

COPY

DUPLICATE ORIGINAL

FOURTH AMENDMENT TO LEASE

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

RECITALS

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

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

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

DOCUMENT NO.

RL 297373

FILED

NOV 25 2002

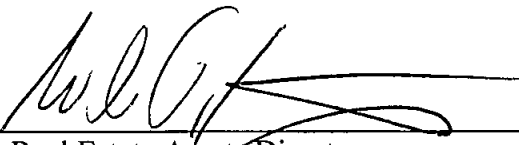
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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

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

THE CITY OF SAN DIEGO

Date 12/02/02

By 
Real Estate Assets Director

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

Date June 27, 2002

By Edna Johnson

Title Commodore

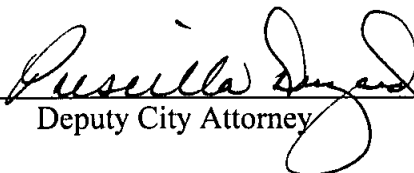
By RH Brown

Title Vice Commodore

Approved as to form and legality:

CASEY GWINN, City Attorney

Date December, 2002

By 
Deputy City Attorney

JPA

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

R 297373

EXHIBIT 'A'
LEGAL DESCRIPTION FOR
MISSION BAY YACHT CLUB

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

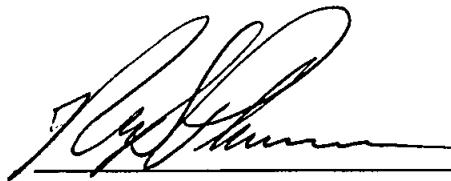
BEGINNING AT STATION #999, THE CCS 83 COORDINATES OF SAID STATION BEING NORTH 1861952.14 AND EAST 6261038.58, AS SHOWN ON ROS 16891, THENCE NORTH 34°39'08" WEST 8701.14 FEET TO THE CITY OF SAN DIEGO GPS STATION PT #1904, THE CCS 83 COORDINATES OF SAID STATION BEING NORTH 1869109.87 AND EAST 6256091.18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

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

13. NORTH 17°29'10" WEST 88.90 FEET; THENCE
14. SOUTH 72°30'50" WEST 77.23 FEET; THENCE
15. NORTH 17°29'10" WEST 115.00 FEET; THENCE
16. SOUTH 72°30'50" WEST 166.56 FEET TO THE BEGINNING OF A NON-TANGENT 339.00 FOOT RADIUS CURVE CONCAVE TO THE WEST, A RADIAL LINE TO SAID BEGINNING BEARS NORTH 87°09'35" EAST; THENCE ALONG THE ARC OF SAID CURVE
17. SOUTHWESTERLY 281.46 FEET THROUGH A CENTRAL ANGLE OF 47°34'15"; THENCE
18. SOUTH 44°43'50" WEST 52.00 FEET TO THE BEGINNING OF A NON-TANGENT 400.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 37°26'20" EAST; THENCE ALONG THE ARC OF SAID CURVE
19. SOUTHWESTERLY 77.35 FEET THROUGH A CENTRAL ANGLE OF 11°04'44" TO THE **TRUE POINT OF BEGINNING.**

CONTAINING 11.82 ACRES, MORE OR LESS.



 7/31/01

REX S. PLUMMER DATE
L.S. 6641
EXPIRATION DATE 12/31/03

Z:\JURY\1844-03\1844-03EDGNOT.DWG

RESOLUTION NUMBER R- **297373**

ADOPTED ON **NOV 25 2002**

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

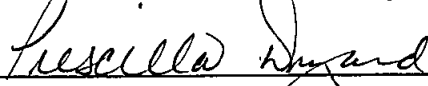
WHEREAS, the current estimated value of the 6.14 acres of land and 5.7 acres of water area included in this leasehold is approximately \$2,500,000, as determined by City valuation staff; and

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

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

297373
RR-_____.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
11/08/02
Or.Dept:REA
R-2003-673

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

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

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of

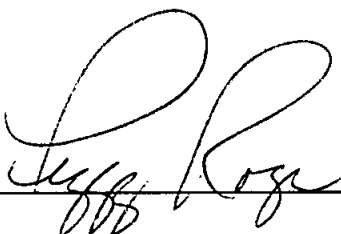
RESOLUTION No. R-297373 passed and adopted by the Council of The City of San Diego, California on November 25, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego,

California

(SEAL)

By:  Deputy

Jim Anthony
5/14

(R-2003-673)

RESOLUTION NUMBER R- **297373**

ADOPTED ON **NOV 25 2002**

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297373
RR-_____.

