

LEASE

THIS INDENTURE OF LEASE, made and entered into this 6th day of September, 1928, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, acting by and through the Harbor Commission of The City of San Diego pursuant to Ordinance No. 11877, of the ordinances of said City, approved August 6th, 1928, as Lessor, and AUTOMOBILE FERRY COMPANY OF CORONADO, a corporation, hereinafter designated as the Lessee, WITNESSETH:

That the City does by these presents demise and lease unto the said Lessee all those lands bordering and extending into the Bay of San Diego, and being a portion of those lands conveyed to The City of San Diego by the State of California, under the provisions of that certain Act of the Legislature, entitled, "An Act conveying certain tide lands and lands lying under inland navigable waters situate in the Bay of San Diego to the City of San Diego in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof," approved on the first day of May, 1911, and as subsequently amended, more particularly described as follows, to-wit:

PARCEL #1:

Beginning at the point of intersection of the easterly line of Kettner Boulevard with the mean high tide line of the Bay of San Diego, as established by decision of the Superior Court of the State of California, in that certain action numbered 35473; thence southerly along the southerly prolongation of the easterly line of Kettner Boulevard to an intersection with the U. S. Bulkhead Line; thence south $89^{\circ} 37' 30''$ west along said bulkhead line a distance of 300 feet to a point; thence north $0^{\circ} 22' 30''$ west a distance of 130 feet to a point; thence north $89^{\circ} 37' 30''$ east to an intersection with the southerly prolongation of the westerly line of Kettner Boulevard; thence northerly along the southerly prolongation of the westerly line of Kettner Boulevard to an intersection with the above mentioned mean high tide line; thence easterly along said mean high tide line to the place of beginning.

PARCEL #2:

Beginning at the point of intersection of the U. S. Bulkhead line with the southerly prolongation of the easterly line of Kettner Boulevard; thence south $89^{\circ} 37' 30''$ west along said bulkhead line a distance of 300 feet to a point; thence south $0^{\circ} 22' 30''$ east to an intersection with the U. S. Pierhead line; thence south $50^{\circ} 50'$ east along said Pierhead line to a point of intersection with the southerly prolongation of the easterly line of Kettner Boulevard; thence northerly along the southerly prolongation of the easterly line of Kettner Boulevard to the place of beginning.

TO HAVE AND TO HOLD the said premises and each and every parcel thereof unto the said lessee, for a period of thirty (30) years beginning September *Sixth*, 1928, and ending September *Fifth*, 1958, unless sooner terminated as herein provided, at the following rentals:

One hundred dollars (\$100.00) per month, payable in advance on the first day of each and every month, for the first five (5) years of said term. Said rental shall be adjusted at the end of said five-year period and at the end of each five-year period thereafter during the remainder of said term. The adjustments of rent herein provided for shall be based on the valuation of adjoining property, which valuation to be used for adjustment shall be the valuation fixed for adjoining property by the Assessor for municipal taxation purposes; provided, that if the amount of such rentals cannot be agreed upon between the parties, then the same shall be determined by arbitration, each party to select one arbitrator, and the two arbitrators so selected to select a third. Said arbitrators shall use as a base for determining the rental the valuation of adjoining property as fixed by the Assessor for municipal taxation purposes.

The right of the Common Council of The City of San Diego and of the Harbor Commission of said City to change or increase said rental, subject to the foregoing provisions, is hereby expressly reserved to said City, and said lessee in accepting

ORIGINAL

this lease acknowledges the right of said Common Council and said Harbor Commission and said City to readjust and increase the rental of said premises at the times and in the manner herein provided.

Neither the whole, nor any part of this lease shall be assignable or transferable, nor shall the lessee have the right to sublet the leased premises, or any part thereof, without the consent of the Common Council evidenced by ordinance duly and regularly adopted and approved.

The Common Council of said City, and the Harbor Commission of said City, and the people of said City, hereby reserve the right and privilege to annul, change or modify this lease in such manner as may seem proper, upon the payment to said lessee of reasonable compensation for damages occasioned by said annulment, change or modification. The reasonable compensation herein provided to be paid to the lessee shall be based upon and limited to compensation for the actual value of such buildings, structures and physical improvements placed upon the demised premises by the lessee, as are required, authorized or permitted under the terms of this lease, and shall not be held to include compensation to said lessee for any damage to, interference with, or loss of business or franchise occasioned by any such amendment, change or modification.

In addition to the foregoing provisions, it is hereby agreed by the parties to this lease that the same is granted and accepted upon the further terms and conditions hereinafter provided, to-wit:

(1) That the demised premises shall be used only and exclusively for the following purposes, to-wit:

For ferry landings and approaches thereto in connection with the operation of ferries between San Diego and Coronado Beach; also for any buildings incident to the actual operation

ORIGINAL

of said ferries and slips; and for the construction and erection of slips, aprons, and other necessary equipment.

(2) That all plans for buildings, structures, wharves and improvements to be erected or placed upon said leased premises shall comply with all the ordinances of The City of San Diego, and shall be subject to the approval of said Harbor Commission.

(3) The business of said lessee to be conducted upon said premises shall be that of operating ferries for the transportation of vehicles and passengers between San Diego and Coronado Beach.

(4) This lease and all rights of the lessee hereunder shall at the option of The City of San Diego be subject to termination if within eight (8) months from September 6th, 1928, the lessee shall fail to secure all necessary licenses and permits required by law to be obtained for the operation and maintenance of a public ferry, from the Railroad Commission of the State of California, Board of Supervisors of the County, or otherwise.

