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THE CITY OF SAN DIEGO
EBBCO INDUSTRIES,
EVERINGHAM-BROS.-BAIT-COMPANY, INC.

Flat Rate Lease

94 7
95 8
96 9
97 10
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## LEASE OUTLINE

| <u>SECTION</u>                                     | <u>PARAGRAPH</u>                                     | <u>PAGE</u> |
|----------------------------------------------------|------------------------------------------------------|-------------|
| <b>SECTION 1: USES</b>                             |                                                      |             |
| 1.01                                               | Premises                                             | 1           |
| 1.02                                               | Uses                                                 | 1           |
| 1.03                                               | Related Council Actions                              | 1           |
| 1.04                                               | Quiet Possession                                     | 1           |
| 1.05                                               | Easements and Reservations                           | 2           |
| 1.06                                               | Competent Management                                 | 2           |
| 1.07                                               | Political Activities                                 | 2           |
| <b>SECTION 2: TERM</b>                             |                                                      |             |
| 2.01                                               | Commencement                                         | 3           |
| 2.02                                               | Holdover                                             | 3           |
| 2.03                                               | Quitclaim and Surrender of LESSEE'S Interest         | 3           |
| <b>SECTION 3: RENT</b>                             |                                                      |             |
| 3.01                                               | Time and Place of Payment                            | 3           |
| 3.02                                               | Rent                                                 | 4           |
| 3.03                                               | Inspection of Records                                | 5           |
| 3.04                                               | Delinquent Rent and Audit Fees                       | 5           |
| 3.05                                               | Inspection of Records                                | 6           |
| <b>SECTION 4: ASSIGNMENT</b>                       |                                                      |             |
| 4.01                                               | Time is of Essence; Provisions Binding on Successors | 6           |
| 4.02                                               | Assignment and Subletting                            | 6           |
| 4.03                                               | Defaults and Remedies                                | 7           |
| 4.04                                               | Eminent Domain                                       | 9           |
| 4.05                                               | Partnership Liability                                | 10          |
| <b>SECTION 5: INSURANCE RISKS/SECURITY</b>         |                                                      |             |
| 5.01                                               | Indemnity                                            | 10          |
| 5.02                                               | Insurance                                            | 11          |
| 5.03                                               | Waste, Damage, or Destruction                        | 12          |
| <b>SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS</b> |                                                      |             |
| 6.01                                               | Acceptance of Premises                               | 13          |
| 6.02                                               | Entry and Inspection                                 | 13          |
| 6.03                                               | Maintenance                                          | 14          |
| 6.04                                               | Improvements/Alterations                             | 14          |
| 6.05                                               | Utilities                                            | 14          |
| 6.06                                               | Construction Bond                                    | 14          |
| 6.07                                               | Liens                                                | 14          |
| 6.08                                               | Taxes                                                | 15          |
| 6.09                                               | Signs                                                | 15          |

## LEASE OUTLINE

| <u>SECTION</u>    | <u>PARAGRAPH</u>                                     | <u>PAGE</u> |
|-------------------|------------------------------------------------------|-------------|
|                   | 6.10 Ownership of Improvements and Personal Property | 15          |
|                   | 6.11 Unavoidable Delay                               | 16          |
| <b>SECTION 7:</b> | <b>GENERAL PROVISIONS</b>                            |             |
|                   | 7.01 Notices                                         | 16          |
|                   | 7.02 Compliance with Law                             | 16          |
|                   | 7.03 CITY Approval                                   | 16          |
|                   | 7.04 Nondiscrimination                               | 16          |
|                   | 7.05 Equal Opportunity                               | 17          |
|                   | 7.06 Partial Invalidity                              | 17          |
|                   | 7.07 Legal Fees                                      | 17          |
|                   | 7.08 Number and Gender                               | 17          |
|                   | 7.09 Captions                                        | 17          |
|                   | 7.10 Entire Understanding                            | 17          |
|                   | 7.11 CITY Employee Participation Policy              | 18          |
|                   | 7.12 Corporate Authority                             | 18          |
|                   | 7.13 Standard of Employees                           | 18          |
|                   | 7.14 Supersedure                                     | 18          |
|                   | 7.15 Damaged Equipment                               | 18          |
|                   | 7.16 Operation                                       | 19          |
|                   | 7.17 Bait Shortage                                   | 19          |
|                   | 7.18 Equipment                                       | 19          |
|                   | 7.19 Cleaning Area                                   | 20          |
|                   | 7.20 Option to Terminate                             | 20          |
| <b>SECTION 8:</b> | <b>SIGNATURES</b>                                    |             |
|                   | 8.01 Signature Page                                  | 21          |
| <b>SECTION 9:</b> | <b>EXHIBITS</b>                                      |             |
|                   | 9.01 Corporate Name                                  | 22          |

