



THE CITY OF

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A
SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CALIFORNIA 92101 TELEPHONE: (619) 236-6020

July 28, 1987

Mr. Lawrence D. Lamb
City of San Diego
Property Department
Security Pacific Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101

8/11/87
C. P. 11 72
Clear
Asst. to
USPH
Bentley Assistant
CPL

Re: Lease - Bahia Belle I

In regard to the referenced agreement, please change the lessee's name to read:

Bahia Sternwheelers, Inc.

The above defines the title change that I have recently enacted.

Very truly yours,

Anne L. Evans

LDL:baa(1)43

ABOVE ACCEPTED:

By:

Deputy City Manager

Date: 8-10-87

COPY

DOCUMENT NO. RR- 265797

P E R M I T

FILED MAY 27 1986
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THE CITY OF SAN DIEGO (CITY) hereby grants a nonexclusive Permit to BAHIA BELLE I (PERMITTEE) for the following purposes, subject to the terms and conditions described as follows:

A. PURPOSES.

Operation of the "Bahia Belle I" as a sightseeing and excursion boat on the waters of Mission Bay Park, operation of a cocktail bar and kitchen on said boat for the sale of alcoholic beverages and food items to patrons, and for no other purposes.

B. TERMS AND CONDITIONS.

1. Term. The term of this Permit shall be for a period of ten (10) years, commencing June 1, 1986, and ending May 31, 1996; provided, however, this Permit may be cancelled by either party without cause by giving 90 days' written notice of intent to so terminate.

2. Consideration.

a. Rent. Beginning on the effective date of this agreement and continuing through May 31, 1991, PERMITTEE shall pay to CITY, monthly in arrears, and prior to the last day of the calendar month following that month in which the revenue subject to rent was earned, a sum of money equal to seven percent (7%) of all gross income derived from the operation of the Bahia Belle I, as said operation is permitted by this agreement.

b. Percentage Rate Adjustment. At lease six (6) months prior to the end of the fifth year of the term of this agreement, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rate of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding five-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section c below. In the event that such adjustment is not made by mutual consent prior to three (3) months before the end of said five-year period, then parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- c. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rate as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rate to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rate for the item under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the five-year period, LESSEE agrees to continue to pay rent in accordance with the then existing lease rate and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate. In no event, however, shall any rent adjustment result in any decrease in any percentage rental rate.

- d. Minimum Rent Adjustment. Effective at the end of the last day of the third year of this Permit and at the end of each three-year period thereafter during the term, the annual minimum rent for the ensuing three-year period shall be adjusted to equal eighty percent (80%) of the annual average of actual rents paid or accrued during the three years preceding the adjustment date. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, PERMITTEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within 60 days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

Provided, however, in the event that the total amount of said percentage rent paid to CITY by PERMITTEE in any one year ending upon the day prior to the anniversary date of this agreement is less than the sum of \$27,000, hereinafter referred to as minimum rent, then PERMITTEE shall pay to CITY, within 60 days of said anniversary date, the difference between the amount actually paid and the minimum rent.

3. Delinquent Rent Compensation. In the event PERMITTEE fails to pay the applicable rents when due, the PERMITTEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent. In the event said delinquent rent is still unpaid 15 days after becoming delinquent, then PERMITTEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to ten percent (10%) of said delinquent rent. Such additional sum or sums shall be deemed compensation to CITY for loss resulting from such delinquency, including costs to CITY of servicing the delinquent account. In the event that the CITY audit discloses that the rent for the audit period has been underpaid in excess of five percent (5%) of the total required rent, then PERMITTEE shall pay CITY the cost of the audit plus ten percent (10%) on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interests as previously described above. The City Manager may for

good cause waive any such delinquency compensation charge upon written application of PERMITTEE prior to the delinquent period.

