of the aforementioned shoal removing work will be Four Thousand Three Hundred Ninety and NO/100 Dollars (\$4,390.00).
2. City contribution for its share of such work shall be One Thousand One Hundred Forty-Six and 67/100 Dollars (\$1,146.67).
3. City's contribution shall be paid upon receipt of evidence that Sea World has paid for and completed the aforementioned work.
4. In the event that suit is brought upon this Agreement to enforce the terms thereof, City shall be entitled to a reasonable sum as attorney's fees.

5. Sea World is and shall be an independent contractor and not an agent of City hereunder. Any provisions in this contract that may appear to give City the right to direct Sea World as to the details of doing the work or to exercise a measure of control over the work mean that Sea World shall follow the wishes of City as to the results of the work only.

This Agreement is executed by The City of San Diego acting by and through the City Manager of said City, under and pursuant to Resolution No. 182666, authorizing such execution, and Sea World has caused this Agreement to be executed by its duly authorized officers and corporate seal attached, this 26 day of Jan, 1965.

THE CITY OF SAN DIEGO

By Walter Hahn Jr.
Asst City Mgr.

MARINE PARK CORPORATION

By George R. Bulay
President

By David M. DeMatte
Secretary

I HEREBY APPROVE the form and legality of the within Agreement this 26 day of Jan, 1965.

EDWARD T. BUTLER, City Attorney

By J. S. Milch
James S. Milch, Deputy

JSM:vl
1/14/65

Ex 15 to app

Mission Bay Park
DOCUMENT NO. 671033

AMENDMENT TO LEASE AGREEMENT

FILED MAY 13 1964
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS AMENDMENT, made and entered into this 5 day of May, 1964,
by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San
Diego, State of California, hereinafter called "CITY," and _____
MARINE PARK CORPORATION dba SEA WORLD

whose address is 1720 SOUTH SHORES ROAD, SAN DIEGO, CALIF. 92109
hereinafter designated "LESSEE"; WITNESSETH:

WHEREAS, the parties heretofore have entered into a Lease Agreement covering
a portion of Mission Bay Park, which said Lease Agreement and Amendments are filed
in the office of the City Clerk as Documents Nos. 658698
_____ as amended _____; and

WHEREAS, LESSEE is a member of the Mission Bay Park Lessees' Association, Inc.,
a California non-profit corporation; and

WHEREAS, CITY and Mission Bay Park Lessees' Association, Inc., desire to
jointly promote increased usages of Mission Bay Park as a recreation facility; and

WHEREAS, LESSEE, as a member of the Mission Bay Park Lessees' Association, Inc.,
wishes to contribute to a special trust fund to be held in trust by CITY for the
purpose of paying one-half of the expenses of said promotion; and

WHEREAS, CITY wishes to make available a like amount of money which will be
used to pay the remaining half of such expenses; and

WHEREAS, said promotion program will be developed and administered jointly
by mutual consent of the CITY and Mission Bay Park Lessees' Association, Inc.;

NOW THEREFORE, For and 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:

I THAT THE FOLLOWING SECTION IS HEREBY ADDED:

E. Mission Bay Park Lessees' Association, Inc., Promotion Fund.

1. LESSEE agrees to maintain membership in the Mission Bay Park Lessees' Association, Inc., so long as said association's membership comprises at least one-half of the CITY'S Mission Bay Park Lessees, exclusive of those classified as non-profit for rental computation purposes.

2. LESSEE agrees, effective January 1, 1964, to pay monthly at the office of the City Treasurer of The City of San Diego, San Diego, California 92101, for deposit in said special trust fund, ONE QUARTER OF ONE PER CENT (.25%) of LESSEE'S monthly gross income, as defined herein in Paragraph (D)(1) Records. Said payment is due and payable on the fifteenth day of the month following the month in which gross income is earned. Provided, however, that LESSEE agrees to deposit in said trust fund, ONE QUARTER OF ONE PER CENT (.25%) of gross income for the period January 1, 1964, through March 31, 1964, on or before ~~April~~^{May} 15, 1964. Further, LESSEE agrees to pay interest on any overdue contributions at the rate of 10% per annum.
3. The aggregate total of the contributions by members of the Mission Bay Park Lessees' Association, Inc., shall not exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) during each calendar year, commencing January 1, 1964. At such time as said aggregate total reaches said TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) during each calendar year, then said payments required in Paragraph (E)(2) hereinabove shall automatically terminate.
4. CITY agrees to appropriate such amounts as are necessary to equal the aggregate contribution of the members of the Mission Bay Park Lessees' Association, Inc.; provided, however, that said amount deposited by CITY shall not exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) for each calendar year.
5. CITY and LESSEE agree that said fund shall be used for paying the cost of expenses of a promotion program, jointly administered by CITY and Mission Bay Park Lessees' Association, Inc. for the purpose of said promotion program; provided said expenses have been approved, in writing, by the President of the Lessees' Association and the City Manager.
6. If, at some future date, the CITY and MISSION BAY PARK LESSEES' ASSOCIATION, INC. should decide, by mutual agreement, that the contributions to the Promotion Fund should be increased, and such mutual agreement has been made prior to the beginning of any calendar year, and the approval of the following year's promotion budget, CITY and LESSEE shall increase their respective contributions herein provided in accordance therewith.
7. In the event that LESSEE shall default in the performance or fulfillment of any covenant or condition provided hereinabove on his part to be performed or fulfilled, then upon TEN (10) DAYS' WRITTEN NOTICE by CITY to LESSEE, this Amendment, in its entirety, shall automatically terminate. Further, either party shall have the right to terminate this Amendment upon NINETY (90) DAYS' WRITTEN NOTICE to the other party.
8. CITY and LESSEE agree that, in the event of termination of said promotion program by either or both the CITY and MISSION BAY PARK LESSEES' ASSOCIATION, INC., funds remaining in said trust fund shall be used first to pay all expenses incurred or obligated, at the time of termination, for said promotion program and then said funds remaining in said trust fund shall be returned to respective contributors in proportion to their contributions.

IN WITNESS WHEREOF, this Amendment to Lease Agreement is executed by the CITY, acting by and through the City Manager of said CITY, under and pursuant to Resolution No. 179826 authorizing such execution, and the LESSEE has caused this Amendment 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 Walter Hahn
Assistant City Manager

LESSEE:

Maring Park Corp - dba
Sea World

By George D. Murray Pres

By James M. LeMotte Sec-Treas

I HEREBY APPROVE the form and legality of the foregoing Lease Amendment this 11 day of May, 1964.

EDWARD T. BUTLER, City Attorney

By Robert S. Lutz
Deputy

Recorded 7/30/63
 Series 4
 Book 1963
 File Page 133100

DOCUMENT NO. 658698

LEASE AGREEMENT

FILED JUL 29 1963

OFFICE OF THE CITY CLERK

SAN DIEGO, CALIFORNIA

THIS LEASE AGREEMENT, executed in duplicate this 16th day of July,

1963, at SAN DIEGO, CALIFORNIA, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY," and MARINE PARK, a California corporation, whose address is: 6691 Paramount Boulevard, Long Beach 9, California, hereinafter referred to as "LESSEE,"

WITNESSETH

ARTICLE I

DEMISE

THE CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY that parcel of real property, together with appurtenances thereto, situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, which is designated as Parcel 1 on City of San Diego Engineering Drawing No. 10768 D, dated 8-3-62, / & revised 5-20-63 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 North 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" 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 5,133.00 and West 13,500.00 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-Ordinates of said true point of beginning being North 5,133.00 feet and West 13,500.00 feet; thence due South 60.91 feet to Mission Bay Park Co-Ordinates North 5,072.09 feet and West 13,500.00 feet, being a point on a 630.00 foot radius curve concave Southwesterly, a radial line from said point bearing South 20°45'44" West; thence Southeasterly along the arc of said curve through a central angle of 21°33'53" a distance of 235.28 feet to Mission Bay Park Co-Ordinates North 4,950.00 feet and West 13,300.47 feet; thence due East 670.76 feet to Mission Bay Park Co-Ordinates North 4,950.00 and West 12,629.71 feet; thence due North 726.78 feet to Mission Bay Park Co-Ordinates North 5,676.78 feet and West 12,629.71 feet; thence North 71°35'40" West 284.86 feet to Mission Bay Park Co-Ordinates North 5766.72 feet and West 12900.00 feet; thence due North 530.25 feet to Mission Bay Park Co-Ordinates North 6296.97 feet and West 12900.00 feet to the beginning of a 1,342.65 foot radius curve concave Southeasterly, a radial line from said point bearing North 10°13'41" West; thence Southwesterly along the arc of said curve through a central angle of 26°55'51" a distance of 631.09 feet to Mission Bay Park Co-Ordinates North 6,045.17 feet and West 13,472.18 feet, being the beginning of a reverse 655.44 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 3°02'40" a distance of 34.89 feet to Mission Bay Park Co-Ordinates North 6,024.09 feet and West 13,500.00 feet; thence due South 891.09 feet to the true point of beginning.

EXCEPTING therefrom all rights, title or interest in any and all gas, oil, minerals upon or beneath said leased premises.

NOTE: The parcel of land described above is delineated on City of San Diego Engineering Department Drawing No. 10768 D dated 8-3-62, revised 5-20-63

The above described parcel contains 2.20 acres of water and 19.11 acres of land.

ARTICLE II

TERM

The term of this Lease shall be the period of FIFTY (50) YEARS, beginning

July 16, 1963 and ending July 15, 2013.

ARTICLE III

USE OF THE PREMISES

Site Revised Amended

The premises shall be used for the primary purpose, and Lessee shall have the right, of constructing, operating, and maintaining thereon an ocean aquarium exhibit substantially of the type and nature described in the master plan which is attached hereto and marked Exhibit C, (said aquarium is sometimes herein referred to as the Marine Life Exhibit) and for such incidental uses as maintaining, operating, and selling rides on hydrofoil-type watercraft, a gift shop or shops, a restaurant and cocktail lounge, and snack bars. Said restaurant and cocktail lounge, to be constructed during Phase II of the development, shall be for the exclusive use of the patrons of the ^{leased area} / and access to said restaurant and cocktail lounge shall be from within the ^{lease} / limits. Lessee shall in addition to the foregoing, have the right to use the said premises to operate and maintain thereon activities which are incidental to the foregoing and such other activities as may from time to time be deemed desirable to serve the patrons of the Marine Life Exhibit and the public and as may have first been approved by the City in writing.

In connection with the maintenance and operation and selling of rides on hydrofoil-type watercraft, Lessee shall have, and City hereby grants and extends to Lessee, the right and privilege to operate hydrofoil-type watercraft in the public waterways of Mission Bay; Lessee shall also have the right to embark and disembark passengers at the said premises and the right to construct and maintain into the said premises from the waterways fronting on the premises, a channel at the location and of the dimensions indicated on Exhibit B attached hereto.

The granting of this right and privilege in connection with use and operation of hydrofoil-type watercraft on the waters of Mission Bay may be suspended by the City at any time when, in the opinion of the City Manager such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, City shall have the right upon ten (10) days' written notice to require Lessee to suspend the use and operation of hydrofoil-type watercraft for limited and predetermined periods when, in the opinion of

the City Manager, such use and operation would unduly interfere with the use of Mission Bay for a major public event.

Such suspension shall be without liability to the City for damages of any kind suffered by the Lessee as a result of such suspension. The rights and privileges hereby granted shall be subject to the availability of operating area and at approved speeds and under such other Municipal, State, and Federal rules and regulations as are applicable to the operation of said hydrofoil-type watercraft.

LESSEE shall use the premises only for the purpose of conducting thereon the business for which they are demised and shall diligently conduct such business to produce a reasonable and substantial gross income.

ARTICLE IV.

RENT

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of THE CITY OF SAN DIEGO, Room 162, Civic Center, San Diego 1, California, is as follows:

- A. For that portion of the Term expiring prior to commencement of operations, which is hereby defined as the opening of the Marine Life Exhibit to the public, as evidenced by sales or admissions to the general public, the rent shall be the sum of \$1,000.47 per month payable monthly in advance. Provided, however, any portion of the sum paid as consideration for the option to lease the Premises shall be applied to such rent as a lump sum advance payment of such rent.

If operations begin within the time specified in the MASTER PLAN, attached hereto as EXHIBIT "C", then the total sum paid as rent during said construction period shall be applied and credited to the rent to become due during the first year of operations as specified in Paragraph B of this ARTICLE IV. In the event LESSEE does not begin construction of the Marine Life Exhibit within the specified time after execution of this Lease, then this Lease shall be automatically terminated. The City Manager, however, in his discretion may grant one 30-day extension period for the commencement of construction after which further delay to begin construction will cause the automatic termination of the Lease Agreement unless the development schedule is revised by mutual consent of the parties and evidenced by an amendment to this Lease.

- B. After the commencement of operations, as hereinabove defined, and continuing thereafter for the remainder of the Term, LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various

percentages of LESSEE's gross income as hereinafter set forth in this Subparagraph (b) of ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

- (a) THREE PERCENT (3%) of all gross income derived from the dispensing of food and non-alcoholic beverages in the operation of any restaurant or snack bar.
- (b) TWO AND ONE-HALF PERCENT ($2\frac{1}{2}\%$) of the gross income, from admission charges.
- (c) FIVE PERCENT (5%) of the gross income from operations of any cocktail lounge, bar or other facility whose primary function is dispensing alcoholic beverages or from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function, excepting meals or food served on the Premises from any such facility shall be subject to the rent stated in (a) above.
- (d) SEVEN PERCENT (7%) of the gross income, if any, from operation of the parking lot or lots.
- (e) SEVEN PERCENT (7%) of the gross income, from any other sale, service or operation on the leased Premises approved under the purposes for which this Lease is granted; or such other percentage of gross income as may be agreed upon by the parties prior to the commencement of any such activity, service or operation. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.
- (f) Rent paid to City from coin-operated vending machines shall be computed and included in the computation of rent due in accordance with subparagraphs (a), (c) and (d) of this Paragraph 1, on the basis of total income from said machines. Provided however, that said rent paid for telephones, cigarette machines and other coin-operated vending machines which may from time to time be mutually acknowledged and

agreed to be installed primarily for the public convenience; shall be computed on the basis of the income received by Lessee rather than on the gross income of the machine, if Lessee has no ownership equity in said machine and if the total gross income from all vending machines on the leased premises does not exceed \$800 per month. When a portion of the premises is leased by LESSEE to a SUBLESSEE, the rental and the use of the Premises shall be subject to approval of the CITY in the manner set forth in Paragraph 10 of this Agreement. It is contemplated that the CITY shall not receive less rent under a Sublease Agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the SUBLESSEE above rental paid to CITY shall not be computed as part of the LESSEE's gross income against which the percentage rental applies.

LESSEE shall render monthly to CITY an accounting of gross income and rent due, based upon the percentage rental herein set forth and shall, in accordance with such accounting, pay to CITY the percentage rent due for such month on or before the 30th day following the month in which such gross income was earned, as specified in ARTICLE V of this Lease Agreement. In the event LESSEE fails to pay such rent when due, then LESSEE shall become liable for and agrees to pay to CITY in addition to the rent due, a sum equal to FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency and an additional FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency for each additional 15 days thereafter that such delinquency exists. Provided, however, City Manager shall have the right to waive for good cause, any delinquency payment upon written application of LESSEE prior to any such delinquency period.

2. The minimum annual rental (hereinafter referred to as the "Minimum Annual Rent") shall be paid in arrears at the expiration of each year of the term and shall be computed on the basis of an area of 832,431.60 square feet of land and an area of 95,832 square feet of water being included within the Premises.

(a) For the first year beginning with the date that operation, as

hereinabove defined as being evidenced by any service or sales of admission to the Marine Life Exhibit or any part thereof, to the general public, or commencing with the first day of the fourteenth calendar month after execution of this Lease, whichever of the two dates is sooner, the minimum annual rent shall be three cents (\$.03) per square foot per year for the land area and one cent (\$.01) per square foot per year for the water area, or a total minimum annual rent of \$ 25,931.27.

- (b) The Minimum Annual Rent for the second year of the Term next following the date determined in accordance with Subparagraph B (2) (a) of this ARTICLE IV shall be four cents (\$.04) per square foot per year for the land and one and three-tenths cents (\$.013) per square foot per year for the water, or an annual minimum rental of \$ 34,543.08.
- (c) The Minimum Annual Rent for the five years of the Term next following the second year of the Term as defined in Subparagraph B (2) (b) of this ARTICLE IV shall be Five Cents (\$.05) per square foot per year for land and two cents (\$.02) per square foot per year for the water, or an annual minimum rental of \$ 43,538.22.
- (d) The Minimum Annual Rent for the balance of the Term, after the expiration of those portions of the Term referred to in Subparagraphs 2 (a), 2 (b) and 2 (c) of this ARTICLE IV shall be at the basic rate set forth in said subparagraph 2 (c), provided, however, such Minimum Annual Rent may be adjusted at CITY's option at the expiration of each THREE (3) years commencing with the THREE (3) year period next following that portion of the Term referred to and provided for in Subparagraph 2 (c) of this ARTICLE IV and continuing for the remainder of the Term. Such adjustment shall be as follows: Minimum Annual Rent may be adjusted at the expiration of each said three (3) year period so that the Minimum Annual Rent shall be in a sum equal to 66-2/3% of the total Rent paid by LESSEE on the basis of a percentage of gross income, such adjusted Minimum Annual Rent shall be applicable for the next succeeding three (3) year period when it may again be re-adjusted.