CITY OF SAN DIEGO  
FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and EBBCO INDUSTRIES, INC., a California Corporation, hereinafter called "LESSEE."

SECTION 1:     USES

- 1.01 Demised Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, being that certain area of water containing approximately 8,990 square feet with a length of 290 feet by a width of 31 feet, more or less, within Quivira Basin, Mission Bay Park, described and delineated on Exhibit "A" attached hereto and by this reference made part of this agreement, or as otherwise designated by mutual written agreement between LESSEE and the City Manager, of CITY throughout the term hereof. Said real property is hereinafter called the "premises."
- 1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the maintenance and operation on said premises of a fishing bait concession providing a retail and wholesale live-bait and/or frozen bait supply as hereinafter set forth in Section 7.16, Operation, hereof, and for no other purpose.
- LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.
- 1.03 Related Council Actions. By the granting of this lease, 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 premises. 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 leased premises.
- 1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to

LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a fishing bait concession and related activities in a fiscally responsible manner.

1.07 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

## SECTION 2: TERM

- 2.01 Commencement and Termination. The term of this agreement shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. Prior to the expiration or termination of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

## SECTION 3: RENT

- 3.01 Time and Place of Payment. Rent is due quarterly in advance on or before the first day of each calendar quarter. All rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar quarter. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.02 Rent. The rent during the entire term of this agreement is payable to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, San Diego, California 92101, quarterly in advance beginning on the effective date hereof. For the first five-year period of this agreement, the rent shall be the sum of Four Thousand Eight Hundred and No/100 Dollars (\$4,800.00) per quarter payable on January 1, April 1, July 1, and October 1, of each lease year. Rent for the initial period shall be prorated from the effective date hereof to the first quarterly date following execution.

The rent for the remaining term of this agreement shall be payable quarterly in advance and shall be adjusted upward at the expiration of the first five-year period according to the following method of computation:

The adjustment shall be determined by multiplying the rent which is effective immediately prior to said adjustment by the "Adjustment Figure" established in the method outlined in the following paragraph:

The "Adjustment Figure" used to adjust the rent as specified above shall be established by dividing the "Current Index" by the "Base Figure."

The "Current Index" shall be a three-month average of index figures published by the Bureau of Labor Statistics Consumer Price Index (CPI) for the Los Angeles/Long Beach area. The three months to be used to establish said average shall be the fourth, fifth and sixth calendar months preceding the adjustment date.

The "Base Figure" shall be a three-month average of index figures from the same source as established above and using the fourth, fifth and sixth calendar months preceding the date of execution of this agreement.

Example: 
$$\frac{\text{Current Index } 121}{\text{Base Figure } 110} = 1.10 \text{ (Adjustment Figure)}$$

Effective Rent x 1.10 = Adjusted Rent

5-1-93 - 149.13  
5-1-89

In the event the CPI for the Los Angeles/Long Beach area, "All Items", is no longer published, the index for the adjustment date shall be the one reported in the U. S. Department of Labor's Comprehensive Official Index most nearly answering the foregoing description of an Index for the San Diego area. If an index is calculated from a base different from the base period 1967 = 100, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

If the above-described Department of Labor indexes are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If the parties hereto are unable to agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Notwithstanding the publication dates of the index, the effective date of the rent adjustment is at the expiration of the first 5-year period. Until said rent adjustment can be reasonably determined by index publication, LESSEE shall continue to make rental payments pursuant to this lease at the same rent in effect during the preceding rental period. Upon determination of the rental adjustment, overpayments of rent shall be credited to the LESSEE'S rental account and underpayments of rent shall be immediately paid to the CITY.