4. Boat Height. The boat shall not have a height greater than twenty-five feet (25') above the waterline.
5. Gross Income. Gross income as used in this Permit shall include all income earned by PERMITTEE from the operations permitted herein, from whatever source derived and whether received or to become due. Gross income, however, 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 PERMITTEE to a governmental agency accompanied by a tax return or statement. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.
6. Records - Statements. PERMITTEE shall maintain adequate and accurate records from which CITY can determine the nature and amount of PERMITTEE'S gross income. In order that CITY may determine the basis of payments to be made hereunder, a statement of all income derived by PERMITTEE during the preceding month and allowable deductions shall accompany each payment.
7. Inspection and Audit. The CITY may embark and inspect the operations permitted hereunder and audit PERMITTEE'S business records at any reasonable time. Such records and books of account shall be made available within the City of San Diego.
8. Repairs and Alterations. PERMITTEE shall, at all times, maintain its boat in good condition and repair at its own expense and shall make no major alterations in design, appearance or color(s) without the prior written consent of the City Manager.
9. Signs. No signs shall be installed at any dock location or on the boat without prior written approval of the City Manager.
10. Routes, Rates and Hours. PERMITTEE shall secure the City Manager's prior written approval of PERMITTEE'S proposed routes, its charges and its hours of operation and any subsequent change or changes thereto. No reasonable routes, charges, operating hours or changes thereto shall be denied. The City Manager shall have the right to require PERMITTEE to temporarily limit and/or discontinue its operation during such time as it may conflict with scheduled activities held in Mission Bay Park.

11. Regulations. PERMITTEE shall comply with all applicable laws, regulations and ordinances of any public authority relative to its operations and to its use of Mission Bay Park, which are now in effect or which may become effective during the term of this Permit.
12. Health Permit. PERMITTEE shall comply with the Health Department requirements sufficient to maintain an "A" Card for its food handling operations. Failure to maintain an "A" Card rating may result in termination of the food handling operation.
13. Assignment and Sublease. PERMITTEE shall not assign this Permit, or any interest herein, or sublet any of its operations hereunder, without first obtaining the written consent of the City Manager. Any assignment by operations of law shall automatically terminate this Permit.
14. Standard of Employees. PERMITTEE and its employees shall, at all times, conduct themselves in a creditable manner.
15. Diligence. Failure by PERMITTEE to diligently conduct its operations so as to produce a reasonable and substantial gross income may result in termination of this Permit.
16. Taxes. PERMITTEE shall pay promptly, when due, all taxes and assessments levied upon PERMITTEE'S business, its personal property, or upon PERMITTEE by reason of this Permit.
17. Hold Harmless. CITY, its agents, officers and employees, shall not be, or be held, liable for any claims, liabilities, penalties, fines, or for any damage to the goods, properties, or effects of PERMITTEE or any of the PERMITTEE'S representatives, agents, employees, guests, licensees, invitees, patrons, or clientele, or of any other persons whatsoever, nor for personal injuries to, or deaths of any of them, whether caused by or resulting from any acts or omission of PERMITTEE in or about the waters of Mission Bay Park, or any act or omission of any other person, or from any other cause or reason whatsoever. PERMITTEE 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 PERMITTEE shall not be liable for damages resulting from any negligent act or omission by any of the officers, agents or employees of the CITY.

18. Insurance. PERMITTEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability and property damage arising from the use or condition of the Bahia Belle I or operations conducted hereunder. Minimum coverage shall be \$2 million combined single limit liability. A Certificate of Insurance shall be filed with the CITY. The Policy of Insurance shall name CITY as an additional insured and shall provide for thirty (30) days notice of cancellation be given to CITY.
19. Legal Proceedings. Should it become necessary for the CITY to commence legal proceedings to collect any payments due hereunder, or enforce any other condition of this Permit, PERMITTEE agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.
20. Termination Liability. It is mutually agreed that the CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE, as a result of termination of this Permit, and further that PERMITTEE expressly waives any claim or expense or loss which PERMITTEE might incur as a result of termination of this Permit.
21. Administration and Control - Notices. The administration and control of the operations permitted hereunder shall be under the jurisdiction of the City Manager of CITY.