Sub-paragraph (D)
deleted and new paragraphs
substituted
See 4th Amendment Doc. 726110

ARTICLE V

MAINTENANCE OF RECORDS

Gross Income as used in this Lease shall include all income resulting from occupancy of the demised Premises from whatever source derived whether received or to become due, (except such income as shall be specifically excluded as elsewhere in this Agreement) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross income, however, shall not include Federal, State or Municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents or original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the CITY of San Diego. Not later than the thirtieth of each month, LESSEE shall render to CITY a detailed statement as to the source

of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said Premises.

ARTICLE VI

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.

ARTICLE VII

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 Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made, or permitted to be made of the 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 Premises or in which the 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 its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance

organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

During any period that improvements, repairs, or alterations are being constructed on the Premises by anyone 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, 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 any lien for labor or materials or arising from any such construction is imposed or recorded against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the LESSEE shall have failed to comply with the requirements of this ARTICLE VIII, this Lease shall be subject to termination at the expiration of 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.

Further provided, 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 lender or lending agency or person who is a beneficiary under a trust deed or mortgaged under any mortgage securing any loan on or in connection with the Premises which was recorded with the prior consent of CITY shall be notified of the failure of the LESSEE to give the bond and shall have 30 days to satisfy any such mechanic's lien, and if such financial institution lender or lending agency or person does so satisfy and remove such lien and action, then this Lease shall continue in effect for the remainder of the Term.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest 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 the 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 obligation on CITY or increase obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the 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. Provided, however, any lender whose loan has been approved by the CITY has the option to take over as Lessee, as provided in Article XXVIII - Lease Encumbrance.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the 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 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 Final Judgment after appeal, if appeal is taken, of any court of competent jurisdiction, or the admission of LESSEE or any SUBLESSEE or PERMITTEE in any action or proceeding against them or any of them, whether CITY is a party thereto or not, that the LESSEE, SUBLESSEE 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.

ARTICLE XII

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 SUBLESSEES of LESSEE.

ARTICLE XIII

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 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.

ARTICLE XIV

MERGER

The voluntary or other surrender of this Lease by LESSEE or a mutual cancellation thereof, shall not work a merger, but will

operate as an assignment to it of any or all such subleases or subtenancies. Any such surrender or mutual cancellation shall have no effect upon the rights of any lender whose loan has been approved by the CITY, unless the surrender or mutual cancellation provides for full satisfaction of the lender's trust deed or mortgage.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the City Manager 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, 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. A copy of any notice or notices sent to LESSEE shall be also sent by registered or certified mail to any lender whose loan has been approved by the CITY.

ARTICLE XVI

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 or other loan provided for 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 the mortgagee or beneficiary shall take the appropriate action required, if any, by Article XXVIII - Lease Encumbrance, and this Lease shall not terminate if said mortgagee or beneficiary take the appropriate action as set out in Article XXVIII and proceed with reasonable diligence thereafter; 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 shall first 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 Cash 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.

(b) In the event that said bond is inadequate or non-existent, CITY shall notify beneficiary or mortgagee ten (10) days prior to exercising its right to 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.

(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 non-curable type or nature, such as being impossible to, not practical to, or not feasible to cure, 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 so substitute itself and commence performance within the period set out in Article XXVIII 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 and duties of the original LESSEE hereunder, subject to cure of the default or defaults by mortgagee or beneficiary as set out in Article XXVIII, and LESSEE expressly assigns all its interest in and to its leasehold estate in that event. *delet* Aforementioned assignment extends to entire leasehold estate (indicated in "Exhibit B" or Parcel 1.)

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the 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.

ARTICLE XVIII

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 clientele 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 therefor. Provided, however, that this Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX

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, ^{to property} 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 reparable 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 Section (d) of Article XXIII 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 ^{with due diligence} said repairs, restoration or replacement within the time specified herein, then CITY shall have the option to do any of the following:

(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) of Article XXIII 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.

(b) CITY may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, and LESSEE authorizes CITY to use the insurance proceeds for said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition, in accordance with Article XXIII hereof entitled "Insurance" and held in trust by a mortgagee or trust deed beneficiary, and LESSEE hereby waives any right of 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.

ARTICLE XX

OWNERSHIP OF IMPROVEMENTS

All improvements of a permanent nature excepting trade fixtures installed by LESSEE in accordance with the provisions hereof 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 within a reasonable time after the termination of this Agreement at LESSEE's own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, 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.

ARTICLE XXI

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 heretofore 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 by Section 1941 of said Civil Code.
see CONDITION III, 3-1 AMEND (ADDS PROVISIONS)
ARTICLE-XXII

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.

ARTICLE XXIII

INSURANCE

Upon taking physical possession of the Leased Premises 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 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. Upon taking physical possession of the Leased Premises, LESSEE shall maintain the minimum amount of not less than Two Hundred Thousand Dollars (\$200,000.00), for one person injured in one accident and not less than One Million Dollars

(\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than Fifty Thousand Dollars (\$50,000.00) 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 or the 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 interest on all such legal proceedings and pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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 deliver to the City Manager of the CITY a policy 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 XXIII, 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 City Manager. If said policy be

terminated or limited in any manner prior to the termination date specified in the certificate.

- (d) LESSEE also agrees upon commencement of construction on the Leased Premises to take out and maintain during the entire remaining 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 at least 80% of the replacement cost of said property. LESSEE shall require that a policy 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 policy 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 ARTICLE XIX of this Agreement, 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 or other loan provided for in Section XXVIII "Lease Encumbrance" 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 both CITY and mortgagee or beneficiary in lieu of restoration of premises, and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be re-

tained by said mortgagee or beneficiary to the extent 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, to restore premises to a neat and clean condition and then for CITY and LESSEE as their interest may appear.

CITY reserves the right to increase the percentage of coverage 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.

ARTICLE XXIV
~~REPLACED WITH "NONCOMPETITION" CLAUSE, 3rd AMEND~~
~~CONTROL-BY-LESSEE~~

A part of the consideration for the granting of this Lease is the personal qualifications and abilities of George D. Millay, Milton C. Shedd, David M. De Motte, Kenneth Norris, Chadwick and Buchanan, Moffatt & Nichol, Willard Bell and William N. MacFarland. Therefore the corporation named herein as LESSEE shall remain owned and controlled by George D. Millay, Milton C. Shedd, David M. De Motte, Kenneth Norris, Chadwick & Buchanan, Moffatt & Nichol, Willard Bell and William N. MacFarland; at least to the extent of 51% of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the Leased Premises; provided, however, that in the event that any of the above-named parties shall become incapacitated, then the others shall continue in such active administration and supervision. In the event George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Chadwick & Buchanan, Moffatt & Nichol, Willard Bell

and William N. MacFarland are all incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the said operations. The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above-named persons in excess of said 51% shall be considered an assignment of interest and shall be treated in accordance with the provisions of ARTICLE X of this Agreement; provided, however, that the stock of any stockholder may be assigned to his spouse or direct lineal heirs upon notification in writing to the CITY.

ARTICLE XXV

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.

ARTICLE XXVI

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 in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

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.

ARTICLE XXVIII

LEASE ENCUMBRANCE

The CITY does hereby consent and agree that the LESSEE may encumber this Lease, leasehold estate and the improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE in accordance with the financial plan approved in writing by City Manager upon the express condition that the net proceeds of such loan or loans received by the LESSEE be devoted exclusively ^{and to costs & charges incident thereto.} 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: Off-site improvements for service of the Leased Premises; on-site improvements; escrow 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 attorney's fees or such other normal expenses.] Any subsequent encumbrances on the real property must first be approved in writing by City Manager.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by CITY. Any assignee of a beneficial interest shall have the same rights under this Lease as the assignor. CITY agrees not to unreasonably withhold consent to assignments of the beneficial interest. The CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof previously approved by it as its new tenant under this lease with all the rights and privileges of the original LESSEE, and that in the event that said mortgagee or beneficiary desires to assign this Lease to its nominee, and said nominee is a reputable, qualified and financially responsible operator in the opinion of the CITY, the CITY hereby agrees that upon the filing of an application for the consent to such assignment, the CITY will give its consent thereto, and agrees not to unreasonably withhold such consent.

Anything in this Lease to the contrary notwithstanding, CITY shall not exercise any remedy available to it for default hereof by LESSEE, unless and until CITY, as a condition precedent to such exercise, shall have given notice

to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct CITY (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this Lease to remain in full force and effect.

a. If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the Leased Premises or any other sum of money required to be paid by LESSEE, said beneficiary or mortgagee may pay the same to CITY or other proper payee within 60 days after the mailing aforesaid; if so paid, said default shall be cured and this lease shall remain in full force and effect. If, after any such payment to CITY, LESSEE pays the same to CITY, or in the event CITY waives default, CITY shall promptly refund said payment to said beneficiary or mortgagee.

b. If said default be other than specified in subparagraph (a) above, CITY shall not exercise any such remedy if:

- (1) Within 60 days after the mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust; and
- (2) Such foreclosure be prosecuted with reasonable diligence; and
- (3) Prior thereto, said beneficiary or mortgagee shall first have obtained, in writing, the approval of CITY of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval CITY agrees not unreasonably to withhold; and
- (4) Within a reasonable time after foreclosure sale, the purchaser thereat cures such default, if said default is curable from both a feasible and practical standpoint, or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

ARTICLE XXIX

UTILITIES

CITY agrees to provide the following utilities services, water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. 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, gas or 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 such 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.

CITY agrees that it shall construct and maintain at its expense any bridge

necessary for public passage over the channel permitted to be constructed in connection with LESSEE's hydrofoil watercraft facilities.

ARTICLE XXX

SCHEDULE OF OPERATIONS *3rd AMEND ADDS CLAUSE*

LESSEE agrees to operate the Leased Premises and associated facilities continuously throughout the entire term of this Agreement after such premises are first opened to the public in order to serve the public interest and in accordance with sound business practices. Closing of portions of the Premises for limited period for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the leased Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager. Provided, however, LESSEE may close the premises certain days of the week during the off-season upon prior approval of City Manager. Type and quality of service furnished by LESSEE must qualify for the conditions and requirements of the "A" Card issued by Department of Health for CITY to operators of food-handling establishments.

ARTICLE XXXI

CANCELLATION

If after the first twenty (20) year period of this Lease or any extension thereof, CITY by Resolution of City Council, determines the uses of the demised Premises provided by ARTICLE I 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 (1) 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. 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 improvement; 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 ARTICLE XXI 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 or other loan provided for in Article XXVIII 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 approved by CITY, and as they may have been modified or extended with the consent in writing of the CITY. Should mortgagee or beneficiary neglect to obtain approval of the CITY as to any modification or extension of the loan or loans, any cancellation payment to the mortgagee or beneficiary may be reduced by the amounts the unpaid balance of the loan or loans would have been further reduced had the modification or extension not been granted by said mortgagee or beneficiary.

In the event of termination of this Lease in accordance with the provision of this Article, LESSEE shall be under no obligation whatsoever to restore the Premises to the conditions which existed at the commencement of the Term nor to demolish, destroy or remove any improvement or structure situated upon the Premises.

CITY shall be under no obligation to compensate LESSEE for improvements made without CITY'S consent, which are not authorized by the provisions of this Agreement nor any improvements made after the date of notice of CITY'S election to terminate this Lease unless there shall have been an expressed Agreement to the contrary.

ARTICLE XXXII

DEVELOPMENT

The development of the Leased Premises shall be in accordance with a Master Plan approved by CITY in accordance with established CITY practices which is filed in the Office of the City Clerk as Document No. 657720.

ARTICLE XXXIII

ACCESS TO THE PREMISES

CITY agrees that it shall at its expense construct and throughout the Term maintain a public street or roadway to the Premises as a means of ingress and egress for the public to the Premises. Such street or roadway shall be hard-surfaced, a minimum width of 40 feet, and construction thereof completed no later than the date for the public opening of the Marine Life Exhibit. CITY further agrees that it shall provide suitable means of ingress and egress to the Premises

during the period of construction of improvements on the Premises.

ARTICLE XXXIV

OPTION

Revised
For a period of five (5) years from and after the date of execution of this Agreement and if in the opinion of the CITY OF SAN DIEGO, additional Marine Park facilities upon the leased premises are desirable and cannot be accommodated within the area described in said Exhibit "A-1" as "Parcel 1," then LESSEE shall have the right of first refusal on any or all of the adjacent twenty (20) acre parcel designated "Parcel 2" on said Exhibit "B" attached hereto.

Said right of first refusal shall give LESSEE the right either to lease or to

ARTICLES 35, 36, 37 ADDED, 1ST AMEND.

ARTICLE ~~XXXVIII~~ ADDED, 3rd AMEND.

STATE OF CALIFORNIA,) ss
COUNTY OF SAN DIEGO,)

On this 8th day of July, 1963, before me, HELEN M. WILLIG, a Notary Public in and for said County and State, personally appeared GEORGE D. HILLAY, President and DAVID M. DEMOTTE, Secretary of MARINE PARK, Inc. known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

My Commission expires
Sept. 11, 1966.

Helen M. Willig
Notary Public in and for said
San Diego County, State of California.
HELEN M. WILLIG

obtain an option under the same terms and conditions as the then existing Lease insofar as applicable or under such other terms and conditions as are mutually agreed upon.

As a condition for the granting of said Lease or option to lease, LESSEE must first file a development plan and schedule of development satisfactory to CITY and in accordance with CITY standards for the development of Mission Bay.

If LESSEE selects said option to lease and thereafter fails to enter into a lease agreement in accordance therewith, then LESSEE shall pay to CITY as consideration for the said option a rental equal to \$435 per acre per year for the area of land and the period covered by the option; prorated for any portion of an acre and any portion of a year.

IN WITNESS WHEREOF, this Lease Agreement is executed by the CITY acting by ^{Helene} ~~Oliver~~ and through the City Manager of said CITY, under and pursuant to Resolution No. 167535 175828 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.

MARINE PARK, INC. ^{CORP}
By [Signature]
President
David M. D. Matte
Secretary

THE CITY OF SAN DIEGO
By [Signature]
Assistant to the City Manager

I HEREBY APPROVE THE FORM AND LEGALITY of the foregoing Lease Agreement this 25th day of July, 1963

ALAN M. FIRESTONE

City Attorney
By [Signature]
Chief Deputy

FILED MAY 28 1963

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIAAMENDMENT TO OPTION AGREEMENT

File

THIS AGREEMENT, made and entered into this 23 day of May, 1963, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and MARINE PARK, a California corporation, doing business as SEA WORLD, hereinafter called "MARINE PARK," WITNESSETH:

WHEREAS, on August 2, 1962, THE CITY OF SAN DIEGO and MARINE PARK entered into an Option Agreement for the leasing of certain land in Mission Bay Park, which said Option Agreement is on file in the office of the City Clerk as Document No. 644020; and

WHEREAS, said Option Agreement provided for the leasing of certain land in Mission Bay Park only upon prior performance of certain acts by MARINE PARK; and

WHEREAS, said Option Agreement provided for the leasing of a certain 18.3 acre tract of land in MISSION BAY PARK of the CITY OF SAN DIEGO, under certain conditions as outlined in Exhibit "A" attached thereto; and

WHEREAS, MARINE PARK has been unable to comply with the schedule as set forth in said Option for prior performance of certain acts; and

WHEREAS, CITY is willing to enter into a 30-day extension of said Option Agreement in order to permit MARINE PARK to fulfill the requirements of said Option; and

WHEREAS, CITY and MARINE PARK desire to extend the date of submission of construction plans and specifications for that certain portion of the initial phase of development commonly known as Murata Pearl, and

WHEREAS, MARINE PARK desires to commence construction of building foundation prior to exercising their Option to lease in order to expedite development of the Lease Premises, and

WHEREAS, it is the desire of both of the parties to amend certain terms and conditions of Exhibit "A" attached to said Option Agreement in order to increase the area to be leased to MARINE PARK an additional .81 acres of land area and .34 acres of water area, and further to satisfy the requirements of MARINE PARK'S lending agency; NOW THEREFORE

IN CONSIDERATION OF the mutual covenants and conditions herein contained, CITY and MARINE PARK hereby agree to amend and modify said Option Agreement to provide as follows:

- I IT IS HEREBY MUTUALLY AGREED that in consideration of the payment by MARINE PARK of the sum of ONE THOUSAND AND EIGHTY DOLLARS AND FORTY-SEVEN CENTS (\$1,080.47), the term of said Option shall be extended an additional THIRTY (30) DAYS TO terminate on July 2, 1963.
- II IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that MARINE PARK shall submit to CITY construction plans and specifications for the initial phase of development, satisfactory to City wanager, showing all improvements in the Leased Premises or within the immediate adjacent area necessary for construction of said initial phase, and will obtain all permits and permissions for said construction on or before July 2, 1963. Provided, however, that plans and specifications for that portion of the initial development more commonly known as Murata Pearl, and shown on the Master Plan for Development and all permits and permissions for said construction granted on or before August 2, 1963.
- III IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that City Manager of City shall have authority to authorize MARINE PARK to enter the area to be leased to MARINE PARK prior to the signing of said Lease Agreement attached hereto as Exhibit "A-1" for the purpose of construction of foundations for buildings shown on said Master Plan of Development. The authorization as provided hereinabove shall be effective upon issuance of proper permits by the Building Inspection Department of The City of San Diego and MARINE PARK has posted a bond satisfactory with CITY guaranteeing removal of said foundations and restoration of the area in the event MARINE PARK fails to exercise the said Option to lease.
- IV THAT CERTAIN FORM OF LEASE AGREEMENT marked Exhibit "A-1" attached hereto and filed in the office of the City Clerk as Document No. 655878 shall replace and supersede that certain form of Lease Agreement marked Exhibit "A" and attached to said Option Agreement filed in the office of City Clerk as Document No. 644020.