APPROVED: CASEY GWINN, City Attorney

By *Prescilla Dugard*
Prescilla Dugard
Deputy City Attorney

PD:cdk
11/08/02
Or.Dept:REA
R-2003-673

EXHIBIT 'A'
LEGAL DESCRIPTION FOR
MISSION BAY YACHT CLUB

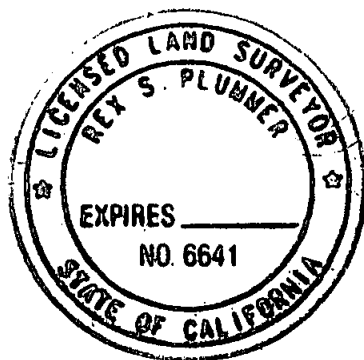
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BEGINNING AT STATION #999, THE CCS 83 COORDINATES OF SAID STATION BEING NORTH 1861952.14 AND EAST 6261038.58, AS SHOWN ON ROS 16891, THENCE NORTH 34°39'08" WEST 8701.14 FEET TO THE CITY OF SAN DIEGO GPS STATION PT #1904, THE CCS 83 COORDINATES OF SAID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

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CONTAINING 11.82 ACRES, MORE OR LESS.



 7/31/01
REX S. PLUMMER DATE
L.S. 6641
EXPIRATION DATE 12/31/03

BASIS OF BEARINGS

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

I.E. S 34°39'08" E

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

REFERENCE DRAWINGS

ROS 16891, ROS 14492

LEGEND

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

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

MEAN HIGH
WATER LINE
JUNE 2000

CARMEL
POINT

T.P.O.B.
N 186°45'38.01
E 62°54'52.82
NAD 83 TIE

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



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

CITY OF SAN DIEGO GPS
PT #1904, FD 2 1/1" CITY
OF SAN DIEGO BRASS
DISC PER ROS 14492
N 186°10'09.87
E 62°56'09.18
NAD 83

GRID NORTH
CCS 83



-0°32'14.75"

P.O.B.
FD 2 1/2" IRON PIPE W/
DISC. STAMPED "L.S. 6641"
STA #999 PER ROS 16981
N 186°19'52.14
E 62°10'38.58
NAD 83

CONVERGENCE ANGLE AT
BASE STATION #999
SCALE 1" = 200'

SAN DIEGO ROWING
CLUB

PREVIOUS
LEASE BOUNDARY

MISSION
BAY

MISSION BAY
YACHT CLUB

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

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	77.35	400.00	11°04'44"
C2	281.46	339.00	47°34'15"

A = 71°48'49"
R = 215.00'
L = 269.48'



