

## **CITY OF SAN DIEGO**

### **RIGHT OF ENTRY PERMIT**

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between THE CITY OF SAN DIEGO, a municipal corporation ("City"), and CHARLES E. FISHER, ("Permittee").

1. Right to Enter. City hereby grants permission to Permittee to enter upon that portion of the Ocean Beach Municipal Pier that extends from the Ocean Front Walk to the turn around point on the pier, as shown on the attached Exhibit "A" ("Permit Area"), upon the terms and conditions set forth below.
2. Use of Permit Area. Permittee and Permittee's vendors, suppliers, technicians, and repair service providers ("Contractors") shall have non-exclusive use of the Permit Area for access to deliver supplies and provide routine maintenance and urgent repairs to the restaurant and bait and tackle shop ("Restaurant") operated by Permittee under the Percentage Lease dated February 22, 2000, City Clerk Document No. RR-292771, during the hours set forth below.

Permittee shall access the Permit Area for deliveries only between the hours 6:00 a.m. and 1:00 p.m. Monday through Saturday. Contractors shall access the Permit Area for deliveries and provide routine services to the Restaurant only between the hours of 6:00 a.m. and 10:00 a.m., Monday through Saturday. Access for urgent repair services shall be permitted from 8:00 a.m. to 9:00 p.m. daily provided that Permittee notifies the City in advance by calling 619 235-1100, if the access is needed between 6:00 a.m. and 4:00 p.m. Monday through Friday, or by calling 619 527-7660, if the access is needed after 4:00 p.m., or on weekends. Permittee or contractors are not allowed to enter the Permit Area on a vehicle with a gross weight exceeding five (5) tons.

The City may deny use of the Permit Area at any time due to storms, to perform repairs or for any other reason that requires closure of the Ocean Beach Municipal Pier. Permittee agrees to insert the provisions of this Section 2, Use of Permit Area, in all agreements with its Contractors for the use of the Permit Area, and to notify its Contractors of the hours for authorized access to the Permit Area.

3. Permit Fee. Consideration to City for granting this Permit shall be a Six Hundred Dollar (\$600) non-refundable processing fee. Processing fee should be made by check payable to the City Treasurer and mailed to the Office of the City Real Estate Assets Department, 1200 Third Avenue, Suite 1700, San Diego, CA 92101 or delivered to the Office of the City Real Estate Assets Department, Civic Center Plaza, 1200 Third Avenue, Seventeenth Floor, San Diego, CA 92101, before executions of the Permit by the City.
4. Effective Date. This Permit shall be in effect upon execution by City and Permittee and as of the approval date of the City Attorney ("Effective Date") and shall expire on December 1, 2006.

5. Insurance. Prior to City Attorney approval of this Permit, Permittee shall deliver to City a certificate of insurance for public liability, property damage, and auto liability in which "The City of San Diego, its elected officials, officers, representatives, agents and employees" are named as additional insured, in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.
6. Hold Harmless. Permittee agrees to defend, indemnify, protect, and hold City, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees.
7. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
8. Permittee's Risk. All risks in connection with Permittee's and its Contractors use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee. City shall not under any circumstances be liable to Permittee or its Contractors for any expenses, costs, or damages caused by closure of the Ocean Beach Municipal Pier.
9. Nuisance. Permittee and/or contractors shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that 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 for expense or loss which Permittee might incur as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.

11. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
12. Compliance with Laws. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.
13. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
14. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
15. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted against the Permit Area (including without limitation Permittee's failure or the failure of any contractor or subcontractor hired by Permittee) to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections.
16. Maintenance of the Permit Area. Permittee shall be solely responsible for any damage repair and removal of hazardous waste/materials from the Permit Area in all instance should it be caused by Permittee use of the Permit Area.
17. Governmental Approvals. By the granting of this Permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: 11/25/03

By: Carol A. Rhode  
Deputy Director

CHARLES E. FISHER

Date: 1-5-04

By: [Signature]  
Name: Charles E. Fisher  
Title: Permittee

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

ENVIRONMENTAL ANALYSIS SECTION  
ENVIRONMENTAL CLEARANCE:

Date: January 6, 2004

By: Kenneth Teasley

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Date: April 12, 2004

By: [Signature]  
Deputy City Attorney

VEB/cdj  
11/06/03

C:\Documents and Settings\vbaloisky\Local Settings\Temp\REP-FISHER.wpd

mon

OCEAN FRONT WALK

NEWBORN

THE NIAGARA

WIPRAGAN:

1300

OCEAN BEACH  
MUNICIPAL PIER

NORTH

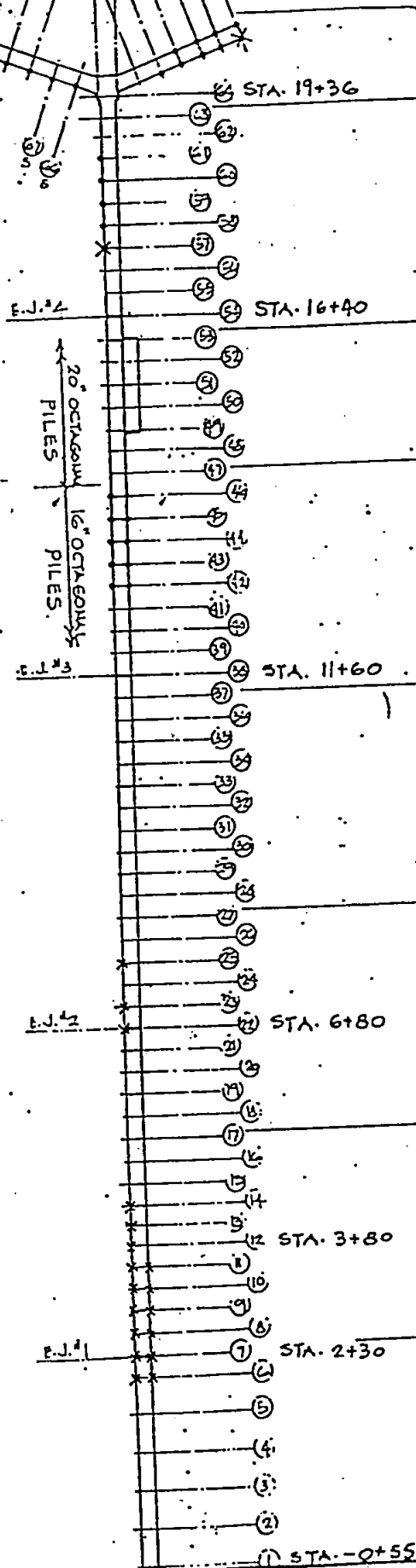
PERMIT AREA

LEASE AREA:  
"RESTAURANT"  
& Public Rest Room

13.5.51  
21.5.51

TURN AROUND AREA

# EXHIBIT A



15 SHEETS 10, 11, 12, 20, 21, 22  
NORTH TO SOUTH

SHEETS 9, 19

SHEETS 8, 18

SHEETS 7, 17

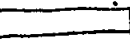
SHEETS 6, 16

SHEETS 5, 15

SHEETS 4, 14

SHEETS 3, 13

PERMIT AREA



SCALE: 1" = 150'

CLIENT: CITY OF SAN DIEGO  
PROJECT: O.B. PIER  
SUBJECT: PIER PLAN (REFERENCE)

W.Q. NO 86039  
DATE 8-14-87  
BY CBS  
SHEET 2 OF

DEL. MONT.

NORTH

Concession Building  
& Public Rest Room

# EXHIBIT A