IN WITNESS WHEREOF, this Agreement is executed by the CITY, acting by and through the City Manager of said CITY, under and pursuant to Resolution No. 175828 authorizing such execution, and MARINE PARK 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 Walter J. Salazar
Assistant City Manager

MARINE PARK,
A California Corporation

By George D. Mulvey - Pres

By David M. DeMatte - Sec

I HEREBY APPROVE the form and legality of the foregoing Amendment to Option Agreement this 21st day of May, 1963.

ALAN M. FIRESTONE, City Attorney

By Robert S. Tenge
Deputy

AGREEMENT

FILED MAR - 7 1963
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIATHIS AGREEMENT, made and entered into this 5 day of March, 1963.

by and between THE CITY OF SAN DIEGO, a municipal corporation, Hereinafter called "CITY," and MARINE PARK CORPORATION, a California corporation, hereinafter called "MARINE PARK," WITNESSETH:

WHEREAS, on August 2, 1962, THE CITY OF SAN DIEGO and MARINE PARK CORPORATION, a California corporation, entered into an Option Agreement for the leasing of certain land in Mission Bay Park, which said Option Agreement is on file in the office of the City Clerk of said CITY as Document No. 644020; and

WHEREAS, said Option Agreement provided for the leasing of a certain EIGHTEEN AND THREE TENTHS (18.3) ACRE tract of land in the Mission Bay Park of THE CITY OF SAN DIEGO, under certain conditions as outlined therein, for the development of a marine life exhibition facility; and

WHEREAS, MARINE PARK desires to commence construction prior to fulfilling all obligations of said Option, in order that MARINE PARK can commence stocking and training of the larger sea specimens at the earliest possible date, in preparation of their opening show in the spring of 1964; and

WHEREAS, MARINE PARK has fully bonded such construction and CITY will not be harmed by such early construction in the event of failure to execute said Option to lease, but would in fact obtain title to a valuable marine stadium; NOW THEREFORE

IT IS MUTUALLY AGREED BETWEEN THE PARTIES HERETO that MARINE PARK is hereby authorized to enter that portion of said EIGHTEEN AND THREE TENTHS (18.3) ACRE tract in Mission Bay Park, described in Option Agreement dated August 2, 1962, filed as Document No. 644020 in the office of the City Clerk of THE CITY OF SAN DIEGO, and shown on MARINE PARK CORPORATION Location Plan as Area A, prepared by Moffatt & Nichol, Engineers, attached hereto as Exhibit A, for the construction of the lagoon, stadium, beach area and three (3) training tanks in Area B.

IT IS FURTHER MUTUALLY AGREED that the authorization as provided hereinabove shall be effective upon issuance of proper permits by the City Engineer and Building Inspection Department of THE CITY OF SAN DIEGO. In the event said permits are not issued within sixty (60) days of the date of this Agreement, then said authorization shall terminate.

IT IS FURTHER MUTUALLY AGREED that MARINE PARK further agrees that, simultaneously with the execution of this Agreement, it will furnish and deliver to CITY, a cash or surety bond, executed by a reliable surety company authorized to do a surety business in the State of California, in the sum of ONE HUNDRED THIRTY-ONE THOUSAND DOLLARS (\$131,000.00), which said bond shall ensure the faithful performance of all that construction shown on plans attached hereto and marked "Exhibit A," regardless of whether MARINE PARK ever exercises the aforementioned Option to lease. It shall additionally inure to the benefit of those persons entitled to the protection Part 3, Title 4, Chapter 2 of the Code of Civil Procedure.

IT IS FURTHER MUTUALLY AGREED AND UNDERSTOOD that MARINE PARK shall hold CITY free and harmless, accepting full responsibility in connection with any liability resulting directly or indirectly by reason of this Agreement. MARINE PARK further warrants that it has and shall maintain in full force and effect during the term of this Agreement, public liability and property damage insurance in amounts not less than ONE HUNDRED THOUSAND AND THREE HUNDRED THOUSAND AND TEN THOUSAND DOLLARS (\$100,000.00/\$300,000.00/\$10,000.00), and shall furnish to CITY a policy of insurance from an insurance company authorized to do business in the State of California showing compliance with this requirement.

Rud. Bert. 200,000/1,000,000/50,000

a copy of Policy

Effective 3/1/63 - 3/1/64

IT IS EXPRESSLY UNDERSTOOD AND AGREED that in the event MARINE PARK fails, for any reason or cause, to exercise the Option to lease as provided in said Option Agreement, then improvements agreed to be constructed on Leased Premises by MARINE PARK shall be completed and thereupon become the property of THE CITY OF SAN DIEGO, without any obligation to compensate MARINE PARK or anyone else therefor.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF SAN DIEGO, acting by and through the CITY MANAGER, pursuant to Resolution No. 174746, and MARINE PARK CORPORATION has caused this Agreement to be executed by its duly authorized officers, and its corporate seal attached, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By Walter Kohn Jr.
Assistant City Manager

MARINE PARK CORPORATION,
a California Corporation

By George O. Milley, President

By _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this 5th day of Mar, 1963.

ALAN M. FIRESTONE, City Attorney

By Robert S. Teoza

OPTION AGREEMENT

M. B. Park - File
DOCUMENT NO. 644020

FILED AUG 15 1962

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS OPTION AGREEMENT, made this 2nd day of August, 1962, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and MARINE PARK, a California corporation, hereinafter called "MARINE PARK.

W I T N E S S E T H :

WHEREAS, On September 21, 1961, The City of San Diego and Marine Park entered into an Option Agreement for the leasing of certain land in Mission Bay Park, which said Option Agreement is on file in the office of the City Clerk of said City as Document No. 629944 as amended by Agreement filed on May 18, 1962 as Document No. 639087 and,

WHEREAS said Option Agreement provided for the leasing of a certain 15 acre tract of land in the Mission Bay Park of the City of San Diego under certain conditions, as outlined therein, and

WHEREAS Marine Park has been unable to comply with the schedule for commencement of construction due to soil conditions beyond their control, and

WHEREAS, The City of San Diego now desires to correct the aforesaid soil conditions; and

WHEREAS, it is the desire of the parties to terminate said Option Agreement and to replace it with a new Option Agreement, which will permit Marine Park to lease from City certain acreage in Mission Bay Park for the purpose of constructing, operating, and maintaining a marine life exhibit for the general public upon the terms and conditions as set forth in the form of lease agreement, copy of which is attached hereto and marked "Exhibit A"; and

WHEREAS, City is willing to enter into such lease agreement only upon prior performance of certain acts by Marine Park, and is willing for its part to perform certain acts in connection with preparation of the construction site within the proposed leased premises; NOW, THEREFORE,

IT IS HEREBY MUTUALLY AGREED that that certain Option Agreement between the parties hereto for the leasing of a portion of Mission Bay Park in the City of San Diego, filed in the office of the City Clerk on September 21, 1961, as Document No. 629944, and all amendments thereto, are hereby terminated, and all funds paid thereunder by Marine Park shall be applicable to the payments due under this new Option Agreement.

IT IS FURTHER MUTUALLY AGREED that in consideration of the following:

1. The payment of ONE THOUSAND THIRTY-ONE and 85/100 DOLLARS (\$1,031.85) per month during the nine-month option period, EIGHT THOUSAND FOUR HUNDRED SIXTY-SIX DOLLARS AND NINETY-EIGHT CENTS (\$8,466.98) of which

is hereby acknowledged by City to have been paid by Marine Park in advance, and the remainder of which is agreed to be payable upon the exercise, refusal or expiration of the option herein granted;

2. The submission to the City Manager within two (2) months of the date of execution of this Option Agreement, of a complete Master Plan satisfactory to the City Manager, for the construction, operation and maintenance, of a marine life exhibit, as generally set forth in that document entitled, "Oceanarium Proposal, Mission Bay, San Diego, California," dated March 10, 1961;

Said master plan will consist of a plot plan together with an architect's or artist's sketch showing in color all of the improvements to be constructed on the entire leased premises as are now contemplated. Said plot plan and sketch will show the location, architectural theme, schedule of construction, and general exterior design and uses for all such improvements, including signs, buildings, docks, parking areas, landscaped areas, and appurtenant structures. Said master plan and plot plan will be drawn on standard City of San Diego Engineering D-sheets;

3. The submission to the City Manager within two (2) months of the date of execution of the Option Agreement a financial statement satisfactory to City Manager, setting forth its projected method of financing the proposed development on the leased premises, and showing the equity capital to be invested and its source, borrowed capital and its source. Lessee will show the amount of investment in improvements and furnishings, schedule of such expenditures, and the amount of capital available for operating upon commencement of operations upon the leased premises. The amount of such capital shall be no less than ONE MILLION, SEVEN HUNDRED THOUSAND and NO/100 DOLLARS (\$1,700,000.00);

4. The submission to the City Manager within six (6) months of the date of execution of the Option Agreement, of construction plans and specifications for the initial phase of development, satisfactory to City Manager, showing all improvements in the leased premises or within the immediate adjacent area necessary for the construction of said initial phase and will obtain all permits and permissions for said construction. Said plans will be designed in accordance with City standards for the development of Mission Bay and will include design for utilities, roads, grading, buildings and structures, landscaping, signs, materials of construction and color scheme and such other items as are necessary to complete construction of said initial phase;

5. The submission to the City Manager of City within six (6) months of the date of execution of this Option Agreement, of evidence, satisfactory to the City Manager of ability to finance the cost of construction of said marine life exhibition facility as proposed in said Master Plan,

Marine Park shall have the exclusive and irrevocable option for a period of nine (9) months from the date of execution hereof, to lease from City upon the terms and conditions set forth in the form of lease agreement, copy of which is attached hereto and marked "Exhibit A", those premises described in said form of lease agreement.

(Said Premises are described in the Plot Plan which is attached hereto marked Exhibit "B".)

IT IS EXPRESSLY UNDERSTOOD AND AGREED that in the event Marine Park fails for any reason or cause to exercise the option to lease heretofore set forth, then the option lease shall not be enforceable and all sums herein required to be paid to City shall be in full compensation for the granting to Marine Park the exclusive and irrevocable right of dealing with CITY for a period of nine (9) months from the date of execution of this Agreement, in connection with the development of a marine life exhibition facility in Mission Bay Park; PROVIDED, HOWEVER, that by mutual agreement between the City Manager of CITY and Marine Park, the period within which the option can be exercised may be extended for an additional one (1) month on the payment by Marine Park of the sum of ONE THOUSAND THIRTY-ONE DOLLARS and EIGHTY-FIVE CENTS (\$1031.85) per month, or any portion thereof.

IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that in the event Marine Park exercises the option and the CITY executes that certain Lease Agreement, form of which is attached hereto as "EXHIBIT A," the total consideration paid for this option as hereinbefore stated shall be applicable to the rent payable during the construction period provided for in ARTICLE IV, Paragraph A of said Lease Agreement.

IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED THAT City will either prior to or simultaneously with the authorization of this agreement, authorize a contract (a copy of which has been furnished Marine Park for review) for the removal of certain soils within the leased premises. City will prosecute said contract to completion within three (3) months of the date of execution of this agreement. In the event the failure of the City to complete said soil removal within said three (3) months, causes Marine Park to delay the commencement of its construction program, then Marine Park shall be entitled to do either of the following: (a) it may terminate this agreement without penalty and shall be entitled to refund of any money paid to City as consideration for the granting of the options by City; or (b) it may extend the period of the option for a term equal to that period by which said soil removal and replacement delays said construction.

IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that this option may be exercised by Marine Park at any time prior to the expiration of nine (9) months from the date of execution of this Agreement by the CITY, which date is acknowledged to be that set forth in the first full paragraph hereof, and upon Marine Park's first having performed to the satisfaction of the City Manager all those acts set out above which form the consideration for the granting of this option by CITY. Marine Park shall exercise this option by giving the CITY written notice of its election to do so accompanied by written Leases of the Premises in the form of EXHIBIT "A" executed by Marine Park in triplicate. The date of such Lease, as provided in the preamble set forth on Page 1 thereof and the commencement of the Term as provided in Article II, shall be the date of execution of the Lease by the CITY. The CITY's failure to execute the Lease prior to the expiration of the Term of this option shall not affect the validity of nor invalidate the Lease nor nullify Marine Park's timely notice of its election to exercise this option.

IT IS FURTHER UNDERSTOOD AND AGREED as follows:

1. The number of square feet to be inserted in ARTICLE IV at subparagraph B, 2 and the amount of the Minimum Annual Rent to be inserted in ARTICLE IV at subparagraphs B, 2, (a); B, 2, (b); and B, 2 (c) shall be computed on the basis of the description of the Premises as set forth on the Plot Plan attached hereto and marked EXHIBIT "B" and such figures shall be inserted in the Lease of the Premises.

2. The information to be inserted in ARTICLE XXXII of the attached form of Lease shall be as determined from the records of the CITY OF SAN DIEGO and likewise inserted in the Lease.

IN WITNESS WHEREOF, this Agreement is executed by the CITY, acting by and through the City Manager of said CITY, under and pursuant to Resolution No. 172101 authorizing such execution, and MARINE PARK has caused this Agreement to be executed and its corporate name and seal to be affixed by the proper officers this 9 day of August, 1962.

THE CITY OF SAN DIEGO

By E. W. Blom
Asst. City Manager

MARINE PARK, INC., a California corporation,

By George W. Mullan
President
Harvey M. He Matte
Secretary

I HEREBY APPROVE THE FORM AND THE LEGALITY of the foregoing Agreement this 8th day of August, 1962.

ALAN M. FIRESTONE, City Attorney

By Robert Steege
Deputy

LEASE AGREEMENT

THIS LEASE AGREEMENT, executed in duplicate this _____ day of _____, 19____, at SAN DIEGO, CALIFORNIA, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY," and MARINE PARK, a California corporation, whose address is: 6691 Paramount Boulevard, Long Beach 9, California, hereinafter referred to as "LESSEE,"

W I T N E S S E T H

ARTICLE I

DEMISE

THE CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY that parcel of real property, together with appurtenances thereto, situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, which is designated as Parcel 1 on City of San Diego Engineering Drawing No. 10768 D, dated 8-3-62, / & revised 5-20-63 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 North 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" North and Longitude 117°11'07.200"

EXHIBIT "A-1"

West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Co-Ordinate System; thence North 5,133.00 and West 13,500.00 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-Ordinates of said true point of beginning being North 5,133.00 feet and West 13,500.00 feet; thence due South 60.91 feet to Mission Bay Park Co-Ordinates North 5,072.09 feet and West 13,500.00 feet, being a point on a 630.00 foot radius curve concave Southwesterly, a radial line from said point bearing South 20°45'44" West; thence Southeasterly along the arc of said curve through a central angle of 21°33'53" a distance of 235.28 feet to Mission Bay Park Co-Ordinates North 4,950.00 feet and West 13,300.47 feet; thence due East 670.76 feet to Mission Bay Park Co-Ordinates North 4,950.00 and West 12,629.71 feet; thence due North 726.78 feet to Mission Bay Park Co-Ordinates North 5,676.78 feet and West 12,629.71 feet; thence North 71°35'40" West 284.86 feet to Mission Bay Park Co-Ordinates North 5766.72 feet and West 12900.00 feet; thence due North 530.25 feet to Mission Bay Park Co-Ordinates North 6296.97 feet and West 12900.00 feet to the beginning of a 1,342.65 foot radius curve concave Southeasterly, a radial line from said point bearing North 10°13'41" West; thence Southwesterly along the arc of said curve through a central angle of 26°55'51" a distance of 631.09 feet to Mission Bay Park Co-Ordinates North 6,045.17 feet and West 13,472.18 feet, being the beginning of a reverse 655.44 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 3°02'40" a distance of 34.89 feet to Mission Bay Park Co-Ordinates North 6,024.09 feet and West 13,500.00 feet; thence due South 891.09 feet to the true point of beginning.