- 3.03 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years. It is understood that any records pertaining to the profitability and/or personal finances of the LESSEE shall be deemed confidential and shall be returned to the LESSEE.
- 3.04 Delinquent Rent. If LESSEE fails to pay the rent when due, 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, 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.

- 3.05 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

#### SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment

and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

It is mutually understood and agreed that Everingham Bros. Bait Company, Inc., presently leases the vessels and other equipment from EBBCO Industries, Inc., and, therefore, this relationship does not apply to Section 4.02.

#### 4.03 Defaults and Remedies.

a. Default. In the event that:

- 1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- 2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- 3) LESSEE shall be adjudicated a bankrupt; or
- 4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.03 Defaults and Remedies, hereof, is not curable within thirty (30) days after service of written notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from service of such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to

commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- 1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- 2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.
- 3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY

expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.04 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the

lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.05 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant and condition and each general partner is jointly and severally liable for performance under this lease.

## SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- b. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without thirty (30) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- c. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

- d. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- e. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof.

LESSEE agrees that preliminary steps 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. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

## SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.

In the event the channel is closed for any reason, or the minimum depth at mean low tide under the water surface of the premises is insufficient to accommodate the bait receiver, except weather conditions, in excess of 24 consecutive hours, LESSEE's rental will be abated for the period of closure in excess of 24 consecutive hours.

- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.03 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Appropriate codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.
- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground or under water, where applicable.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.09 Signs. The type, color, size and design of all exterior signs installed on the leased premises shall be subject to the prior written approval by City Manager.

6.10 Ownership of Improvements and Personal Property.

- a. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- b. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- c. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.

- 6.11 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized state, if required, body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit, but if unable to do so within three (3) months after the date of this lease, this lease will terminate.

## SECTION 7: GENERAL PROVISIONS

### 7.01 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager  
Attention Property Director  
City Administration Building  
202 "C" Street, M.S. 9B  
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.02 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.03 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital

status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any

objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.14 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the tenth day of January, 1977, with Everingham Brothers Bait Company, Document 757877, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.15 Damaged Equipment. LESSEE shall salvage within 24 hours any property, real or personal, of LESSEE'S declared by CITY to be a menace to navigation or a nuisance within Mission Bay and to salvage or cause to be salvaged any sunken vessel or property of the LESSEE upon the leased premises. CITY may require that any boats of the LESSEE not kept in a clean and operable condition be removed from the leased premises.

7.16. Operation. LESSEE shall offer for sale live fishing bait and/or frozen bait in adequate quality and quantity to serve the wholesale and retail trades in the Mission Bay Park area, continuously throughout the term of this lease on such days and hours as will properly serve the public in the opinion of the City Manager. LESSEE shall maintain wholesale and retail prices for said live bait, as well as any other bait and bait equipment sold by LESSEE, commensurate with the prevailing prices of like bait quantities sold in San Diego Bay. The prices for all sales and services shall be approved by the City Manager and prominently displayed on said premises by LESSEE during all hours of operation. LESSEE shall not thereafter increase said prices without approval of the City Manager, provided, however, LESSEE shall not be required to sell fishing bait on said premises at prices lower than the prevailing prices of like bait quantities sold in San Diego Bay, provided further, LESSEE may increase bait prices in Mission Bay independent of San Diego Bay prices upon the written approval of the City Manager if the rental adjustment set out in Section 3 Rent. hereinabove results in an upward rental payment to CITY.