(5) This lease shall also at the option of said City be subject to cancellation, and all rights of the lessee thereunder be terminated, in event the lessee shall fail to expend or cause to be expended in the construction of slips, buildings and other improvements, for the purposes herein specified, upon the premises leased, not less than fifty thousand dollars (\$50,000.00) within six (6) months after securing the necessary licenses and permits referred to in the preceding paragraph hereof.

All such construction of buildings and improvements shall be in conformity with the ordinances of The City of San Diego, and subject to the approval of the Harbor Commission of said City.

(6) It is expressly understood and agreed by said lessee that whenever, pursuant to the present or any future plan for the development of the harbor district of said City, the City shall desire to extend and/or open Kettner Boulevard, and/or Harbor Drive, said lessee will, upon sixty (60) days' notice of such intention, surrender to the City such portion of the premises hereby leased as may be required for the extension and opening of either or both of said streets, and that the lessee will, within said time remove any structures or buildings from that portion of the premises leased as may be required to open said street or streets, at its own expense, and without any claim or right to damages or compensation therefor, and without any diminution of rent.

(7) It is further expressly understood and agreed by said lessee that whenever The City of San Diego, or the Harbor Commission thereof, shall undertake the construction of Pier No. 3, as said pier is now shown upon the present harbor development plan, the lessee will, without claim for compensation or damages on any account whatsoever, and at its own expense, remove any and all structures erected or maintained by it under this lease which shall, in the judgment of said City or Harbor Commission, interfere with the full and free use of said Pier No. 3, or impede or obstruct the free approach thereto.

(8) Reference is hereby made to all laws as now existing, and as may be hereafter amended or enacted applicable to the leasing of tide lands by The City of San Diego, and by such reference all restrictions or conditions imposed, or reservations made thereby, are made a part of this lease with like effect as though the same were expressly set forth herein.

(9) At no time during the life of this lease shall The City of San Diego be required to make any improvement on or

(6) It is expressly understood and agreed by said lessee that whenever, pursuant to the present or any future plan for the development of the harbor district of said City, the City shall desire to extend and/or open Kettner Boulevard, and/or Harbor Drive, said lessee will, upon sixty (60) days' notice of such intention, surrender to the City such portion of the premises hereby leased as may be required for the extension and opening of either or both of said streets, and that the lessee will, within said time remove any structures or buildings from that portion of the premises leased as may be required to open said street or streets, at its own expense, and without any claim or right to damages or compensation therefor, and without any diminution of rent.

(7) It is further expressly understood and agreed by said lessee that whenever The City of San Diego, or the Harbor Commission thereof, shall undertake the construction of Pier No. 3, as said pier is now shown upon the present harbor development plan, the lessee will, without claim for compensation or damages on any account whatsoever, and at its own expense, remove any and all structures erected or maintained by it under this lease which shall, in the judgment of said City or Harbor Commission, interfere with the full and free use of said Pier No. 3, or impede or obstruct the free approach thereto.

(8) Reference is hereby made to all laws as now existing, and as may be hereafter amended or enacted applicable to the leasing of tide lands by The City of San Diego, and by such reference all restrictions or conditions imposed, or reservations made thereby, are made a part of this lease with like effect as though the same were expressly set forth herein.

(9) At no time during the life of this lease shall The City of San Diego be required to make any improvement on or

ORIGINAL

for the benefit of the said leased lands hereinabove described.

(10) In event the lessee shall fail to establish and maintain the business of operating a public ferry service, as hereinabove set forth, or shall fail to fulfill in any manner the uses and purposes for which the said premises are leased, as above stated, or shall fail or refuse to perform the obligations or meet the conditions by it under this lease undertaken, then and in that event this lease, and all of the rights of the lessee hereunder, shall terminate, and the said lessee shall remove from said demised premises, and shall have no further right or claim thereto, and the said City shall immediately thereupon, without recourse to the courts, have the right to take possession of said property, and said lessee shall forfeit all rights and claims thereto and hereunder; and said lessee, in accepting this lease, hereby acknowledges the right of said City to take possession of said premises immediately upon the neglect or refusal of said lessee to comply with the terms and conditions hereinabove mentioned.

(11) At the expiration of the term of this lease the lessee shall remove any and all structures, including wharves and slips, erected on said premises, therefrom at its own cost and expense.

(12) The right is hereby expressly reserved to the Common Council and/or the Harbor Commission of said City, at any time to change the boundaries of the premises leased, and to open streets through said premises, in accordance with any plan of harbor improvement adopted by said Common Council.

IN WITNESS WHEREOF, a majority of the members of the Harbor Commission of The City of San Diego have hereunto subscribed their names as and for the act of said City, and the said Lessee has caused this instrument to be executed,

and its corporate name and seal to be hereunto affixed,
by its proper officers thereunto duly authorized, the day
and year first hereinabove written.

THE CITY OF SAN DIEGO,
Lessor.

By M. A. Graham

W. H. Corman

ATTEST:

Allen H. Wright, city clerk

By Fred W. Sick
Deputy

No. 1000
Members of the Harbor Commission
of The City of San Diego, California.

AUTOMOBILE FERRY COMPANY OF CORONADO

Lessee.

By William A. Gunn
President

ATTEST:

William T. Westbrook

Secretary

I hereby approve the form of the foregoing Lease, this
6th day of September, 1928.

Jas. E. O'Keefe
City Attorney.

By H. B. Daniel
Assistant City Attorney.

9
DOCUMENT No. 231261

Filed SEP 21 1928

ALLEN B. WRIGHT
FRED W. SICK
City Clerk.

By Deputy.

Lease with Automobile Ferry
Company of Coronado

Cover Form C 12-28-27

BOOK 6 PAGE 173