EXCEPTING therefrom all rights, title or interest in any and all gas, oil, minerals upon or beneath said leased premises.

NOTE: The parcel of land described above is delineated on City of San Diego Engineering Department Drawing No. 10768 D dated 8-3-62, revised 5-20-63

The above described parcel contains 2.20 acres of water and 19.11 acres of land.

RESOLUTION No. 172101

ADOPTED ON AUG 9 1962

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

That the City Manager do, and he is hereby authorized and empowered to execute, for and on behalf of said City, an Option Agreement with Marine Park, a corporation, in connection with the leasing of a portion of Mission Bay Park for construction, operation and maintenance of a Marine life exhibit for the general public, under the terms and conditions set forth in the form of option agreement on file in the office of the City Clerk under Document

No. 643637

Presented by _____

APPROVED:

ALAN H. FIRESTONE, City Attorney,

By _____

Chief Deputy.

M/8/8/62

ARTICLE II

TERM

The term of this Lease shall be the period of FIFTY (50) YEARS, beginning _____, 19____ and ending _____, 20____.

ARTICLE III

USE OF THE PREMISES

The premises shall be used for the primary purpose, and Lessee shall have the right, of constructing, operating, and maintaining thereon an ocean aquarium exhibit substantially of the type and nature described in the master plan which is attached hereto and marked Exhibit C, (said aquarium is sometimes herein referred to as the Marine Life Exhibit) and for such incidental uses as maintaining, operating, and selling rides on hydrofoil-type watercraft, a gift shop or shops, a restaurant and cocktail lounge, and snack bars. Said restaurant and cocktail lounge, to be constructed during Phase II of the development, shall be for the exclusive use of the patrons of the / ^{leased area} and access to said restaurant and cocktail lounge shall be from within the // ^{lease} limits. Lessee shall in addition to the foregoing, have the right to use the said premises to operate and maintain thereon activities which are incidental to the foregoing and such other activities as may from time to time be deemed desirable to serve the patrons of the Marine Life Exhibit and the public and as may have first been approved by the City in writing.

In connection with the maintenance and operation and selling of rides on hydrofoil-type watercraft, Lessee shall have, and City hereby grants and extends to Lessee, the right and privilege to operate hydrofoil-type watercraft in the public waterways of Mission Bay; Lessee shall also have the right to embark and disembark passengers at the said premises and the right to construct and maintain into the said premises from the waterways fronting on the premises, a channel at the location and of the dimensions indicated on Exhibit B attached hereto.

The granting of this right and privilege in connection with use and operation of hydrofoil-type watercraft on the waters of Mission Bay may be suspended by the City at any time when, in the opinion of the City Manager such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, City shall have the right upon ten (10) days' written notice to require Lessee to suspend the use and operation of hydrofoil-type watercraft for limited and predetermined periods when, in the opinion of

the City Manager, such use and operation would unduly interfere with the use of Mission Bay for a major public event.

Such suspension shall be without liability to the City for damages of any kind suffered by the Lessee as a result of such suspension. The rights and privileges hereby granted shall be subject to the availability of operating area and at approved speeds and under such other Municipal, State, and Federal rules and regulations as are applicable to the operation of said hydrofoil-type watercraft.

LESSEE shall use the premises only for the purpose of conducting thereon the business for which they are demised and shall diligently conduct such business to produce a reasonable and substantial gross income.

ARTICLE IV.

RENT

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of THE CITY OF SAN DIEGO, Room 162, Civic Center, San Diego 1, California, is as follows:

- A. For that portion of the Term expiring prior to commencement of operations, which is hereby defined as the opening of the Marine Life Exhibit to the public, as evidenced by sales or admissions to the general public, the rent shall be the sum of ^{1031.55} per month payable monthly in advance. Provided, however, any portion of the sum paid as consideration for the option to lease the Premises shall be applied to such rent as a lump sum advance payment of such rent.

If operations begin within the time specified in the MASTER PLAN, attached hereto as EXHIBIT "C", then the total sum paid as rent during said construction period shall be applied and credited to the rent to become due during the first year of operations as specified in Paragraph B of this ARTICLE IV. In the event LESSEE does not begin construction of the Marine Life Exhibit within the specified time after execution of this Lease, then this Lease shall be automatically terminated. The City Manager, however, in his discretion may grant one 30-day extension period for the commencement of construction after which further delay to begin construction will cause the automatic termination of the Lease Agreement unless the development schedule is revised by mutual consent of the parties and evidenced by an amendment to this Lease.

- B. After the commencement of operations, as hereinabove defined, and continuing thereafter for the remainder of the Term, LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various

percentages of LESSEE's gross income as hereinafter set forth in this Subparagraph (b) of ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

- (a) THREE PERCENT (3%) of all gross income derived from the dispensing of food and non-alcoholic beverages in the operation of any restaurant or snack bar.
- (b) TWO AND ONE-HALF PERCENT ($2\frac{1}{2}\%$) of the gross income, from admission charges.
- (c) FIVE PERCENT (5%) of the gross income from operations of any cocktail lounge, bar or other facility whose primary function is dispensing alcoholic beverages or from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function, excepting meals or food served on the Premises from any such facility shall be subject to the rent stated in (a) above.
- (d) SEVEN PERCENT (7%) of the gross income, if any, from operation of the parking lot or lots.
- (e) SEVEN PERCENT (7%) of the gross income, from any other sale, service or operation on the leased Premises approved under the purposes for which this Lease is granted; or such other percentage of gross income as may be agreed upon by the parties prior to the commencement of any such activity, service or operation. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.
- (f) Rent paid to City from coin-operated vending machines shall be computed and included in the computation of rent due in accordance with subparagraphs (a), (c) and (d) of this Paragraph 1, on the basis of total income from said machines. Provided however, that said rent paid for telephones, cigarette machines and other coin-operated vending machines which may from time to time be mutually acknowledged and

agreed to be installed primarily for the public convenience; shall be computed on the basis of the income received by Lessee rather than on the gross income of the machine, if Lessee has no ownership equity in said machine and if the total gross income from all vending machines on the leased premises does not exceed \$800 per month. When a portion of the premises is leased by LESSEE to a SUBLESSEE, the rental and the use of the Premises shall be subject to approval of the CITY in the manner set forth in Paragraph 10 of this Agreement. It is contemplated that the CITY shall not receive less rent under a Sublease Agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the SUBLESSEE above rental paid to CITY shall not be computed as part of the LESSEE's gross income against which the percentage rental applies.

LESSEE shall render monthly to CITY an accounting of gross income and rent due, based upon the percentage rental herein set forth and shall, in accordance with such accounting, pay to CITY the percentage rent due for such month on or before the 30th day following the month in which such gross income was earned, as specified in ARTICLE V of this Lease Agreement. In the event LESSEE fails to pay such rent when due, then LESSEE shall become liable for and agrees to pay to CITY in addition to the rent due, a sum equal to FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency and an additional FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency for each additional 15 days thereafter that such delinquency exists. Provided, however, City Manager shall have the right to waive for good cause, any delinquency payment upon written application of LESSEE prior to any such delinquency period.

2. The minimum annual rental (hereinafter referred to as the "Minimum Annual Rent") shall be paid in arrears at the expiration of each year of the term and shall be computed on the basis of an area of _____ square feet of land and an area of _____ square feet of water being included within the Premises.

(a) For the first year beginning with the date that operation, as

hereinabove defined as being evidenced by any service or sales of admission to the Marine Life Exhibit or any part thereof, to the general public, or commencing with the first day of the fourteenth calendar month after execution of this Lease, whichever of the two dates is sooner, the minimum annual rent shall be three cents (\$.03) per square foot per year for the land area and one cent (\$.01) per square foot per year for the water area, or a total minimum annual rent of \$_____.

- (b) The Minimum Annual Rent for the second year of the Term next following the date determined in accordance with Subparagraph B (2) (a) of this ARTICLE IV shall be four cents (\$.04) per square foot per year for the land and one and three-tenths cents (\$.013) per square foot per year for the water, or an annual minimum rental of \$_____.
- (c) The Minimum Annual Rent for the five years of the Term next following the second year of the Term as defined in Subparagraph B (2) (b) of this ARTICLE IV shall be Five Cents (\$.05) per square foot per year for land and two cents (\$.02) per square foot per year for the water, or an annual minimum rental of \$_____.
- (d) The Minimum Annual Rent for the balance of the Term, after the expiration of those portions of the Term referred to in Subparagraphs 2 (a), 2 (b) and 2 (c) of this ARTICLE IV shall be at the basic rate set forth in said subparagraph 2 (c), provided, however, such Minimum Annual Rent may be adjusted at CITY's option at the expiration of each THREE (3) years commencing with the THREE (3) year period next following that portion of the Term referred to and provided for in Subparagraph 2 (c) of this ARTICLE IV and continuing for the remainder of the Term. Such adjustment shall be as follows: Minimum Annual Rent may be adjusted at the expiration of each said three (3) year period so that the Minimum Annual Rent shall be in a sum equal to $66\frac{2}{3}\%$ of the total Rent paid by LESSEE on the basis of a percentage of gross income, such adjusted Minimum Annual Rent shall be applicable for the next succeeding three (3) year period when it may again be re-adjusted.

ARTICLE V

MAINTENANCE OF RECORDS

Gross Income as used in this Lease shall include all income resulting from occupancy of the demised Premises from whatever source derived whether received or to become due, (except such income as shall be specifically excluded as elsewhere in this Agreement) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross income, however, shall not include Federal, State or Municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents or original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the CITY of San Diego. Not later than the thirtieth of each month, LESSEE shall render to CITY a detailed statement as to the source

of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said Premises.

ARTICLE VI

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.

ARTICLE VII

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 Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made, or permitted to be made of the 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 Premises or in which the 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 its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance

organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

During any period that improvements, repairs, or alterations are being constructed on the Premises by anyone 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, 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 any lien for labor or materials or arising from any such construction is imposed or recorded against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the LESSEE shall have failed to comply with the requirements of this ARTICLE VIII, this Lease shall be subject to termination at the expiration of 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.

Further provided, 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 lender or lending agency or person who is a beneficiary under a trust deed or mortgaged under any mortgage securing any loan on or in connection with the Premises which was recorded with the prior consent of CITY shall be notified of the failure of the LESSEE to give the bond and shall have 30 days to satisfy any such mechanic's lien, and if such financial institution lender or lending agency or person does so satisfy and remove such lien and action, then this Lease shall continue in effect for the remainder of the Term.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest 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 the 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 obligation on CITY or increase obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the 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.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the 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 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 Final Judgment of any court of competent jurisdiction, or the admission of LESSEE or any SUBLESSEE or PERMITTEE in any action or proceeding against them or any of them, whether CITY is a party thereto or not, that the LESSEE, SUBLESSEE 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.

ARTICLE XII

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 SUBLESSEES of LESSEE.

ARTICLE XIII

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 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.

ARTICLE XIV

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 subleases or subtenancies, or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the Property Division 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, 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.

ARTICLE XVI

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 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, 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 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 any 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.

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the 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.

ARTICLE XVIII

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 clientele 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 therefor. Provided, however, that this Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX

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, unsightly, or unfit for the use or purpose for which the same are hereby let and said damages are repairable with 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 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 and pay to CITY the proceeds from any insurance coverage covering the permanent improvements to the Premises.

ARTICLE XX

OWNERSHIP OF IMPROVEMENTS

All improvements of a permanent nature excepting trade fixtures installed by LESSEE in accordance with the provisions hereof 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 within a reasonable time after the termination of this Agreement at LESSEE's own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, 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.

ARTICLE XXI

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 heretofore 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 by Section 1941 of said Civil Code.

ARTICLE XXII

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.

ARTICLE XXIII

INSURANCE

Upon taking physical possession of the Leased Premises 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 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 Two Hundred Thousand Dollars (\$200,000.00), for one person injured in one accident and not less than One Million Dollars

(\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than Fifty Thousand Dollars (\$50,000.00) 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 or the 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 interest on all such legal proceedings and pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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 deliver to the City Manager of the CITY a policy 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 XXIII, 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 City Manager. If said policy be

terminated or limited in any manner prior to the termination date specified in the certificate.

- (d) LESSEE also agrees upon commencement of construction on the Leased Premises to take out and maintain during the entire remaining 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 at least 80% of 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 ARTICLE XIX of this Agreement. (CITY reserves the right to increase the limits of liability 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.

ARTICLE XXIV

CONTROL BY LESSEE

A part of the consideration for the granting of this Lease is the personal qualifications and abilities of George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch and William N. MacFarland. Therefore the corporation named herein as LESSEE shall remain owned and controlled by George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch and William N. MacFarland; at least to the extent of 51% of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the Leased Premises; provided, however, that in the event that any of the above-named parties shall become incapacitated, then the others shall continue in such active administration and supervision. In the event George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch

and William N. MacFarland are all incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the said operations. The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above-named persons in excess of said 51% shall be considered an assignment of interest and shall be treated in accordance with the provisions of ARTICLE X of this Agreement; provided, however, that the stock of any stockholder may be assigned to his spouse or direct lineal heirs upon notification in writing to the CITY.

ARTICLE XXV

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.

ARTICLE XXVI

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 in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

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.

ARTICLE XXVIII

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 secure 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 this Lease 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, CITY hereby agrees that upon the filing of an application for consent to such assignment 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. CITY agrees that it shall agree to such reasonable changes, amendments or modifications to this ARTICLE XXVIII as may be requested by LESSEE and/or any lender as a requisite to the granting of a loan for improvement of the Premises.

ARTICLE XXIX

UTILITIES

CITY agrees to provide the following utilities services, water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. 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, gas or 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 such 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.

CITY agrees that it shall construct and maintain at its expense any bridge

necessary for public passage over the channel permitted to be constructed in connection with LESSEE's hydrofoil watercraft facilities.

ARTICLE XXX

SCHEDULE OF OPERATIONS

LESSEE agrees to operate the Leased Premises and associated facilities continuously throughout the entire term of this Agreement after such premises are first opened to the public in order to serve the public interest and in accordance with sound business practices. Closing of portions of the Premises for limited period for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the leased Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager. Provided, however, LESSEE may close the premises certain days of the week during the off-season upon prior approval of City Manager. Type and quality of service furnished by LESSEE must qualify for the conditions and requirements of the "A" Card issued by Department of Health for CITY to operators of food-handling establishments.

ARTICLE XXXI

CANCELLATION

If after the first twenty (20) year period of this Lease or any extension thereof, CITY by Resolution of City Council, determines the uses of the demised Premises provided by ARTICLE I 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 (1) 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. 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 improvement; 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 ARTICLE XXI of this Agreement.

In the event of termination of this Lease in accordance with the provision of this ARTICLE, LESSEE shall be under no obligation whatsoever to restore the Premises to the conditions which existed at the commencement of the Term nor to demolish, destroy or remove any improvement or structure situated upon the Premises.

CITY shall be under no obligation to compensate LESSEE for improvements made without CITY's consent, which are not authorized by the provisions of this Agreement nor any improvements made after the date of notice of CITY's election to terminate this Lease unless there shall have been an expressed Agreement to the contrary.

ARTICLE XXXII

DEVELOPMENT

The development of the Leased Premises shall be in accordance with a Master Plan approved by CITY in accordance with established CITY practices which is filed in the Office of the City Clerk as Document No. _____.

ARTICLE XXXIII

"ACCESS TO THE PREMISES"

CITY agrees that it shall at its expense construct and throughout the Term maintain a public street or roadway to the Premises as a means of ingress and egress for the public to the Premises. Such street or roadway shall be hard-surfaced, a minimum width of 40 feet, and construction thereof completed no later than the date for the public opening of the Marine Life Exhibit. CITY further agrees that it shall provide suitable means of ingress and egress to the Premises during the period of construction of improvements on the Premises.

ARTICLE XXXIV

OPTION

For a period of five (5) years from and after the date of execution of this Agreement and if in the opinion of the CITY OF SAN DIEGO, additional Marine Park facilities upon the leased premises are desirable and cannot be accommodated within the area described in said Exhibit A as "Parcel 1", then LESSEE shall have the right of first refusal on any or all of the adjacent twenty (20) acre parcel designated "Parcel 2" on said Exhibit B attached hereto.

