

LEASE

THIS LEASE, made and entered into in triplicate this _____ day of _____, 1956, by and between THE CITY OF SAN DIEGO, a municipal corporation, acting by and through the Harbor Commission of said City, hereinafter called the "Lessor", and SILVER GATE YACHT CLUB, a corporation organized under the laws of the State of California, hereinafter called the "Lessee", WITNESSETH:

That the Lessor, for the considerations hereinafter set forth, hereby leases to the Lessee for the term and upon the conditions hereinafter set forth, a portion of those certain 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 of the State of California entitled, "An Act conveying certain tidelands 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, which said lands are more particularly described as follows, to-wit:

PARCEL NO. 1

Beginning at the intersection of a line parallel to and distant 10 feet southwesterly from the northerly property line of Byron Street with the Mean High Tide Line for the Bay of San Diego as said Mean High Tide Line was established by that certain Superior Court Action numbered 35473; thence south 54° 15' 30" east along said 10 foot line a distance of 2293.61 feet to a point on a curve concave to the northwest,

having a radius of 4750 feet, said curve being on the center line of an area known as Shelter Island; thence southwesterly along said curve an arc distance of 684.04 feet to the end of curve which bears south 42° 17' 30" east from the center of said curve; thence continuing along the center line of said Shelter Island south 47° 42' 30" west a distance of 524.59 feet; thence leaving the centerline of said Shelter Island north 42° 17' 30" west a distance of 15.00 feet to the true point or place of beginning, said true point lying on a curve concave to the northwest having a radius of 3525.62 feet the center of which bears north 48° 23' 50" west; thence southwesterly along the arc of said 3525.62 foot radius curve an arc distance of 200.65 feet to a point which bears south 45° 08' 11" east from the center of said curve; thence north 42° 17' 30" west a distance of 150.66 feet; thence north 47° 42' 30" east a distance of 200.02 feet; thence south 42° 17' 30" east a distance of 135 feet to the true point or place of beginning, containing 28,782 square feet of tideland area.

PARCEL NO. 2

Beginning at the most northerly corner of the hereinabove described Parcel No. 1, said point also being the true point or place of beginning of Parcel No. 2; thence along Parcel No. 1 south 47° 42' 30" west a distance of 200.02 feet; thence north 43° 03' west a distance of 591.86 feet to the U. S. Pierhead Line as said U. S. Pierhead Line is now established for the Bay of San Diego; thence north 46° 57' east along said Pierhead Line a distance of 200.00 feet; thence south 43° 03' east a distance of 594.51 feet to the true point or place of beginning of Parcel No. 2 containing 118,637 square feet of water covered area.

The above described premises are those more particularly delineated on Drawing No. 403-B dated January 21, 1954, attached hereto, marked Exhibit "A" and by this reference made a part hereof.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

First. The term of this lease shall be for five (5) years commencing on the _____ day of _____, 1956, and ending on the _____ day of _____, 1961, unless sooner terminated as herein provided; provided, however, that the Lessee shall have the right and option to extend said term for two (2) additional terms of five (5) years each to

commence at the expiration of each term herein provided. Said options to extend shall be exercised by Lessee giving notice in writing to the Port Director of Lessor at least sixty (60) days before the expiration of each of the terms herein provided. Upon exercise of said options, this lease shall continue in full force and effect in accordance with the terms and conditions hereof, including the adjustment in rental as herein provided.

Second. As and for the rental and for and in consideration of the leasing aforesaid, Lessee agrees to pay the Lessor the following sums:

(1) For the first two and one-half (2-1/2) years of said lease, a sum equal to Two Dollars (\$2.00) per year for each and every member belonging to said Silver Gate Yacht Club, excepting junior members as defined by the by-laws of said Silver Gate Yacht Club, for which memberships the Lessee shall pay a sum equal to One Dollar (\$1.00) per year per junior member or the sum of Two Hundred Fifty Dollars (\$250.00) per year, whichever sum is greater.

(2) For each of the successive two and one-half (2-1/2) years of said lease and any extension thereof, a sum to be agreed upon at or before the expiration of each two and one-half (2-1/2) year period of said lease by the Harbor Commission and said Lessee.

In the event that an agreement cannot be reached at any of the times hereinabove mentioned, then the matter shall be determined by submission to a board of arbiters consisting of three members: one arbiter shall be selected by the Harbor Commission and one by the Lessee, and the two arbiters so selected shall select a third. The decision of such board shall be final and both the Lessor and the Lessee shall be bound thereby.