REX S. PLUMMER

REX S. PLUMMER L.S. 6641
MY REGISTRATION EXPIRES 12-31-03

7/31/01

DATE

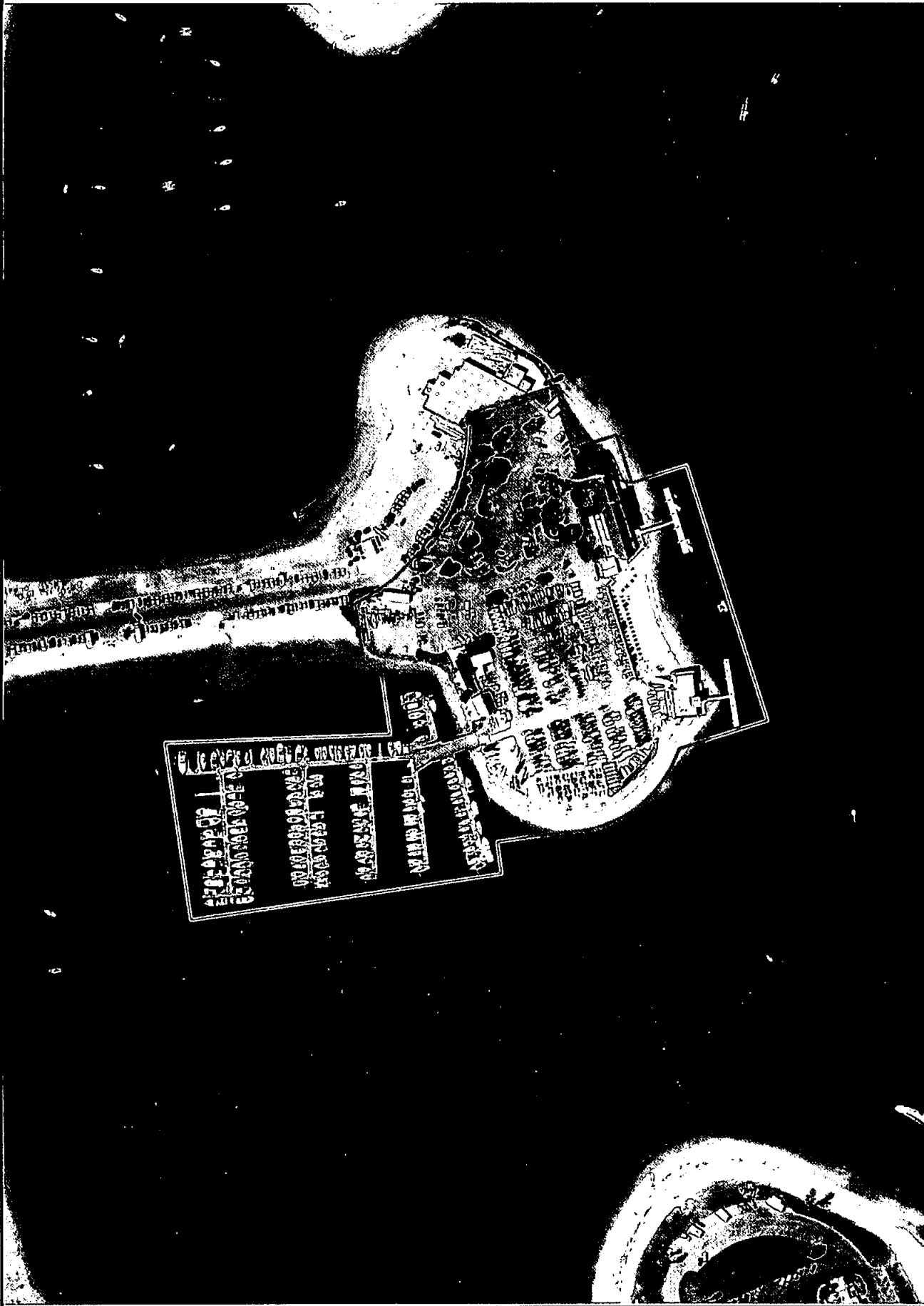
LEASE DESCRIPTION

FOR MISSION BAY YACHT CLUB

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

MISSION BAY YACHT CLUB PROPOSED LEASEHOLD BOUNDARY

Legend



1:2924

Vicinity Map



SanGIS
We Have San Diego Covered!

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Plot Date: 8/15/01

This is a high-contrast, black and white aerial photograph of a coastal town and harbor. The town is built on a hillside overlooking the water. A large, rectangular structure, possibly a dock or pier, extends into the harbor. The harbor is filled with numerous small boats and larger vessels. The surrounding area is dark, suggesting a night or low-light photograph.

Vicinity Map



SanGIS
We Have San Diego Covered!

Every reasonable effort has been made to assure the accuracy of this map. However, neither the Publisher nor the State of New Jersey provides a representation or warranty by liability arising from its use.

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This file contains information that is not intended for public release.

Plot Date: 8/15/01

THIRD AMENDMENT
TO LEASE AGREEMENT

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

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

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

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

NOW, THEREFORE, CITY and LESSEE hereby agree:

1. That Section C is hereby deleted in its entirety and the following substituted therefore:

- c. The rent which shall be computed on an annual basis as hereinafter described and is payable in 12 equal monthly installments on or before the first day of each month at the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165.

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

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

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

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

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

THE CITY OF SAN DIEGO

Date APR 18 1988

By Donald Van Wanselle
ASSISTANT TO THE City Manager

LESSEE - MISSION BAY YACHT CLUB, INC.

Date 12-3-87

By Nelson D. Bedford

By Quentin Hogan

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

By [Signature]
Deputy City Attorney

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

R 270773

(R-88-1915)

RESOLUTION NUMBER R- 270773

ADOPTED ON APR 18 1988

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

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

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

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

April 18, 1988 by the following vote:

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

McCarty, Filner, O'Connor

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

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

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Ellen Bovard, Deputy

POOR QUALITY DOCUMENT

RESOLUTION No. _____

177635

Pen H
PK + B...