Said right of first refusal shall give LESSEE the right either to lease or to

obtain an option under the same terms and conditions as the then existing Lease insofar as applicable or under such other terms and conditions as are mutually agreed upon.

As a condition for the granting of said Lease or option to lease, LESSEE must first file a development plan and schedule of development satisfactory to CITY and in accordance with CITY standards for the development of Mission Bay.

If LESSEE selects said option to lease and thereafter fails to enter into a lease agreement in accordance therewith, then LESSEE shall pay to CITY as consideration for the said option a rental equal to \$435 per acre per year for the area of land and the period covered by the option; prorated for any portion of an acre and any portion of a year.

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. 172101 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.

MARINE PARK, INC.

By _____
President

THE CITY OF SAN DIEGO

By _____
City Manager

I HEREBY APPROVE THE FORM AND LEGALITY of the foregoing Lease Agreement this _____ day of _____, 19__.

ALAN M. FIRESTONE

City Attorney

By _____
Chief Deputy

AGREEMENT

THIS AGREEMENT, signed and entered this 10 day of May, 1962, by and between the CITY MANAGER of The City of San Diego, hereinafter called "City Manager", and MARINE PARK, a California corporation, hereinafter called "Marine Park", WITNESSETH:

WHEREAS, on September 21, 1961, The City of San Diego and Marine Park entered into an Option Agreement for the leasing of certain land in Mission Bay Park, which said Option Agreement is on file in the office of the City Clerk of said City as Document No. 629944; and

WHEREAS, on page 3 of said Option Agreement it is provided that the City Manager and Marine Park may by mutual agreement extend for an additional three (3) months the period within which Marine Park may exercise its option to enter into a lease with The City of San Diego, upon payment by Marine Park of the sum of Eight Hundred Sixteen and 75/100 Dollars (\$816.75) per month; and

WHEREAS, certain facts relative to the condition of the subterranean soil of the premises to be leased have come to light which make it necessary for the City Manager and Marine Park to enter into the aforementioned mutual agreement; NOW, THEREFORE,

FOR AND IN CONSIDERATION of the payment by Marine Park of the sum of Eight Hundred Sixteen and 75/100 Dollars (\$816.75) per month, IT IS HEREBY MUTUALLY AGREED by and between the parties hereto that the period within which the option to enter into a lease with the City can be exercised by Marine Park is extended for an additional three (3) months to and including September 21, 1962.

IN WITNESS WHEREOF, this Agreement is executed by the City Manager of The City of San Diego under and pursuant to Option Agreement on file in the office of the City Clerk as Document No. 629944, and Marine Park has caused this Agreement to be executed and its corporate name and seal to be affixed by the proper officers, this 10 day of May, 1962.

E. A. Blom
Assistant City Manager of
The City of San Diego

MARINE PARK, INC.

By George D. Mclay
Pres.
By David M. DeMatte
Sec. - Treas.

I HEREBY APPROVE the form and legality of the foregoing Agreement this 10 day of May, 1962.

ALAN M. FIRESTONE, City Attorney

By Robert S. Tease
Chief Deputy City Attorney

LEASE AGREEMENT

This LEASE AGREEMENT, executed in duplicate this _____ day of _____, 19____, at SAN DIEGO, CALIFORNIA, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY," and MARINE PARK, a California corporation, whose address is: 880 South Harbor Scenic Drive, Long Beach, California, hereinafter referred to as "LESSEE,"

WITNESSETH

ARTICLE I

DEMISE

The CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY that parcel of real property, together with appurtenances thereto, situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, which is designated as Parcel 1 in the plot plan attached hereto marked EXHIBIT "B" and made a part of this Lease.

Said parcel is hereinafter referred to as the "Premises."

ARTICLE II

TERM

The term of this Lease shall be the period of FIFTY (50) YEARS, beginning

_____, 19____ and ending _____, 20____.

ARTICLE III

USE OF THE PREMISES

The premises shall be used for the primary purpose, and Lessee shall have the right, of constructing, operating, and maintaining thereon an ocean aquarium exhibit substantially of the type and nature described in the master plan which is attached hereto and marked Exhibit C, (said aquarium is sometimes herein referred to as the Marine Life Exhibit) and for such incidental uses as maintaining, operating, and selling rides on hydrofoil-type watercraft, a gift shop or shops, a restaurant and cocktail lounge, and snack bars. Said restaurant and cocktail lounge, to be constructed during Phase II of the development, shall be for the exclusive use of the patrons of the / leased area and access to said restaurant and cocktail lounge shall be from within the / lease limits. Lessee shall in addition to the foregoing, have the right to use the said premises to operate and maintain thereon activities which are incidental to the foregoing and such other activities as may from time to time be deemed desirable to serve the patrons of the Marine Life Exhibit and the public, and as may have first been approved by the City in writing.

In connection with the maintenance and operation and selling of rides on hydrofoil-type watercraft, Lessee shall have, and City hereby grants and extends to Lessee, the right and privilege to operate hydrofoil-type watercraft in the public waterways of Mission Bay; Lessee shall also have the right to embark and disembark passengers at the said premises and the right to construct and maintain into the said premises from the waterways fronting on the premises, a channel at the location and of the dimensions indicated on Exhibit B attached hereto.

The granting of this right and privilege in connection with use and operation of hydrofoil-type watercraft on the waters of Mission Bay may be suspended by the City at any time when, in the opinion of the City Manager such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, City shall have the right upon ten (10) days' written notice to require Lessee to suspend the use and operation of hydrofoil-type watercraft for limited and predetermined periods when, in the opinion of

the City Manager, such use and operation would unduly interfere with the use of Mission Bay for a major public event.

Such suspension shall be without liability to the City for damages of any kind suffered by the Lessee as a result of such suspension. The rights and privileges hereby granted shall be subject to the availability of operating area and at approved speeds and under such other Municipal, State, and Federal rules and regulations as are applicable to the operation of said hydrofoil-type watercraft.

LESSEE shall use the premises only for the purpose of conducting thereon the business for which they are demised and shall diligently conduct such business to produce a reasonable and substantial gross income.

ARTICLE IV.

RENT :

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of THE CITY OF SAN DIEGO, Room 162, Civic Center, San Diego 1, California, is as follows:

- A. For that portion of the Term expiring prior to commencement of operations, which is hereby defined as the opening of the Marine Life Exhibit to the public, as evidenced by sales or admissions to the general public, the rent shall be the sum of \$1,000.47 per month payable monthly in advance. Provided, however, any portion of the sum paid as consideration for the option to lease the Premises shall be applied to such rent as a lump sum advance payment of such rent.

If operations begin within the time specified in the MASTER PLAN, attached hereto as EXHIBIT "C", then the total sum paid as rent during said construction period shall be applied and credited to the rent to become due during the first year of operations as specified in Paragraph B of this ARTICLE IV. In the event LESSEE does not begin construction of the Marine Life Exhibit within the specified time after execution of this Lease, then this Lease shall be automatically terminated. The City Manager, however, in his discretion may grant one 30-day extension period for the commencement of construction after which further delay to begin construction will cause the automatic termination of the Lease Agreement unless the development schedule is revised by mutual consent of the parties and evidenced by an amendment to this Lease.

- B. After the commencement of operations, as hereinabove defined, and continuing thereafter for the remainder of the Term, LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various

percentages of LESSEE's gross income as hereinafter set forth in this Subparagraph (A) of ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

(a) THREE PERCENT (3%) of all gross income derived from the dispensing of food and non-alcoholic beverages in the operation of any restaurant or snack bar.

(b) TWO AND ONE-HALF PERCENT (2½%) of the gross income, from admission charges.

(c) FIVE PERCENT (5%) of the gross income from operations of any cocktail lounge, bar or other facility whose primary function is dispensing alcoholic beverages or from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function, excepting meals or food served on the Premises from any such facility shall be subject to the rent stated in (a) above.

(d) ~~SEVEN PERCENT (7%)~~ of the gross income, if any, from operation of the parking lot or lots.

(e) SEVEN PERCENT (7%) of the gross income, from any other sale, service or operation on the leased Premises approved under the purposes for which this Lease is granted; or such other percentage of gross income as may be agreed upon by the parties prior to the commencement of any such activity, service or operation. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.

(f) Rent paid to City from coin-operated vending machines shall be computed and included in the computation of rent due in accordance with subparagraphs (a), (c) and (d) of this Paragraph 1, on the basis of total income from said machines. Provided however, that said rent paid for telephones, cigarette machines and other coin-operated vending machines which may from time to time be mutually acknowledged and

agreed to be installed primarily for the public convenience; shall be computed on the basis of the income received by Lessee rather than on the gross income of the machine, if Lessee has no ownership equity in said machine, and if the total gross income from all vending machines on the leased premises does not exceed \$800 per month. When a portion of the premises is leased by LESSEE to a SUBLESSEE, the rental and the use of the Premises shall be subject to approval of the CITY in the manner set forth in Paragraph 10 of this Agreement. It is contemplated that the CITY shall not receive less rent under a Sublease Agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the SUBLESSEE above rental paid to CITY shall not be computed as part of the LESSEE's gross income against which the percentage rental applies.

LESSEE shall render monthly to CITY an accounting of gross income and rent due, based upon the percentage rental herein set forth and shall, in accordance with such accounting, pay to CITY the percentage rent due for such month on or before the 30th day following the month in which such gross income was earned, as specified in ARTICLE V of this Lease Agreement. In the event LESSEE fails to pay such rent when due, then LESSEE shall become liable for and agrees to pay to CITY, in addition to the rent due, a sum equal to FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency and an additional FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency for each additional 15 days thereafter that such delinquency exists. Provided, however, City Manager shall have the right to waive for good cause, any delinquency payment upon written application of LESSEE prior to any such delinquency period.

2. The minimum annual rental (hereinafter referred to as the "Minimum Annual Rent") shall be paid in arrears at the expiration of each year of the term and shall be computed on the basis of an area of _____ square feet of land and an area of _____ square feet of water being included within the Premises.

(a) For the first year beginning with the date that operation, as

hereinabove defined as being evidenced by any service or sales of admission to the Marine Life Exhibit or any part thereof, to the general public, or commencing with the first day of the fourteenth calendar month after execution of this Lease, whichever of the two dates is sooner, the minimum annual rent shall be three cents (\$.03) per square foot per year for the land area and one cent (\$.01) per square foot per year for the water area, or a total minimum annual rent of \$_____.

- (b) The Minimum Annual Rent for the second year of the Term next following the date determined in accordance with Subparagraph B (2) (a) of this ARTICLE IV shall be four cents (\$.04) per square foot per year for the land and one and three-tenths cents (\$.013) per square foot per year for the water, or an annual minimum rental of \$_____.
- (c) The Minimum Annual Rent for the five years of the Term next following the second year of the Term as defined in Subparagraph B (2) (b) of this ARTICLE IV shall be Five Cents (\$.05) per square foot per year for land and two cents (\$.02) per square foot per year for the water, or an annual minimum rental of \$_____.
- (d) The Minimum Annual Rent for the balance of the Term, after the expiration of those portions of the Term referred to in Subparagraphs 2 (a), 2 (b) and 2 (c) of this ARTICLE IV shall be at the basic rate set forth in said subparagraph 2 (c), provided, however, such Minimum Annual Rent may be adjusted at CITY's option at the expiration of each THREE (3) years commencing with the THREE (3) year period next following that portion of the Term referred to and provided for in Subparagraph 2 (c) of this ARTICLE IV and continuing for the remainder of the Term. Such adjustment shall be as follows: Minimum Annual Rent may be adjusted at the expiration of each said three (3) year period so that the Minimum Annual Rent shall be in a sum equal to $66\frac{2}{3}\%$ of the total Rent paid by LESSEE on the basis of a percentage of gross income, such adjusted Minimum Annual Rent shall be applicable for the next succeeding three (3) year period when it may again be re-adjusted.

ARTICLE V

MAINTENANCE OF RECORDS

Gross Income as used in this Lease shall include all income resulting from occupancy of the demised Premises from whatever source derived whether received or to become due, (except such income as shall be specifically excluded as elsewhere in this Agreement) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross income, however, shall not include Federal, State or Municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents or original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the CITY of San Diego. Not later than the thirtieth of each month, LESSEE shall render to CITY a detailed statement as to the source

of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY.. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said Premises.

ARTICLE VI

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.

ARTICLE VII

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 Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made, or permitted to be made of the 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 Premises or in which the 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 its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance

organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

During any period that improvements, repairs, or alterations are being constructed on the Premises by anyone 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, 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 any lien for labor or materials or arising from any such construction is imposed or recorded against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the LESSEE shall have failed to comply with the requirements of this ARTICLE VIII, this Lease shall be subject to termination at the expiration of 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.

Further provided, 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 lender or lending agency or person who is a beneficiary under a trust deed or mortgaged under any mortgage securing any loan on or in connection with the Premises which was recorded with the prior consent of CITY shall be notified of the failure of the LESSEE to give the bond and shall have 30 days to satisfy any such mechanic's lien, and if such financial institution lender or lending agency or person does so satisfy and remove such lien and action, then this Lease shall continue in effect for the remainder of the Term.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest 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 the 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 obligation on CITY or increase obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the 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. Provided, however, any lender whose loan has been approved by the CITY has the option to take over as Lessee, as provided in Article XXVIII - Lease Encumbrance.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the 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 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 Final Judgment after appeal, if appeal is taken, of any court of competent jurisdiction, or the admission of LESSEE or any SUBLESSEE or PERMITTEE in any action or proceeding against them or any of them, whether CITY is a party thereto or not, that the LESSEE, SUBLESSEE 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.

ARTICLE XII

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 SUBLESSEES of LESSEE.

ARTICLE XIII

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 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.

ARTICLE XIV

MERGER

The voluntary or other surrender of this Lease by LESSEE or a mutual cancellation thereof, shall not work a merger, but will

operate as an assignment to it of any or all such subleases or subtenancies. Any such surrender or mutual cancellation shall have no effect upon the rights of any lender whose loan has been approved by the CITY, unless the surrender or mutual cancellation provides for full satisfaction of the lender's trust deed or mortgage.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the City Manager 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, Civic Center, San Diego 4, 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. A copy of any notice or notices sent to LESSEE shall be also sent by registered or certified mail to any lender whose loan has been approved by the CITY.

ARTICLE XVI

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 or other loan provided for 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 the mortgagee or beneficiary shall take the appropriate action required, if any, by Article XXVIII - Lease Encumbrance, and this Lease shall not terminate if said mortgagee or beneficiary take the appropriate action as set out in Article XXVIII and proceed with reasonable diligence thereafter; 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 shall first 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 Cash 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.

(b) In the event that said bond is inadequate or non-existent, CITY shall notify beneficiary or mortgagee ten (10) days prior to exercising its right to 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.

(c) CITY may terminate this Lease with respect to the LESSEE by either assuming liability or 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 non-curable type or nature, such as being impossible to, not practical to, or not feasible to cure, 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 so substitute itself and commence performance within the period set out in Article XXVIII 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 and duties of the original LESSEE hereunder, subject to cure of the default or defaults by mortgagee or beneficiary as set out in Article XXVIII, and LESSEE expressly assigns all its interest in and to its leasehold estate in that event. Aforementioned assignment extends to entire leasehold estate indicated in "Exhibit B", or Parcel 1.

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the 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.

ARTICLE XVIII

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 clientele 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 therefor. | Provided, however, that this Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX

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, ^{to property} 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 reparable 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 Section (d) of Article XXIII 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 ^{with due diligence} said repairs, restoration or replacement within the time specified herein, then CITY shall have the option to do any of the following:

(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) of Article XXIII 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.

(b) CITY may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, and LESSEE authorizes CITY to use the insurance proceeds for said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition, in accordance with Article XXIII hereof entitled "Insurance" and held in trust by a mortgagee or trust deed beneficiary, and LESSEE hereby waives any right of 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.

ARTICLE XX

CWNERSHIP OF IMPROVEMENTS

All improvements of a permanent nature excepting trade fixtures installed by LESSEE in accordance with the provisions hereof 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 within a reasonable time after the termination of this Agreement at LESSEE's own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, 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.

ARTICLE XXI

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 heretofore 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 by Section 1941 of said Civil Code.

ARTICLE XXII

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.

ARTICLE XXIII

INSURANCE

Upon taking physical possession of the Leased Premises 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 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. Upon taking physical possession of the Leased Premises, LESSEE shall maintain the minimum amount of not less than Two Hundred Thousand Dollars (\$200,000.00), for one person injured in one accident and not less than One Million Dollars

(\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than Fifty Thousand Dollars (\$50,000.00) 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 or the 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 interest on all such legal proceedings and pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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 deliver to the City Manager of the CITY a policy 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 XXIII, 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 City Manager. If said policy be

terminated or limited in any manner prior to the termination date specified in the certificate.