In connection with the above rental, the Lessee hereby covenants and agrees that it will on the effective date of this lease, and its yearly anniversary thereafter, furnish to the Lessor a statement showing the total membership of said

Lessee as of that date and the rental for that year of Two Dollars (\$2.00) per year for each member and One Dollar (\$1.00) per year for each junior member which shall be computed and fixed upon the membership as of the yearly anniversary of the effective date of this lease. The rental so calculated, or the sum of Two Hundred Fifty Dollars (\$250.00), whichever sum is greater, shall be payable within thirty (30) days after the effective date of this lease and its annual anniversaries.

In addition to the aforesaid rental, Lessee agrees to pay to Lessor within ten (10) days after the effective date of this lease the sum of Two Hundred Eight Dollars (\$208.00) as and for the payment in full for the installation of a 2-inch water service previously installed to the demised premises by the Lessor.

Third. The Lessee agrees that the leased premises shall be used only and exclusively for the construction, maintenance and operation of buildings, piers, and floats for use as a "non-profit making" yacht club and for no other purpose whatsoever without consent of the Harbor Commission, evidenced by resolution first had and obtained.

It is mutually understood and agreed that the piers and slips for the mooring of pleasure craft shall be constructed at the same time as the club house, and Lessee expressly agrees that in no event shall there be maintained in a safe and useable condition less than one (1) slip for 3500 square feet of water covered area. It is further mutually understood and agreed that any restaurant or bar operation permitted under

the terms of this lease shall be designed primarily for the use by members of the Silver Gate Yacht Club and that it is not the intent of the parties hereto to permit an operation of a restaurant and bar for use by the general public or as a primary activity on the demised premises.

In connection with the above intent and the use of the premises, the Harbor Commission shall at all times during the term of this lease, have the authority to modify the provision of this lease as it pertains to this paragraph, which modification shall be evidenced by resolution of the Harbor Commission.

Fourth. The Lessee expressly covenants and agrees that it will within 120 days after the effective date of this lease have constructed to substantial completion the central section of the club house, piers, floats, fence, landscaping, paving and other improvements at a cost of approximately Twenty-Five Thousand Dollars (\$25,000); and that within five (5) years after the effective date of this lease will have constructed to completion the club house consisting of the central section and two adjoining wings as shown on the drawing filed with the Harbor Department on the 8th day of March, 1936; provided, however, that such building, piers, floats, fences, landscaping, surfacing and other improvements shall not be built or installed except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

It is mutually understood and agreed that Lessee will either pave or plant ground cover, at its own cost and expense,

over the entire area of the leased premises not covered by the club house or other landscaping.

It is mutually agreed that the Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to be built, made or installed thereon any other buildings or other structures, or any machines, appliances, utilities, signs, or other improvements necessary or desirable for its use of said premises, and may alter and repair any such buildings, structures, machines, and other improvements; provided, however, that such alterations and changes shall not be made and such buildings, structures, machines, appliances, utilities, signs and other improvements shall not be built or installed, and major repairs thereto shall not be made except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

Fifth. Lessee agrees that it will at all times save Lessor free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs or alterations on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs or alterations are made or constructed on the leased premises by other than the Lessor, the Lessee shall file with the Lessor 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 Port Director. 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 lienholder attempts to perfect such lien by a lawsuit and the Lessee has failed to comply with the requirements of this paragraph, this lease shall automatically terminate five (5) days after service of summons in such lawsuit upon the Lessor; provided, however, that the Port Director shall have the right to continue this lease in full force and effect by notifying the Lessee in writing of his election so to do.

Sixth. The Lessee agrees not to assign or transfer the whole or any part of this lease or any interest therein, nor to sublease the whole or any part of the leased premises, nor to permit the occupancy of any part thereof by any other person, without the consent of the Harbor Commission evidenced by resolution first had and obtained. Lessee further agrees that no assignment, voluntary or involuntary, in whole or in part, of this lease or any interest therein, and no sublease of the whole or any part of the leased premises and no permission to any person to occupy the whole or any part of the leased premises, shall be valid or effective without the said consent of the Harbor Commission first had and obtained.

Seventh. It is mutually agreed that the Lessee shall

keep and maintain the leased premises and all improvements of any kind which may be erected, installed or made thereon by the Lessee in good and substantial repair and condition including the painting thereof, and shall make all necessary repairs and alterations thereto, and that the Lessor shall not be required at any time to make any improvements or repairs whatsoever on or for the benefit of the leased premises. Lessee further agrees to provide proper containers for trash and garbage, and to keep the demised premises free and clear of rubbish, debris and litter at all times. The Lessor shall at all times during ordinary business hours have the right to enter upon and inspect said premises.