OCT 24 1963

ADOPTED ON _____

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

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

No. 662462

Presented by _____

APPROVED: ALAN M. FIRESTONE, City Attorney,

By _____

Chief Deputy.

M/10/15/63

POOR QUALITY DOCUMENT

2nd Amendment
AMENDMENT TO LEASE AGREEMENT

DOCUMENT NO. 662527
FILED OCT 29 1963
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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

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

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

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

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

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

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

of a non-tangent 215.00 foot radius curve concave Northwesterly; thence Southerly and Southwesterly along the arc of said curve 441.70 feet through an angle of 117°42'40"; thence South 81°11'50" West 248.97 feet; thence South 08°48'10" East 12.50 feet; thence South 81°11'50" West 432.00 feet; thence North 08°48'10" West 282.50 feet; thence North 81°11'50" East 370.00 feet; thence North 08°48'10" West 196.97 feet to the beginning of a non-tangent 167.00 foot radius curve concave Northwesterly, a radial of which said curve bears North 19°02'42" West from said point; thence Northeasterly along the arc of said curve 77.93 feet through an angle of 26°44'18"; thence North 44°13'00" East 52.00 feet to the beginning of a tangent 339.00 foot radius curve concave Northwesterly; a radial of which said curve bears North 45°47'00" West from said point; thence Northeasterly and Northerly along the arc of said curve 281.46 feet through an angle of 47°34'12"; thence North 72°00'00" East 166.56 feet; thence South 18°00'00" East 115.00 feet; thence North 72°00'00" East 180.00 feet; thence South 18°00'00" East 463.00 feet to the TRUE POINT OF BEGINNING and containing 6.1 acres of land area and 5.65 acres of water area.

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

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

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

THE CITY OF SAN DIEGO

By Walter Vahn Jr.
Acting City Manager

MISSION BAY YACHT CLUB, INC.

By R. C. Harris

By R. Gary Collins

I HEREBY APPROVE the form and legality of the foregoing Lease Amendment this

16 day of October, 1963.

ALAN M. FIRESTONE, City Attorney

By Robert S. Lopez
Deputy

ATTACHMENT TO LEASE AGREEMENT

FILED FEB 27 1962
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

*
THIS AMENDMENT, made and entered into this 19th day of Feb., 1962, by and between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and MISSION BAY YACHT CLUB, INC., a non-profit California corporation, whose address is 1215 El Carmel Point, San Diego 8, California, hereinafter designated "Lessee," WITNESSETH:

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

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

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

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

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

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

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

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

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

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

*
THAT SUB-PARAGRAPH (D) (4) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

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

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

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

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

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

*
 precedent to termination of this lease as set forth below, immediately cancel and terminate this lease and terminate each, every, and all of the rights of Lessee and of any and all persons claiming by, through, or under Lessee in or to the leased premises and in or to the further possession thereof and may thereupon enter into and upon the leased premises and repossess the same and expel Lessee and all persons claiming by, through, or under Lessee. The rights and remedies of City as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to City any right or remedy at law or in equity which City may have or assert against Lessee under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which City may have against said Lessee. Provided, however, that in the event that there is a deed of trust or mortgage on the leasehold given by Lessee with the consent of the City to secure a construction loan provided for in Section 37 herein, the City shall not terminate this lease until it shall have as a condition precedent served upon the mortgagee or beneficiary written notice of the default or defaults complained of and if said defaults are curable, the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary, and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter and said thirty (30) day period shall be extended during the time required for said mortgagee or beneficiary to perfect through litigation its right to cure. Provided further that if mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation, then City shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

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

(b) City may correct or cause to be corrected said default or defaults and pay the costs thereof (including costs incurred by City in enforcing this provision) from the funds of any Faithful Performance 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.

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

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

* THAT SUB-PARAGRAPH (D) (13) (d) IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

INSURANCE

(D) (13) (d) Lessee also agrees to take out and maintain during the entire term of this agreement, fire and extended coverage insurance on all property of an insurable nature belonging to Lessee located upon the leased premises. Said insurance shall be written by an insurance carrier satisfactory with City and in an amount sufficient to cover the replacement cost of said property. Lessee shall require that a certificate of such insurance be filed with City and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the certificate without prior written notice to City. Lessee shall pay the premium for such insurance and shall require that any such insurance proceeds resulting from a loss under said policy are payable jointly to City and Lessee in order that said proceeds will be reinvested in rebuilding or repairing the damaged property; (or said proceeds may be disposed of as specified in Section D, Paragraph 16,) provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of the City securing a construction loan provided for in Section D, Paragraph 25 herein, then and for that period all policies of fire insurance shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to the said mortgagee or beneficiary, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes: (1) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to Lessee or (2) In the event that this lease is terminated with consent of City and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary fully to discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability for City and Lessee as their interests may appear.