- (d) LESSEE also agrees upon commencement of construction on the Leased Premises to take out and maintain during the entire remaining 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 at least 80% of the replacement cost of said property. LESSEE shall require that a policy 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 policy 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 ARTICLE XIX of this Agreement, 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 or other loan provided for in Section XXVIII "Lease Encumbrance" 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 both CITY and mortgagee or beneficiary in lieu of restoration of premises, and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be re-

tained by said mortgagee or beneficiary to the extent 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, to restore premises to a neat and clean condition and then for CITY and LESSEE as their interest may appear.

CITY reserves the right to increase the percentage of coverage 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.

ARTICLE XXIV

CONTROL BY LESSEE

A part of the consideration for the granting of this Lease is the personal qualifications and abilities of George D. Millay, Milton C. Shedd, David M. De Motte, Kenneth Norris, Chadwick and Buchanan, Moffatt & Nichol, Willard Bell and William N. MacFarland. Therefore the corporation named herein as LESSEE shall remain owned and controlled by George D. Millay, Milton C. Shedd, David M. De Motte, Kenneth Norris, Chadwick & Buchanan, Moffatt & Nichol, Willard Bell and William N. MacFarland; at least to the extent of 51% of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the Leased Premises; provided, however, that in the event that any of the above-named parties shall become incapacitated, then the others shall continue in such active administration and supervision. In the event George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Chadwick & Buchanan, Moffatt & Nichol, Willard Bell.

and William N. MacFarland are all incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the said operations. The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above-named persons in excess of said 51% shall be considered an assignment of interest and shall be treated in accordance with the provisions of ARTICLE X of this Agreement; provided, however, that the stock of any stockholder may be assigned to his spouse or direct lineal heirs upon notification in writing to the CITY.

ARTICLE XXV

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.

ARTICLE XXVI

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 in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

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.

ARTICLE XXVIII

LEASE ENCUMBRANCE

The CITY does hereby consent and agree that the LESSEE may encumber this Lease, leasehold estate and the improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE in accordance with the financial plan approved in writing by City Manager upon the express 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: Off-site improvements for service of the Leased Premises; on-site improvements; escrow 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 attorney's fees or such other normal expenses. Any subsequent encumbrances on the real property must first be approved in writing by City Manager.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by CITY. Any assignee of a beneficial interest shall have the same rights under this Lease as the assignor. CITY agrees not to unreasonably withhold consent to assignments of the beneficial interest. The CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof previously approved by it as its new tenant under this lease with all the rights and privileges of the original LESSEE, and that in the event that said mortgagee or beneficiary desires to assign this Lease to its nominee, and said nominee is a reputable, qualified and financially responsible operator in the opinion of the CITY, the CITY hereby agrees that upon the filing of an application for the consent to such assignment, the CITY will give its consent thereto, and agrees not to unreasonably withhold such consent.

Anything in this Lease to the contrary notwithstanding, CITY shall not exercise any remedy available to it for default hereof by LESSEE, unless and until CITY, as a condition precedent to such exercise, shall have given notice

to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct CITY (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this Lease to remain in full force and effect.

a. If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the Leased Premises or any other sum of money required to be paid by LESSEE, said beneficiary or mortgagee may pay the same to CITY or other proper payee within 60 days after the mailing aforesaid; if so paid, said default shall be cured and this lease shall remain in full force and effect. If, after any such payment to CITY, LESSEE pays the same to CITY, or in the event CITY waives default, CITY shall promptly refund said payment to said beneficiary or mortgagee.

b. If said default be other than specified in subparagraph (a) above, CITY shall not exercise any such remedy if:

- (1) Within 60 days after the mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust; and
- (2) Such foreclosure be prosecuted with reasonable diligence; and
- (3) Prior thereto, said beneficiary or mortgagee shall first have obtained, in writing, the approval of CITY of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval CITY agrees not unreasonably to withhold; and
- (4) Within a reasonable time after foreclosure sale, the purchaser thereat cures such default, if said default is curable from both a feasible and practical standpoint, or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

ARTICLE XXIX

UTILITIES

CITY agrees to provide the following utilities services, water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. 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, gas or 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 such 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.

CITY agrees that it shall construct and maintain at its expense any bridge

necessary for public passage over the channel permitted to be constructed in connection with LESSEE's hydrofoil watercraft facilities.

ARTICLE XXX

SCHEDULE OF OPERATIONS

LESSEE agrees to operate the Leased Premises and associated facilities continuously throughout the entire term of this Agreement after such premises are first opened to the public in order to serve the public interest and in accordance with sound business practices. Closing of portions of the Premises for limited period for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the leased Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager. Provided, however, LESSEE may close the premises certain days of the week during the off-season upon prior approval of City Manager. Type and quality of service furnished by LESSEE must qualify for the conditions and requirements of the "A" Card issued by Department of Health for CITY to operators of food-handling establishments.

ARTICLE XXXI

CANCELLATION

If after the first twenty (20) year period of this Lease or any extension thereof, CITY by Resolution of City Council, determines the uses of the demised Premises provided by ARTICLE I 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 (1) 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. 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 improvement; 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 ARTICLE XXI 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 or other loan provided for in Article XXVIII 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 approved by CITY, and as they may have been modified or extended with the consent in writing of the CITY. Should mortgagee or beneficiary neglect to obtain approval of the CITY as to any modification or extension of the loan or loans, any cancellation payment to the mortgagee or beneficiary may be reduced by the amounts the unpaid balance of the loan or loans would have been further reduced had the modification or extension not been granted by said mortgagee or beneficiary.

In the event of termination of this Lease in accordance with the provision of this Article, LESSEE shall be under no obligation whatsoever to restore the Premises to the conditions which existed at the commencement of the Term nor to demolish, destroy or remove any improvement or structure situated upon the Premises.

CITY shall be under no obligation to compensate LESSEE for improvements made without CITY'S consent, which are not authorized by the provisions of this Agreement nor any improvements made after the date of notice of CITY'S election to terminate this Lease unless there shall have been an expressed Agreement to the contrary.

ARTICLE XXXII

DEVELOPMENT

The development of the Leased Premises shall be in accordance with a Master Plan approved by CITY in accordance with established CITY practices which is filed in the Office of the City Clerk as Document No. _____.

ARTICLE XXXIII

ACCESS TO THE PREMISES

CITY agrees that it shall at its expense construct and throughout the Term maintain a public street or roadway to the Premises as a means of ingress and egress for the public to the Premises. Such street or roadway shall be hard-surfaced, a minimum width of 40 feet, and construction thereof completed no later than the date for the public opening of the Marine Life Exhibit. CITY further agrees that it shall provide suitable means of ingress and egress to the Premises.

obtain an option under the same terms and conditions as the then existing Lease insofar as applicable or under such other terms and conditions as are mutually agreed upon.

As a condition for the granting of said Lease or option to lease, LESSEE must first file a development plan and schedule of development satisfactory to CITY and in accordance with CITY standards for the development of Mission Bay.

If LESSEE selects said option to lease and thereafter fails to enter into a lease agreement in accordance therewith, then LESSEE shall pay to CITY as consideration for the said option a rental equal to \$435 per acre per year for the area of land and the period covered by the option; prorated for any portion of an acre and any portion of a year.

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. _____ 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.

MARINE PARK, INC.

By _____
President

THE CITY OF SAN DIEGO

By _____
City Manager

I HEREBY APPROVE THE FORM AND LEGALITY of the foregoing Lease Agreement this _____ day of _____, 19____.

ALAN M. FIRESTONE

City Attorney

By _____
Chief Deputy

LEGAL DESCRIPTION

Parcel 1 - Land 84.85 acres

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 North 89°59'00" 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" 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 5,000.00 feet and West 13,500.00 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-ordinates of said TRUE POINT OF BEGINNING being North 5,000.00 feet and West 13,500.00 feet; thence NORTH 858.00 feet to a point for the purposes of this legal description being hereby designated as Point A, said point being the beginning of an 800.00 foot radius curve, concave Northwesterly, a radial to said point bears South 27°25'39" East; thence Northeasterly along the arc of said curve through a central angle of 09°43'53", an arc length of 135.88 feet to a point of reverse curvature in the arc of an 1,198.09 foot radius curve, concave Southeasterly, a radial to said point bears North 37°09'32" West; thence Northeasterly along the arc of said curve through a central angle of 29°36'42", an arc length of 619.21 feet to the beginning of a 514.76 foot radius curve, concave Southwesterly, a radial to said point bears North 07°32'50" West; thence Easterly and Southeasterly along the arc of said curve through a central angle of 25°57'10", an arc length of 233.17 feet; thence South 71°35'40" East, 766.29 feet to a point for the purposes of this legal description being hereby designated Point B; thence continuing South 71°35'40" East, 414.75 feet to Mission Bay Park co-ordinates North 5,768.595 and West 11,468.185; thence South 18°24'20" West, 502.61 feet; thence SOUTH 962.23 feet; thence South 84°53'47" West, 1,192.85 feet; thence South 85°17'48" West, 588.34 feet to the

beginning of a 568.00 foot radius curve, concave Northeasterly, a radial to said point bears South $04^{\circ}42'12''$ East; thence Westerly and Northwesterly along the arc of said curve through a central angle of $65^{\circ}57'16''$, an arc length of 653.84 feet to the beginning of a 268.00 foot radius curve, concave Easterly, a radial to said point bears South $61^{\circ}15'04''$ West; thence Northwesterly, Northerly & Northeasterly along the arc of said curve through a central angle of $73^{\circ}56'28''$, an arc length of 345.86 feet to a point of reverse curvature in the arc of a 332.00 foot radius curve, concave Northwesterly, a radial to said point bears South $44^{\circ}48'28''$ East; thence Northeasterly and Northerly along the arc of said curve through a central angle of $46^{\circ}43'28''$, an arc length of 270.74 feet to a point of reverse curvature in the arc of a 20.00 foot radius curve, concave Southeasterly, a radial to said point bears South $88^{\circ}28'04''$ West; thence Northerly, Northeasterly and Easterly along the arc of said curve through a central angle of $91^{\circ}29'11''$, an arc length of 31.93 feet; thence North $00^{\circ}02'45''$ West, 12.99 feet; thence EAST 81.94 feet; thence South $75^{\circ}37'07''$ East, 80.52 feet; thence South $69^{\circ}45'18''$ East, 130.04 feet returning to the TRUE POINT OF BEGINNING.

PARCEL 2 - Water 2.22 acres

Beginning at Point A as set out and established in Parcel 1 above, said point being the beginning of an 800.00 foot radius curve, concave Northwesterly, a radial to said point bears South $27^{\circ}25'39''$ East; thence Northeasterly along the arc of said curve through a central angle of $09^{\circ}43'53''$, an arc length of 135.88 feet to a point of reverse curvature in a 1,198.09 foot radius curve, concave Southeasterly; thence Northeasterly along said curve through a central angle of $25^{\circ}40'51''$, an arc length of 537.01 feet to a point to which a radial bears North $11^{\circ}28'41''$ West; thence North 147.18 feet to a point in the arc of a 1,342.65 foot radius curve, concave Southeasterly, a radial to said point bears North $10^{\circ}13'41''$ West; thence Westerly and Southwesterly along the arc of said curve through a central angle of $26^{\circ}55'51''$, an arc length of 631.09 feet; thence South $52^{\circ}50'28''$ West, 34.39 feet; thence SOUTH 166.93 feet returning to the Point of Beginning.

PARCEL 3 - Water 0.08 acres

Beginning at Point B as set out and established in Parcel 1 above; thence South $71^{\circ}35'40''$ East, 50.00 feet; thence North $18^{\circ}24'20''$ East, 71.00 feet; thence North $71^{\circ}35'40''$ West, 50.00 feet; thence South $18^{\circ}24'20''$ West, 71.00 feet returning to the Point of Beginning.

PROPERTY

OPTION AGREEMENT

DOCUMENT NO. **629944**

FILED **OCT 4 1961**

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS OPTION AGREEMENT, made this 21 day of September, 1961, by
and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called
"CITY," and MARINE PARK, a California corporation, hereinafter called "MARINE
PARK."

W I T N E S S E T H:

WHEREAS, MARINE PARK desires to lease from the CITY a certain 15-acre tract
for the purpose of constructing, operating and maintaining a marine life exhibit
for the general public, upon the terms and conditions as set forth in the form
of Lease Agreement, a copy of which is attached hereto and marked "EXHIBIT A,"
and

WHEREAS, the CITY is willing to enter into such a Lease Agreement only upon
the prior performance of certain acts by MARINE PARK; NOW, THEREFORE,

In consideration of:

1. The sum of Seven Thousand, Three Hundred Fifty and 75/100 Dollars
(\$7,350.75), receipt of which is hereby acknowledged by CITY;

2. The submission to the City Manager within six (6) months of the
date of execution of this Option Agreement, of a complete Master Plan
satisfactory to the City Manager, for the construction, operation and
maintenance, of a marine life exhibit, as generally set forth in that
document entitled, "Oceanarium Proposal, Mission Bay, San Diego, Cali-
fornia," dated March 10, 1961;

Said master plan will consist of a plot plan together with an
architect's or artist's sketch showing in color all of the improvements
to be constructed on the entire leased premises as are now contemplated.
Said plot plan and sketch will show the location, architectural theme,
schedule of construction, and general exterior design and uses for all
such improvements, including signs, buildings, docks, parking areas,
landscaped areas, and appurtenant structures. Said master plan and plot
plan will be drawn on standard City of San Diego Engineering D-sheets.

3. The submission to the City Manager within six (6) months of the
date of execution of the Option Agreement a financial statement satis-
factory to City Manager, setting forth its projected method of financing

This agreement was superseded by Option dated 8-2-62, Doc. 644020

the proposed development on the leased premises, and showing the equity capital to be invested and its source, borrowed capital and its source. Lessee will show the amount of investment in improvements and furnishings, schedule of such expenditures, and the amount of capital available for operating upon commencement of operations upon the leased premises. The amount of such capital shall be no less than One Million, Seven Hundred Thousand and NO/100 Dollars (\$1,700,000.00).

4. The submission to the City Manager within nine (9) months of the date of execution of the Option Agreement, of construction plans and specification for the initial phase of development, satisfactory to City Manager, showing all improvements in the leased premises or within the immediate adjacent area necessary for the construction of said initial phase and will obtain all permits and permissions for said construction. Said plans will be designed in accordance with City standards for the development of Mission Bay and will include design for utilities, roads, grading, buildings and structures, landscaping, signs, materials of construction and color scheme and such other items as are necessary to complete construction of said initial phase.

5. The submission to the City Manager of City within nine (9) months of the date of execution of this Option Agreement, of evidence, satisfactory to the City Manager of ability to finance the cost of construction of said marine life exhibition facility as proposed in said Master Plan.

6. The granting by CITY to Marine Park of the exclusive and irrevocable right during the period of this Option Agreement to enter into a lease agreement for the construction, operation and construction of a marine life exhibit.

IT IS HEREBY AGREED by and between the parties hereto that Marine Park shall have the option to lease from CITY, upon the terms and conditions set forth in the form of Lease Agreement, a copy of which is attached hereto and marked "EXHIBIT A," the following-described premises:

(Said Premises are described in the Plot Plan which is attached hereto marked EXHIBIT "B".)

IT IS EXPRESSLY UNDERSTOOD AND AGREED that in the event Marine Park fails

for any reason or cause to exercise the option to lease heretofore set forth, then the option to lease shall not be enforceable and the amount of Seven Thousand, Three Hundred Fifty and 75/100 Dollars (\$7,350.75) shall be in full compensation for the granting to Marine Park the exclusive and irrevocable right of dealing with CITY for a period of nine (9) months from the date of execution of this Agreement, in connection with the development of a marine life exhibition facility in Mission Bay Park; PROVIDED, HOWEVER, that by mutual agreement between the City Manager of CITY and Marine Park, the period within which the option can be exercised may be extended for an additional three (3) months on the payment by Marine Park of the sum of Eight Hundred Sixteen and 75/100 Dollars (\$816.75) per month, or any portion thereof.

IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that in the event Marine Park exercises the option and the CITY executes that certain Lease Agreement, form of which is attached hereto as "EXHIBIT A," the consideration of Seven Thousand, Three Hundred Fifty and 75/100 Dollars (\$7,350.75) shall be applicable to the rent payable during the construction period provided for in ARTICLE IV, Paragraph A of said Lease Agreement.