Eighth. It is mutually agreed that any installations or improvements placed on the leased premises shall, at the expiration of this lease or the sooner termination thereof, except as provided in Paragraph Thirteenth, become the property of the Lessor; provided, however, Lessee agrees to remove any such installations or improvements within thirty (30) days after the expiration of this lease or sooner termination thereof, should Lessor request Lessee to do so in writing, and should Lessee fail to do so, Lessor shall have the right to sell, remove or demolish the same and Lessee agrees to pay Lessor any expense incurred therewith. It is further agreed that on the expiration of this lease, provided Lessee is not in default hereunder, Lessee shall have the right to remove all machines, appliances, piles, floating equipment and trade fixtures placed on the leased premises by Lessee and peculiar to the conduct of Lessee's business; provided, however, Lessee

agrees to repair any and all damage occasioned by the removal thereof; and if any such machines, appliances, piles, floating equipment or trade fixtures are not removed within thirty (30) days after the expiration of this lease, the same may be considered as abandoned and shall thereupon become the property of Lessor; except that the Lessor shall have the right to sell, remove or demolish the same and Lessee agrees to pay Lessor any expense incurred therewith.

Ninth. The Lessee agrees to pay before delinquency all taxes and assessments assessed or levied upon the Lessee or the leased premises by reason of any 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 premises and to pay any fees imposed by law for licenses or permits for any business or activities of the Lessee upon the leased premises or under this lease, and to pay before delinquency any and all charges for utilities at or on the leased premises.

Tenth. It is mutually agreed that in the event the Lessee is adjudicated bankrupt or insolvent or makes any assignment for the benefit of creditors, or in the event of any judicial sale of the Lessee's interest under this lease, this lease shall at the option of the Lessor immediately terminate and all rights of the Lessee hereunder shall immediately cease and terminate.

Eleventh. The Lessee agrees that the Lessor shall not be nor be held liable for any damage to the goods, properties

or effects of the Lessee or any of the Lessee's representatives, agents, employees, guests, licensees, invitees, or of any other person whatsoever, nor for personal injuries to or deaths of them caused by or resulting from any act or omission of any person on the premises or from any defect in any part thereof. The Lessee further agrees to indemnify and save free and harmless the Lessor and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by the Lessor on account of any claim or claims therefor.

Twelfth. The Lessee agrees to take out public liability insurance with an insurance carrier satisfactory to Lessor 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 the Lessee or any person acting for them or under their control or direction, or any person authorized by them to use the leased premises, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of the Lessee or any person, or any person acting for them or under their control or direction, or any person authorized by them to use the leased premises.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in amounts of not less than \$100,000 for one

person injured in one accident, and not less than \$200,000 for more than one person injured in one accident, and in the amount of not less than \$50,000 with respect to any property damage aforesaid. The policy shall carry an endorsement which agrees to accept the hold harmless provisions set forth above.

Certificates of such insurance shall be filed with the Lessor and shall be satisfactory in form to the Lessor. Said policies shall have a non-cancellation-without-notice clause and shall provide that copies of all cancellation notices shall be sent to Lessor.

Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the Lessee may be held responsible for the payment of damages to persons or property resulting from their activities or the activities of any person or persons for which they are otherwise responsible.

Thirteenth. If at any time during the term of this lease, or any extension thereof, the tenancy hereunder shall interfere with the use of any of the tidelands of San Diego Bay, or in any manner become inconsistent with the trust under which the said tidelands are held from the State of California, the City shall have the right to terminate this lease upon one (1) year's notice and the payment to the Lessee of reasonable compensation, which shall be based upon and limited to compensation for the actual value at the time of the termination of this lease of such improvements constructed upon the demised premises by the Lessee as are authorized or permitted under the terms of this lease, and which are not subject to

removal by Lessee as hereinabove set out, but shall not be held to include or require compensation to be paid in any amount to the Lessee for any damage to or interference with or the loss of business or franchise occasioned by any such termination. In the event an agreement cannot be reached as to the amount of compensation for actual value at the time of termination, the matter should be submitted to a board of arbiters as described in Paragraph Second hereinbefore set forth.