Notices to CITY hereunder shall be directed to City Manager, Attention Property Director, City of San Diego, Community Concourse, 202 "C" Street, San Diego, California, 92101. Notices to PERMITTEE may be mailed or otherwise delivered to 998 West Mission Bay Drive, San Diego, California, 92109, or may be personally served upon PERMITTEE.
22. Default. CITY may terminate this Permit upon failure of PERMITTEE to perform any condition imposed upon PERMITTEE herein.
23. Waiver. The failure of CITY to insist upon strict performance by PERMITTEE of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force.
24. Oral Representations. This Permit contains the complete expression of the agreement between the parties and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.

25. Nondiscrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, creed, sex or national origin in PERMITTEE'S use of the premises, including, but not limited to the providing of good, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

26. Equal Opportunity. PERMITTEE agrees to abide by the CITY'S Affirmative Action Program for PERMITTEES as it exists or is amended to the extent that the program is applicable to this Permit. A copy of the program effective as of the date of this Permit is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.

~~27. Limitation on Use. The boat shall not be used on any weekend or holiday prior to 7:30 p.m., from Memorial Day through Labor Day. However, the City Manager may, at his discretion, allow use prior to 7:30 p.m. for special events upon advanced written request by PERMITTEE.~~

28. Permits and Approvals. PERMITTEE shall secure all necessary permits and approvals for the boat's operation at its expense.

29. Plans. Should the Permittee desire to make major changes to the boat, the final plans and design and color shall have prior written approval by the City Manager.

30. Location. The boat will be berthed at the Bahia Hotel Dock, or a location having prior written approval by the City Manager, while it is not in operation.

31. CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements, leases and permits with consultants, vendors, lessees and permittees shall include a condition that the contract, agreement, lease or permit shall be unilaterally and immediately terminated by the CITY if the contractor, lessee or permittee employs an individual who within the 12 months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor of PERMITTEE. It is not the intent of this policy that these provisions apply to members of the City Council.

32. Supersedure. It is mutually agreed that this Permit, upon commencement, supersedes and annuls that certain Permit filed May 4, 1981 with William D. Evans, Document RR254117.

APPROVED BY:

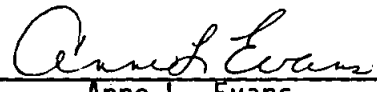
THE CITY OF SAN DIEGO

Date MAY 27 1986

By 
ASSISTANT TO THE City Manager

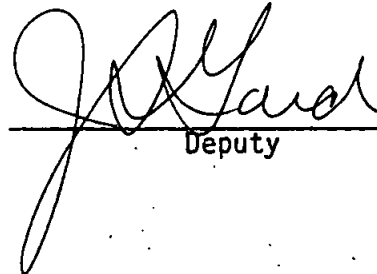
PERMITTEE:

Date April 17, 1986

By 
Anne L. Evans

APPROVED AS TO FORM AND LEGALITY THIS 23rd DAY OF June, 1986.

JOHN W. WITT, City Attorney

By 
Deputy

LDL:st(108-4)
4-11-86

K.u -

ANNE L. EVANS

Property 503
Lamb

(R-86-2059)

RESOLUTION NUMBER R- 265797

ADOPTED ON MAY 27 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a ten (10) year permit to ANNE L. EVANS for the operation of the "Bahia Belle" as a sightseeing and excursion boat on the waters of Mission Bay Park, including a cocktail bar on said vessel for the sale of alcoholic beverages to patrons, sale of food items, and for no other purpose, at an initial annual minimum rent of \$27,000 versus seven (7) percent of gross income, under the terms and conditions set forth in that permit on file in the office of the City Clerk as Document No. RR- 265797.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
04/25/86
Or.Dept:Prop.
Job:218888
R-86-2059
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