IT IS ALSO EXPRESSLY UNDERSTOOD AND AGREED that this option may be exercised by Marine Park at any time prior to the expiration of nine (9) months from the date of execution of this Agreement by the CITY, which date is acknowledged to be that set forth in the first full paragraph hereof, and upon Marine Park's first having performed to the satisfaction of the City Manager all those acts set out above which form the consideration for the granting of this option by CITY. Marine Park shall exercise this option by giving the CITY written notice of its election to do so accompanied by written Leases of the Premises in the form of EXHIBIT "A" executed by Marine Park in triplicate. The date of such Lease, as provided in the preamble set forth on Page 1 thereof and the commencement of the Term as provided in Article II, shall be the date of execution of the Lease by the CITY. The CITY's failure to execute the Lease prior to the expiration of the Term of this option shall not effect the validity of nor invalidate the Lease nor nullify Marine Park's timely notice of its election to exercise this option.

IT IS FURTHER UNDERSTOOD AND AGREED as follows:

1. The number of square feet to be inserted in ARTICLE IV at subparagraph

B, 2 and the amount of the Minimum Annual Rent to be inserted in ARTICLE IV at subparagraphs B, 2, (a); B, 2, (b); and B, 2 (c) shall be computed on the basis of the description of the Premises as set forth on the Plot Plan attached hereto and marked EXHIBIT "B" and such figures shall be inserted in the Lease of the Premises.

2. The information to be inserted in ARTICLE XXXII of the attached form of Lease shall be as determined from the records of the CITY OF SAN DIEGO and likewise inserted in the Lease.

IN WITNESS WHEREOF, this Agreement is executed by the CITY, acting by and through the City Manager of said CITY, under and pursuant to Resolution No. 167555 authorizing such execution, and MARINE PARK has caused this Agreement to be executed and its corporate name and seal to be affixed by the proper officers this 21st day of Sept, 1961.

THE CITY OF SAN DIEGO

By George E. Bean
Its City Manager

MARINE PARK, a California corporation,

By George D. Mulloy
Its _____

By David M. De Matte
Its Secretary

I HEREBY APPROVE THE FORM AND THE LEGALITY of the foregoing Agreement this 29 day of Sept, 1961.

ALAN M. FIRESTONE

City Attorney
By Robert S. Trage
Chief Deputy

L E A S E A G R E E M E N T

This LEASE AGREEMENT, executed in duplicate this _____ day of _____, 19____, at SAN DIEGO, CALIFORNIA, by and between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter referred to as the "CITY," and MARINE PARK, a California corporation, whose address is: 880 South Harbor Scenic Drive, Long Beach, California, hereinafter referred to as "LESSEE,"

W I T N E S S E T H

ARTICLE I

DEMISE

The CITY hereby leases to LESSEE and LESSEE hereby leases and hires from CITY that parcel of real property, together with appurtenances thereto, situated in the COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, which is designated as Parcel 1 in the plot plan attached hereto marked EXHIBIT "B" and made a part of this Lease.

Said parcel is hereinafter referred to as the "Premises."

ARTICLE II

TERM

The term of this Lease shall be the period of FIFTY (50) YEARS, beginning

_____, 19____ and ending _____, 20____.

ARTICLE III

USE OF THE PREMISES

The premises shall be used for the primary purpose, and Lessee shall have the right, of constructing, operating, and maintaining thereon an ocean aquarium exhibit substantially of the type and nature described in the master plan which is attached hereto and marked Exhibit C, (said aquarium is sometimes herein referred to as the Marine Life Exhibit) and for such incidental uses as maintaining, operating, and selling rides on hydrofoil-type watercraft, a gift shop or shops, a restaurant and cocktail lounge, and snack bars. Said restaurant and cocktail lounge, to be constructed during Phase II of the development, shall be for the exclusive use of the patrons of the ^{leased area} ~~park~~ and access to said restaurant and cocktail lounge shall be from within the ^{lease} ~~park~~ limits. Lessee shall in addition to the foregoing, have the right to use the said premises to operate and maintain thereon activities which are incidental to the foregoing and such other activities as may from time to time be deemed desirable to serve the patrons of the Marine Life Exhibit and the public and as may have first been approved by the City in writing.

In connection with the maintenance and operation and selling of rides on hydrofoil-type watercraft, Lessee shall have, and City hereby grants and extends to Lessee, the right and privilege to operate hydrofoil-type watercraft in the public waterways of Mission Bay; Lessee shall also have the right to embark and disembark passengers at the said premises and the right to construct and maintain into the said premises from the waterways fronting on the premises, a channel at the location and of the dimensions indicated on Exhibit B attached hereto.

The granting of this right and privilege in connection with use and operation of hydrofoil-type watercraft on the waters of Mission Bay may be suspended by the City at any time when, in the opinion of the City Manager such use becomes detrimental or hazardous to the other uses of Mission Bay. In any event, City shall have the right upon ten (10) days' written notice to require Lessee to suspend the use and operation of hydrofoil-type watercraft for limited and predetermined periods when, in the opinion of

the City Manager, such use and operation would unduly interfere with the use of Mission Bay for a major public event.

Such ~~suspension~~ shall be without liability to the City for damages of any kind suffered by the Lessee as a result of such ~~suspension~~. The rights and privileges hereby granted shall be subject to the availability of operating area and at approved speeds and under such other Municipal, State, and Federal rules and regulations as are applicable to the operation of said hydrofoil-type watercraft.

LESSEE shall use the premises only for the purpose of conducting thereon the business for which they are demised and shall diligently conduct such business to produce a reasonable and substantial gross income.

ARTICLE IV.

RENT

The rent which LESSEE hereby agrees to pay to CITY and which shall be paid at the Office of the Treasurer of THE CITY OF SAN DIEGO, Room 162, Civic Center, San Diego 1, California, is as follows:

- A. For that portion of the Term expiring prior to commencement of operations, which is hereby defined as the opening of the Marine Life Exhibit to the public, as evidenced by sales or admissions to the general public, the rent shall be the sum of \$816.75 per month payable monthly in advance. Provided, however, any portion of the sum paid as consideration for the option to lease the Premises shall be applied to such rent as a lump sum advance payment of such rent.

If operations begin within the time specified in the MASTER PLAN, attached hereto as EXHIBIT "C", then the total sum paid as rent during said construction period shall be applied and credited to the rent to become due during the first year of operations as specified in Paragraph B of this ARTICLE IV. In the event LESSEE does not begin construction of the Marine Life Exhibit within the specified time after execution of this Lease, then this Lease shall be automatically terminated. The City Manager, however, in his discretion may grant one 30-day extension period for the commencement of construction after which further delay to begin construction will cause the automatic termination of the Lease Agreement unless the development schedule is revised by mutual consent of the parties and evidenced by an amendment to this Lease.

- B. After the commencement of operations, as hereinabove defined, and continuing thereafter for the remainder of the Term, LESSEE shall pay to CITY a sum of money equal to the total of the sums computed on the basis of the various

percentages of LESSEE's gross income as hereinafter set forth in this Subparagraph (b) of ARTICLE IV, or the minimum yearly rent as hereinafter set forth in this Subparagraph (B) of ARTICLE IV, whichever of the two sums is the greater.

1. The percentage rental which LESSEE agrees to pay CITY shall be computed on the basis of the following percentages:

(a) THREE PERCENT (3%) of all gross income derived from the dispensing of food and non-alcoholic beverages in the operation of any restaurant or snack bar.

(b) TWO AND ONE-HALF PERCENT (2½%) of the gross income, from admission charges.

(c) FIVE PERCENT (5%) of the gross income from operations of any cocktail lounge, bar or other facility whose primary function is dispensing alcoholic beverages or from the sale or service of any alcoholic beverages dispensed from any facility regardless of its primary function, excepting meals or food served on the Premises from any such facility shall be subject to the rent stated in (a) above.

(d) SEVEN PERCENT (7%) of the gross income, if any, from operation of the parking lot or lots.

(e) SEVEN PERCENT (7%) of the gross income, from any other sale, service or operation on the leased Premises approved under the purposes for which this Lease is granted; or such other percentage of gross income as may be agreed upon by the parties prior to the commencement of any such activity, service or operation. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activity, service or operation shall not be entered into by LESSEE.

(f) Rent paid to City from coin-operated vending machines shall be computed and included in the computation of rent due in accordance with subparagraphs (a), (c) and (d) of this Paragraph 1, on the basis of total income from said machines. Provided however, that said rent paid for telephones, cigarette machines and other coin-operated vending machines which may from time to time be mutually acknowledged and

agreed to be installed primarily for the public convenience; shall be computed on the basis of the income received by Lessee rather than on the gross income of the machine, if Lessee has no ownership equity in said machine and if the total gross income from all vending machines on the leased premises does not exceed \$800 per month. When a portion of the premises is leased by LESSEE to a SUBLESSEE, the rental and the use of the Premises shall be subject to approval of the CITY in the manner set forth in Paragraph 10 of this Agreement. It is contemplated that the CITY shall not receive less rent under a Sublease Agreement than if that operation were conducted by the LESSEE. The rent received by LESSEE from the SUBLESSEE above rental paid to CITY shall not be computed as part of the LESSEE's gross income against which the percentage rental applies.

LESSEE shall render monthly to CITY an accounting of gross income and rent due, based upon the percentage rental herein set forth and shall, in accordance with such accounting, pay to CITY the percentage rent due for such month on or before the 30th day following the month in which such gross income was earned, as specified in ARTICLE V of this Lease Agreement. In the event LESSEE fails to pay such rent when due, then LESSEE shall become liable for and agrees to pay to CITY in addition to the rent due, a sum equal to FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency and an additional FIVE PERCENT (5%) of the rent due as compensation to CITY for loss of revenue resulting from such delinquency for each additional 15 days thereafter that such delinquency exists. Provided, however, City Manager shall have the right to waive for good cause, any delinquency payment upon written application of LESSEE prior to any such delinquency period.

2. The minimum annual rental (hereinafter referred to as the "Minimum Annual Rent") shall be paid in arrears at the expiration of each year of the term and shall be computed on the basis of an area of _____ square feet of land and an area of _____ square feet of water being included within the Premises.

(a) For the first year beginning with the date that operation, as

hereinabove defined as being evidenced by any service or sales of admission to the Marine Life Exhibit or any part thereof, to the general public, or commencing with the first day of the fourteenth calendar month after execution of this Lease, whichever of the two dates is sooner, the minimum annual rent shall be three cents (\$.03) per square foot per year for the land area and one cent (\$.01) per square foot per year for the water area, or a total minimum annual rent of \$_____.

- (b) The Minimum Annual Rent for the second year of the Term next following the date determined in accordance with Subparagraph B (2) (a) of this ARTICLE IV shall be four cents (\$.04) per square foot per year for the land and one and three-tenths cents (\$.013) per square foot per year for the water, or an annual minimum rental of \$_____.
- (c) The Minimum Annual Rent for the five years of the Term next following the second year of the Term as defined in Subparagraph B (2) (b) of this ARTICLE IV shall be Five Cents (\$.05) per square foot per year for land and two cents (\$.02) per square foot per year for the water, or an annual minimum rental of \$_____.
- (d) The Minimum Annual Rent for the balance of the Term, after the expiration of those portions of the Term referred to in Subparagraphs 2 (a), 2 (b) and 2 (c) of this ARTICLE IV shall be at the basic rate set forth in said subparagraph 2 (c); provided, however, such Minimum Annual Rent may be adjusted at CITY's option at the expiration of each THREE (3) years commencing with the THREE (3) year period next following that portion of the Term referred to and provided for in Subparagraph 2 (c) of this ARTICLE IV and continuing for the remainder of the Term. Such adjustment shall be as follows: Minimum Annual Rent may be adjusted at the expiration of each said three (3) year period so that the Minimum Annual Rent shall be in a sum equal to $66\frac{2}{3}\%$ of the total Rent paid by LESSEE on the basis of a percentage of gross income, such adjusted Minimum Annual Rent shall be applicable for the next succeeding three (3) year period when it may again be re-adjusted.

ARTICLE V

MAINTENANCE OF RECORDS

Gross Income as used in this Lease shall include all income resulting from occupancy of the demised Premises from whatever source derived whether received or to become due, (except such income as shall be specifically excluded as elsewhere in this Agreement) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross income, however, shall not include Federal, State or Municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to LESSEE, LESSEE shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the CITY can at all times determine the nature and amounts of income subject to rental percentage from the operation of the Premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents or original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. In the event of admission charges, LESSEE shall issue serially-numbered tickets for each paid admission and shall keep adequate records of said serial numbers issued and of those unused. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register readings shall be made a matter of daily record. Said books of account and records shall be kept or made available at one location within the limits of the CITY of San Diego. Not later than the thirtieth of each month, LESSEE shall render to CITY a detailed statement as to the source

of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. CITY shall, through its duly authorized agents or representatives, have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said Premises.

ARTICLE VI

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.

ARTICLE VII

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 Premises are hereby leased. Unless included within said purposes authorized by CITY or necessarily incidental to such uses, no use shall be made or permitted to be made, or permitted to be made of the 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 Premises or in which the 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 its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance

organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

ARTICLE VIII

MECHANIC'S LIEN BOND

LESSEE will save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repair or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

During any period that improvements, repairs, or alterations are being constructed on the Premises by anyone 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, 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 any lien for labor or materials or arising from any such construction is imposed or recorded against the leased premises and the lien holder attempts to perfect such lien by a lawsuit and the LESSEE shall have failed to comply with the requirements of this ARTICLE VIII, this Lease shall be subject to termination at the expiration of 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.

Further provided, 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 lender or lending agency or person who is a beneficiary under a trust deed or mortgaged under any mortgage securing any loan on or in connection with the Premises which was recorded with the prior consent of CITY shall be notified of the failure of the LESSEE to give the bond and shall have 30 days to satisfy any such mechanic's lien, and if such financial institution lender or lending agency or person does so satisfy and remove such lien and action, then this Lease shall continue in effect for the remainder of the Term.

ARTICLE IX

ENTRY AND INSPECTION

CITY reserves, and shall always have the right to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest 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 the 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 obligation on CITY or increase obligations elsewhere in this Lease imposed on CITY.

ARTICLE X

ASSIGNMENT

LESSEE shall not assign this Lease or any interest herein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officers and employees of CITY excepted) to occupy or use the 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.

ARTICLE XI

COMPLIANCE WITH LAW

LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the 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 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 Final Judgment of any court of competent jurisdiction, or the admission of LESSEE or any SUBLESSEE or PERMITTEE in any action or proceeding against them or any of them, whether CITY is a party thereto or not, that the LESSEE, SUBLESSEE 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.

ARTICLE XII

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 SUBLESSEES of LESSEE.

ARTICLE XIII

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 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.

ARTICLE XIV

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 subleases or subtenancies, or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.

ARTICLE XV

NOTICES

Control and administration of this Lease is under the jurisdiction of the Property Division 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 Division, 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.

ARTICLE XVI

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 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, 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 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 any 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.

ARTICLE XVII

HOLDING OVER

Any holding-over after the expiration of the 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.

ARTICLE XVIII

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 clientele 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 therefor. Provided, however, that this Hold Harmless Clause between LESSEE and CITY shall not apply to any injury, death, or damage caused by the CITY, its officers, employees, or authorized agents.

ARTICLE XIX

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, unsightly, or unfit for the use or purpose for which the same are hereby let and said damages are repairable with 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 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 and pay to CITY the proceeds from any insurance coverage covering the permanent improvements to the Premises.

ARTICLE XX

OWNERSHIP OF IMPROVEMENTS

All improvements of a permanent nature excepting trade fixtures installed by LESSEE in accordance with the provisions hereof 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 within a reasonable time after the termination of this Agreement at LESSEE's own expense, provided that any damage to the remaining improvement shall be repaired and the Premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures, 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.

ARTICLE XXI

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 heretofore 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 by Section 1941 of said Civil Code.

ARTICLE XXII

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.

ARTICLE XXIII

INSURANCE

Upon taking physical possession of the Leased Premises 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 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 Two Hundred Thousand Dollars (\$200,000.00), for one person injured in one accident and not less than One Million Dollars

(\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than Fifty Thousand Dollars (\$50,000.00) 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 or the 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 interest on all such legal proceedings and pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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, and to pay all sums which the CITY may become liable to pay as damages imposed upon CITY 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 deliver to the Property Division 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 XXIII, 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 Division if said policy be

terminated or limited in any manner prior to the termination date specified in the certificate.

- (d) LESSEE also agrees upon commencement of construction on the Leased Premises to take out and maintain during the entire remaining 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 at least 80% of 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 ARTICLE XIX of this Agreement. CITY reserves the right to increase the limits of liability 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.