Fourteenth. If the whole or a substantial part of the premises hereby leased shall be taken by any paramount public authority under the power of eminent domain, then the term of this lease shall cease as to the part so taken, from the day the possession of that part shall be required for any public purpose, and the rent shall be paid up to that day, and from that day the Lessee shall have the right either to cancel this lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of the Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that the Lessor shall not be entitled to any portion of the award made to the Lessee for loss of business, or to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee as provided in Paragraph Eighth

of this lease.

Fifteenth. It is mutually understood and agreed that if any default be made in the payment of the rental herein provided, or in the performance of the covenants, conditions or agreements hereof, or should the Lessee fail to fulfill in any manner the uses and purposes for which the said premises are leased as above stated, and such default shall not be cured within ten (10) days after written notice thereof, the Lessor shall have the option to immediately terminate this lease; and that in the event of such termination, the Lessee shall have no further rights hereunder and the Lessee shall thereupon forthwith remove from said premises and shall have no further right or claim thereto, and the said Lessor shall immediately thereupon without recourse to the courts have the right to re-enter and take the possession of the leased premises.

Sixteenth. The Lessee agrees that upon the termination of this lease by the expiration thereof, or the earlier termination as by the terms of this lease provided, the Lessee will peaceably yield up and surrender the leased premises and the whole thereof and allow the Lessor to take peaceable possession thereof.

Seventeenth. It is mutually agreed that if the Lessee shall hold over after the expiration of this lease for any cause, such holding over shall be deemed a tenancy from month to month only, at the same rental per month and upon the same terms, conditions and provisions of this lease, unless other terms, conditions and provisions be agreed upon in writing by the Lessor and the Lessee. Such holding over shall include any time employed by the Lessee to remove machines, appliances,

and other improvements, during the thirty (30) day period hereinabove mentioned for such removal.

Eighteenth. It is mutually agreed that any waiver by the Lessor of any breach of any one or more of the covenants, conditions or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of the Lessor 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 the Lessor 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 Lessor and the Lessee.

Nineteenth. Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove from the premises, within thirty (30) days, all ships, vessels, barges, hulls, debris, surplus and salvage materials both on the land area and the water area forming a part of or adjacent to the premises hereinabove described, so as to leave the same in as good a condition as when first occupied by the Lessee; provided, however, that if any of said ships, vessels, barges, hulls, debris, surplus or salvage materials shall not be so removed within thirty (30) days by Lessee, the Lessor may remove and/or sell and/or destroy the same at the expense of the Lessee and the Lessee hereby agrees to pay to the Lessor the reasonable cost of

any such removal, sale or destruction; or at the option of the Lessor, the title to said ships, vessels, barges, hulls, debris, surplus or salvage materials not removed shall become the property of the Lessor and title therein shall rest in the Lessor.

Twentieth. The Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines and other improvements, it will abide by and conform to all rules and regulations prescribed by the City Charter of the City of San Diego, any ordinances of said City, including the Building Code thereof, and any general rules of the Harbor Commission of the said City and the Fire Department of the said City, and any applicable laws of the State of California, as any of the same may now exist or be hereafter promulgated or amended; provided, however, notwithstanding any of the foregoing, Lessee shall be required to install a shake-shingle roof in conformance with the general plans for the development of Shelter Island.

Twenty-First. It is mutually agreed that any notice or notices provided for by this lease or by law to be given or served upon the Lessee may be given or served by registered letter addressed to the Lessee at the leased premises, deposited in the United States mail, or may be served personally upon the said Lessee or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided by this lease or by law to be served upon the Lessor may be given or served by registered letter addressed

to the Port Director of the Lessor at 1365 North Harbor Drive, San Diego, California, deposited in the United States Mail, or may be served personally upon said Port Director or his duly authorized representative, and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

Twenty-Second. It is mutually agreed that time is of the essence of each and all of the terms and provisions of this lease and that this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of the Lessee as fully and to the same extent as though specifically mentioned in each instance, and that all covenants, stipulations and agreements in this lease shall extend to and bind any assigns and sublessees of the Lessee.

IN WITNESS WHEREOF, the City has executed the foregoing lease by and through the Harbor Commission of said City and the Lessee has caused this lease to be executed the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By _____

Members of the Harbor Commission
of The City of San Diego

SILVER GATE YACHT CLUB

By _____

I HEREBY APPROVE the form and legality of the foregoing lease this _____ day of _____, 1956.

J. F. DuPAUL, City Attorney

By _____
Deputy City Attorney

DOCUMENT NO. 531967

FILED MAR 16 1956

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Form of Tideland Lease
with Silver Gate Yacht Club

MAR 22 1956

132117