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

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

(D) (16) WASTE, DAMAGE OR DESTRUCTION OF PREMISES. Lessee shall give prompt notice of any fire or damage that may occur from any reason whatsoever. Lessee shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the leased premises shall be damaged by any cause so as to render the premises untenable, unsightly, or unfit for the uses or purposes for which the same are hereby let and said damages are 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 Part 1 of clause (d) of Section D, Paragraph (13) hereof marked "Insurance." Preliminary steps

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

In the event Lessee fails to commence and/or complete said repairs, restoration or replacement within the time specified herein, then City shall have the option to do any of the 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, Paragraph (13) hereof entitled "Insurance", and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part 2 of clause (d) thereof; or (b) City may make or cause to be made said repairs, restoration or replacement and charge the costs therefor (including costs incurred by City and enforcing this provision) to the account of the Lessee, and Lessee authorizes City to use the insurance proceeds for said repairs, restoration or replacement, in accordance with Part 1 of clause (d) of Section D, Paragraph (13) hereof entitled, "Insurance", and held in trust by a mortgagee or trust deed beneficiary, and Lessee hereby waives any right in said insurance proceeds.

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

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

(D) (26) CANCELLATION. If at any time during the term of this lease or any extension thereof, City by resolution of City Council, determines the uses of the leased premises provided by Paragraph "A" hereof are then inconsistent with public convenience and necessity and further that the leased premises shall not be used for said purposes during the then remaining term of this lease, then City shall have the right to terminate the lease upon one year's written notice to Lessee and upon payment to the Lessee of compensation for the improvements placed upon the leased premises by the Lessee. Provided however, in the event of cancellation of this lease in accordance with the terms of this section, any amount due from City for payment of compensation for the improvements placed on the leased premises shall be used first to pay the financial institution or lending agency or person who is a beneficiary under a trust deed or mortgage recorded with the prior consent of City any unpaid balance of the loan. Any excess after payment by City to said beneficiary shall then be paid to Lessee. The amount of compensation shall be the approved construction cost, as defined in this agreement, depreciated as hereinafter defined, and in ratio to the time of approval of construction costs to the time of termination and adjusted to the Purchasing Power of the Dollar as reflected by the U.S. Department of Commerce Consumer Price Index of Commodity Prices using 1947-49 equal to 100%. Depreciation shall be computed by dividing the approved construction costs by the number of years remaining in the term of this agreement after the date of completion of such improvements, prorated for any portion of a year. No compensation shall be paid by the City for any costs not approved in accordance with the provisions of Section D, Paragraph (13) of this agreement, provided, however, that should said cancellation occur during a period within which there is in existence a mortgage or deed of trust on the leasehold given by Lessee with the consent of the City to secure any construction loan provided for in Section D, Paragraph (28) herein, then in no event shall the amount payable by the City on cancellation of this lease be less than the amount sufficient to fully discharge all such loans if all periodic payments thereon had been made when due under the terms of such loans, approved by City, and as they may have been modified or extended with the consent in writing of the City other than payments not actually made which fell due within one year prior to the date of such termination by the City.

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

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

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

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

*
IN WITNESS WHEREOF, this lease amendment is executed by the City, acting
by and through the City Manager of said City, under and pursuant to Resolution
No. 169517 authorizing such execution, and the Lessee has caused
this 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 /s/ E. W. Blom
City Manager

Acting

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

By /s/ Bradford W. Powers.

Pres.

By /s/ R. D. Collins

Secy.

I HEREBY AFFIRM the form and legality of the foregoing lease Amendment
this 5 day of Feb., 1952.

ALAN W. FLEISHER, City Attorney

By /s/ Robert S. Teaze
Deputy

RESOLUTION No. 169517

FEB 13 1962

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

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an Amendment to Lease Agreement with the Mission Bay Yacht Club, Inc., covering construction, operation and maintenance of a yacht club on a portion of the tidelands of False Bay, also known as Mission Bay, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 634923.

Presented by _____

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

By _____
Chief Deputy.

M/1/23/62

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

City Clerk

By _____
Deputy.