ARTICLE XXIV

CONTROL BY LESSEE

A part of the consideration for the granting of this Lease is the personal qualifications and abilities of George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch and William N. MacFarland. Therefore the corporation named herein as LESSEE shall remain owned and controlled by George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch and William N. MacFarland; at least to the extent of 51% of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the Leased Premises; provided, however, that in the event that any of the above-named parties shall become incapacitated, then the others shall continue in such active administration and supervision. In the event George D. Millay, Milton C. Shedd, David M. DeMotte, Kenneth Norris, Cyril W. Welch

and William N. MacFarland are all incapacitated, then the stockholders shall select a manager acceptable to CITY to so administer and supervise the said operations. The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above-named persons in excess of said 51% shall be considered an assignment of interest and shall be treated in accordance with the provisions of ARTICLE X of this Agreement; provided, however, that the stock of any stockholder may be assigned to his spouse or direct lineal heirs upon notification in writing to the CITY.

ARTICLE XXV

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.

ARTICLE XXVI

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 in a clean and orderly condition be removed from the Leased Premises.

ARTICLE XXVII

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.

ARTICLE XXVIII

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 secure 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 this Lease 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, CITY hereby agrees that upon the filing of an application for consent to such assignment 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. CITY agrees that it shall agree to such reasonable changes, amendments or modifications to this ARTICLE XXVIII as may be requested by LESSEE and/or any lender as a requisite to the granting of a loan for improvement of the Premises.

ARTICLE XXIX

UTILITIES

CITY agrees to provide the following utilities services, water, sewer, power and communications service and road to the property line of the Leased Premises to be occupied by the LESSEE and in such a manner as to enable the LESSEE to connect with and utilize said services. Any special or unusual utility services will be provided by LESSEE. 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, gas or 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 such 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.

CITY agrees that it shall construct and maintain at its expense any bridge

necessary for public passage over the channel permitted to be constructed in connection with LESSEE's hydrofoil watercraft facilities.

ARTICLE XXX

SCHEDULE OF OPERATIONS

LESSEE agrees to operate the Leased Premises and associated facilities continuously throughout the entire term of this Agreement after such premises are first opened to the public in order to serve the public interest and in accordance with sound business practices. Closing of portions of the Premises for limited period for remodeling, or alterations during times of least interference with the public's use of the Premises will be granted by the CITY upon request in writing with reasonable notice by the LESSEE. All facilities upon the leased Premises shall be open to the public during a regular schedule of days and hours which shall be subject to approval of the City Manager. Provided, however, LESSEE may close the premises certain days of the week during the off-season upon prior approval of City Manager. Type and quality of service furnished by LESSEE must qualify for the conditions and requirements of the "A" Card issued by Department of Health for CITY to operators of food-handling establishments.

ARTICLE XXXI

CANCELLATION

If after the first twenty (20) year period of this Lease or any extension thereof, CITY by Resolution of City Council, determines the uses of the demised Premises provided by ARTICLE I 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 (1) 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. 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 improvement; prorated for any portion of a year.

to compensation shall be paid by the CITY for any costs not approved in accordance with the provisions of ARTICLE XXI of this Agreement.

In the event of termination of this Lease in accordance with the provision of this ARTICLE, LESSEE shall be under no obligation whatsoever to restore the Premises to the conditions which existed at the commencement of the Term nor to demolish, destroy or remove any improvement or structure situated upon the Premises.

CITY shall be under no obligation to compensate LESSEE for improvements made without CITY's consent, which are not authorized by the provisions of this Agreement nor any improvements made after the date of notice of CITY's election to terminate this Lease unless there shall have been an expressed Agreement to the contrary.

ARTICLE XXXII

DEVELOPMENT

The development of the Leased Premises shall be in accordance with a Master Plan approved by CITY in accordance with established CITY practices which is filed in the Office of the City Clerk as Document No. _____.

ARTICLE XXXIII

"ACCESS TO THE PREMISES"

CITY agrees that it shall at its expense construct and throughout the Term maintain a public street or roadway to the Premises as a means of ingress and egress for the public to the Premises. Such street or roadway shall be hard-surfaced, a minimum width of 40 feet, and construction thereof completed no later than the date for the public opening of the Marine Life Exhibit. CITY further agrees that it shall provide suitable means of ingress and egress to the Premises during the period of construction of improvements on the Premises.

ARTICLE XXXIV

OPTION

For a period of five (5) years from and after the date of execution of this Agreement and if in the opinion of the CITY OF SAN DIEGO, additional Marine Park facilities upon the leased premises are desirable and cannot be accommodated within the area described in said Exhibit A as "Parcel 1", then LESSEE shall have the right of first refusal on any or all of the adjacent twenty (20) acre parcel designated "Parcel 2" on said Exhibit B attached hereto.

Said right of first refusal shall give LESSEE the right either to lease or to

obtain an option under the same terms and conditions as the then existing Lease insofar as applicable or under such other terms and conditions as are mutually agreed upon.

As a condition for the granting of said Lease or option to lease, LESSEE must first file a development plan and schedule of development satisfactory to CITY and in accordance with CITY standards for the development of Mission Bay.

If LESSEE selects said option to lease and thereafter fails to enter into a lease agreement in accordance therewith, then LESSEE shall pay to CITY as consideration for the said option a rental equal to \$435 per acre per year for the area of land and the period covered by the option; prorated for any portion of an acre and any portion of a year.

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. _____ 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.

MARINE PARK, INC.

By _____
President

By _____
Secretary

THE CITY OF SAN DIEGO

By _____
City Manager

I HEREBY APPROVE THE FORM AND LEGALITY of the foregoing Lease Agreement this _____ day of _____, 19____.

ALAN M. FIRESTONE

City Attorney

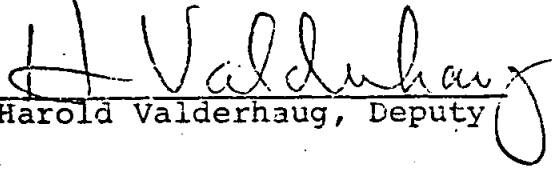
By _____
Chief Deputy

RESOLUTION No. 214422Adopted on OCT 8 1975

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of said City, a Sixth Amendment to Lease Agreement with SEA WORLD, INC., a California corporation, formerly Marine Park Corporation, amending that certain Lease Agreement on file in the office of the City Clerk as Document No. 658698 incorporating clauses for a General Development Plan, Affirmative Action, and an Educational Program, under the terms and conditions set forth in the form of Sixth Amendment to Lease Agreement on file in the office of the City Clerk as Document No. 753151.

APPROVED: JOHN W. WITT, City Attorney

By 

Harold Valderhaug, Deputy

HOV:nb 263.2
Rev. 10-29-75
Job:11759
Or. Dept. Property

Steuermer 3A

RESOLUTION No. 205330

Adopted on APR 11 1972

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 consent to sublease agreement between SEA WORLD, INC. and RUBEN DUCHENY, Sublessee, for the exclusive right to operate and maintain a glassblowing shop within the lease area of Sea World in Mission Bay on a year-to-year term subordinate to the master lease between THE CITY OF SAN DIEGO and SEA WORLD, INC., subject to a seven percent rental to be paid to City in accordance with said master lease, under the terms and conditions set forth in the form of consent to sublease agreement on file in the office of the City Clerk as Document No. 739635.

APPROVED: JOHN W. WITT, City Attorney

By *H. Valderhaug*
Harold Valderhaug, Deputy

HOV:rp
3/30/72
Job 9133

5A-
Barone

RESOLUTION No. 202116

Adopted on MAR 9 1971

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 Fifth Amendment to Lease Agreement with SEA WORLD, INC., a California corporation, amending that certain Lease Agreement between the parties which is on file in the office of the City Clerk as Document No. 658698, as amended, to (1) add 3,550 square feet of water area adjoining the Northwest portion of the lease premises; (2) clarify uses of the premises relative to ride, concessions and institutional advertising; (3) make the four existing rides subject to a rent requirement of 3% of gross income; (4) require a rent of 2 1/2% of gross income from institutional advertising; (5) exempt income from promotional magazine publications from lease rent; and (6) provide City with 1/4 page free advertising in each issue of said magazine, under the terms and conditions set forth in the form of Fifth Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 735151.

APPROVED: JOHN W. WITT, City Attorney

By Clifton E. Reed, Deputy

rb/3-3-71

3A-
Barone

RESOLUTION No. 199813

Adopted on MAY 19 1970

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 Consent to Agreement with SEA WORLD, INC. and SHOWA KIGYO CO., LTD., by which City consents to Sea World, Inc. renting to Showa Kigyo Co., Ltd., a portion of the premises leased by said City to said Sea World, Inc., by that Lease Agreement filed in the office of the City Clerk as Document No. 658698, as amended, for the operation, management and maintenance of a pearl diving exhibition and gift shop, under the terms and conditions set forth in the form of Consent to Agreement, on file in the office of the City Clerk as Document No. 731997.

APPROVED: JOHN W. WITT, City Attorney

By Clifton E. Reed, Deputy

rb/5-8-70

54 Property
RESOLUTION No. 194830

ADOPTED ON

SEP 24

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 Fourth Amendment to Lease Agreement with SEA WORLD, INC., a California corporation, as Lessee, amending that certain Lease Agreement between the parties, which is on file in the office of the City Clerk as Document No. 658698, as amended, for the lessing of a portion of Mission Bay Park, to (1) add 32.124 acres of land and .021 acres of water area to the leased premises, (2) provide lessee with the first right to lease an additional 11.152 acres of land, such rights to be exercised within five (5) years, (3) increase the minimum rent to \$183,971.30 per year, and (4) provide a revised fifty (50) years term from the date of execution of this Fourth Amendment to Lease Agreement, under the terms and conditions set forth in the form of Fourth Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 725607.

APPROVED: EDWARD T. BUTLER, City Attorney

By James F. McGowan, Jr., Deputy

rb/9-19-68

RESOLUTION No. 190537ADOPTED ON JUN 1 1967

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 First Amendment to Lease Agreement with MARINE PARK CORPORATION, as lessee, amending that certain Lease Agreement between the parties which is on file in the office of the City Clerk as Document No. 708271, to (1) grant the right to operate an aerial sky ride over the water of Mission Bay between Marine Park Corporation's restaurant development and Sea World, and (2) grant the right to construct and maintain two supporting towers for the sky ride, each in a 20foot square area, under the terms and conditions set forth in the form of First Amendment to Lease Agreement, on file in the office of the City Clerk as Document No. 712118.

APPROVED: EDWARD T. BUTLER, City Attorney

By James F. McGowan, Jr., Deputy

rb/5-19-67

PROP. #81

RESOLUTION No. 186356

FEB 15 1966

ADOPTED ON

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

That the City Manager do, and he is hereby authorized and empowered to execute, for and on behalf of said City a Consent to Termination of Sublease with Marine Park, a California corporation, dba Sea World, and Kai-Kai, a partnership, by which City consents to the termination of the sublease agreement between Marine Park and Kai-Kai, which sublease agreement is on file in the office of the City Clerk as Document No. 672249, under the terms and conditions set forth in the form of Consent to Termination of Sublease, on file in the Office of the City Clerk as Document No. 696136

Presented by _____

APPROVED: EDWARD T. BUTLER, City Attorney

**By _____
James F. McGowan, Jr., Deputy**

rb/2-8-66

RECEIVED

FEB 17 '66

Property Dept.

RESOLUTION No. 185773ADOPTED ON **DEC 16 1965**

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 agreement with Marina Park Corporation, a California corporation, dba Sea World, covering the deletion of that Amendment to Lease Agreement on file in the Office of the City Clerk as Document No. 671033, under the terms and conditions set forth in the form of Agreement on file in the office of the City Clerk as Document No. 693867.

Presented by _____

APPROVED: **EDWARD T. BUTLER, City Attorney**By _____
James P. McGowan, Jr., Deputy

rb/11-23-65

PK & Rec
81

File under

RESOLUTION No. 182666

ADOPTED ON **JAN 26 1965**

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

1. That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with Marine Park Corporation, a corporation, covering contribution by City of San Diego to the cost of remedial sand removal in the vicinity of Sea World's hydrofoil dock in Mission Bay Park, in the City of San Diego, California, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. **684-107**

2. That the expenditure of \$1,735.07 is hereby authorized out of the Capital Outlay Fund of the City of San Diego, solely and exclusively for the purpose of providing funds for the City's contribution to the cost of remedial sand removal in the vicinity of Sea World's hydrofoil dock in said Mission Bay Park.

Presented by _____

APPROVED: **CHARLES T. DITTMER**, City Attorney

Adopted: **1965**

W/L

James T. Glavin, Deputy

POOR QUALITY DOCUMENT

*Park & Rec
Mission Bay Park*

RESOLUTION No. 181212

ADOPTED ON AUG 27 1964

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 Consent to Modification of Sublease between Marine Park dba Sea World and Murata Pearl Company of California, Inc., modifying that certain Sublease between said parties dated July 16, 1963, which Consent to Sublease by the City is on file in the office of the City Clerk as Document No. 659229, and Amendment to Lease Agreement between The City of San Diego and Marine Park dba Sea World, a copy of which Lease Agreement is on file in the office of the City Clerk as Document No. 658698, for the purpose of exhibiting Japanese culture, art and the production of cultured pearls, under the terms and conditions set forth in the form of Consent to Modification of Sublease and Amendment to Lease Agreement on file in the office of the City Clerk as Document No.

675559

Presented by _____

APPROVED: EDWARD T. BUTLER, City Attorney

By _____
Robert S. Toaze, Chief Deputy

rb/7-9-64

RESOLUTION No. 180266

Park & Rec
Ben H
ADOPTED ON JUN 9 1964

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 Consent to Sublease with Marine Park, doing business as Sea World, and Kai-Kai, by which the City consents to Marine Park's subleasing to Kai-Kai, for the purpose of conducting a gift shop operation for the sale of Tahitian clothing, jewelry and curios, a portion of the premises leased by said City to said Marine Park by that lease agreement dated July 16, 1963, as amended, copy of which lease agreement is on file in the office of the City Clerk as Document No. 658698, under the terms and conditions set forth in the form of Consent to Sublease on file in the office of the City Clerk as Document No. 672233.

Presented by _____

APPROVED: EDWARD T. BUTLER, City Attorney

By Robert S. Tease, Chief Deputy

RECEIVED

JUN 11 1964

PARK & REC. DIRECTOR

rjt/5/29/64

RESOLUTION No. 175828

ADOPTED ON

MAY 23 1963

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 that option agreement with Marine Park entered into August 2, 1962, for the leasing of certain land in Mission Bay Park, which is on file in the office of the City Clerk as Document No. 644020, under the terms and conditions set forth in the form of Amendment to Option Agreement on file in the office of said City Clerk as Document No. 655877.

Presented by _____

APPROVED: ALAN M. FIRESTONE, CITY ATTORNEY

By _____

RECEIVED

MAY 24 1963

PARK & REC. DIRECTOR

RESOLUTION No. 174746

ADOPTED ON

MAR 5 1963

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 Agreement with Marine Park Corporation, permitting Marine Park to commence certain construction of facilities on City-owned property upon which Marine Park has an option to lease, under the terms and conditions set forth in the form of Agreement on file in the office of the City Clerk as Document No. 652521

Presented by _____

APPROVED: ALAN M. FIRESTONE, City Attorney

By _____
Chief Deputy City Attorney

RET:rjt
3/5/63

RECEIVED

MAR 7 1963

PARK & REC. DIRECTOR

Mission Bay
Park
Ben

RESOLUTION No. 172493

ADOPTED ON

SEP 6 1962

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

1. That the bid of \$21,511.00 (Schedule I, \$21,500.00; Schedule II, \$2,520.00; and Schedule III, \$2,100.00), by Willers Contracting Co., a corporation, for the removal of material from the Marineland Park Site and the extension of existing beach at West Crown Point, in Mission Bay Park, in the City of San Diego, California, is hereby adopted; and the City Manager is hereby authorized to execute a contract therefor.

2. That the expenditure of \$30,270.00 is hereby authorized out of the Capital Outlay Fund of the City of San Diego, solely and exclusively for the purpose of providing funds for removal of material from said Marineland Park Site and said extension of existing beach at West Crown Point, in Mission Bay Park, in said City, and for related costs.

Presented by

ALAN M. PIERSTONE, City Attorney,

by

Deputy City Attorney.

And Cert.

1962
9/10/62

POOR QUALITY DOCUMENT

RESOLUTION No. 167555

SEP 12 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, an option agreement with Marine Park Corporation covering the future lease of City-owned property in Mission Bay for a marine life exhibit, upon the terms and conditions set forth in the form of Option Agreement on file in the office of the City Clerk as Document No. 629036.

BE IT FURTHER RESOLVED, that in the event Marine Park Corporation performs all those acts required of it as consideration for the granting of said Option to lease and in the event Marine Park Corporation thereafter exercises said Option to lease, the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement to lease City-owned property in Mission Bay for a marine life exhibit upon the terms and conditions set forth in that certain lease agreement marked "Exhibit A", attached to and made a part of Document No. 629036 on file in the office of said City Clerk.

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

By _____
Chief Deputy.

RT/M/9/11/61

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.