7.17 Bait Shortage. In the event of bait shortages beyond the reasonable control of LESSEE to supply adequate quantities of bait in accordance with Section 7.16, Operation, hereof, then, to the best of LESSEE'S ability and judgement to so do, LESSEE shall 1) reduce the amounts of bait sold to those sportfishing fleets based in Mission Bay to the minimum supply necessary to maintain sportfishing operations and 2) reduce the individual amounts of bait sold to the general public to the minimum supply necessary to serve the most individuals seeking purchase of the available bait supply.

7.18 Equipment. LESSEE shall maintain a minimum of 20 bait receivers, of which seven are approximately 16 by 21 surface feet each and 12 are approximately 22 by 15.5 feet and one attending barge of approximately 20 x 25 surface feet with shelter house. LESSEE shall also maintain sufficient oceangoing fishing vessels fully equipped for catching live-bait and hauling such bait to the Mission Bay bait receivers as required. LESSEE may add additional bait receivers, barges and other equipment as necessary in his opinion to fulfill the purposes of this lease provided that such addition does not occupy an area in excess of the leased premises.

LESSEE will equip and maintain his installation with adequate utilities, self-contained or otherwise, without cost therefor to CITY and shall provide at all times throughout said term such navigational aids required by CITY to be placed upon any of LESSEE'S equipment. LESSEE shall maintain said equipment in good repair and in a clean and sightly condition throughout said term.

LESSEE will provide for night operation such sound suppressing devices on all generators, pumps, engines and any other motorized device as approved by CITY'S Noise Abatement and Control Officer. LESSEE shall remove within twenty-four hours any property of LESSEE, real or personal, declared by the City Manager to be a hazard to navigation or a nuisance within Mission Bay Park and shall remove or cause to be removed any sunken, damaged or derelict vessel or property within; abutting or obstructing the leased premises.

- 7.19 Cleaning Area. CITY shall designate at least once each year during said term, following LESSEE'S written request therefor, a location on CITY premises for the temporary use by LESSEE for cleaning the bait storage equipment used in the operation of the leased premises. LESSEE shall not make use of any CITY premises for said equipment cleaning except at such locations so designated by CITY.
- 7.20 Option to Terminate. In the event CITY authorizes additional wholesale live bait businesses as live bait barges to establish within Mission Bay Park, then LESSEE shall have the option to terminate this lease and surrender the premises to CITY upon ninety (90) days following written notice thereof to CITY rendered at any time after commencement of the operations of such additional business.

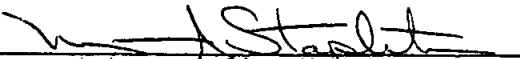
SECTION 8: SIGNATURES

8.01 Signature Page

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

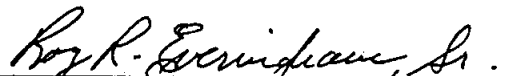
THE CITY OF SAN DIEGO

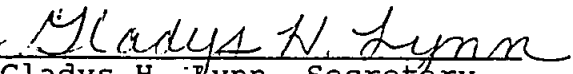
Date APR 6 1987

By   
DEPUTY City Manager

LESSEE:  
EBBCO INDUSTRIES, INC.

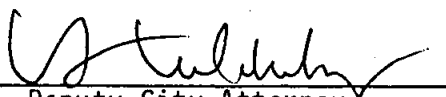
Date 3-16-87

By   
Roy R. Everingham, President

By   
Gladys H. Lynn, Secretary

APPROVED as to form and legality this 22 day of April, 19 87

JOHN W. WITT, City Attorney

By   
Deputy City Attorney

LDL:st(61-5)  
3-3-87

9.01 Corporate Name

EBBCO INDUSTRIES, INC.

CORPORATE NAME

I, Gladys H. Lynn, certify that I am the Secretary of the corporation named in the attached agreement; that Roy R. Everingham, who signed this agreement on behalf of the corporation, was then the President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on March 16, 1987 and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

By Gladys H. Lynn  
Gladys H. Lynn, Secretary

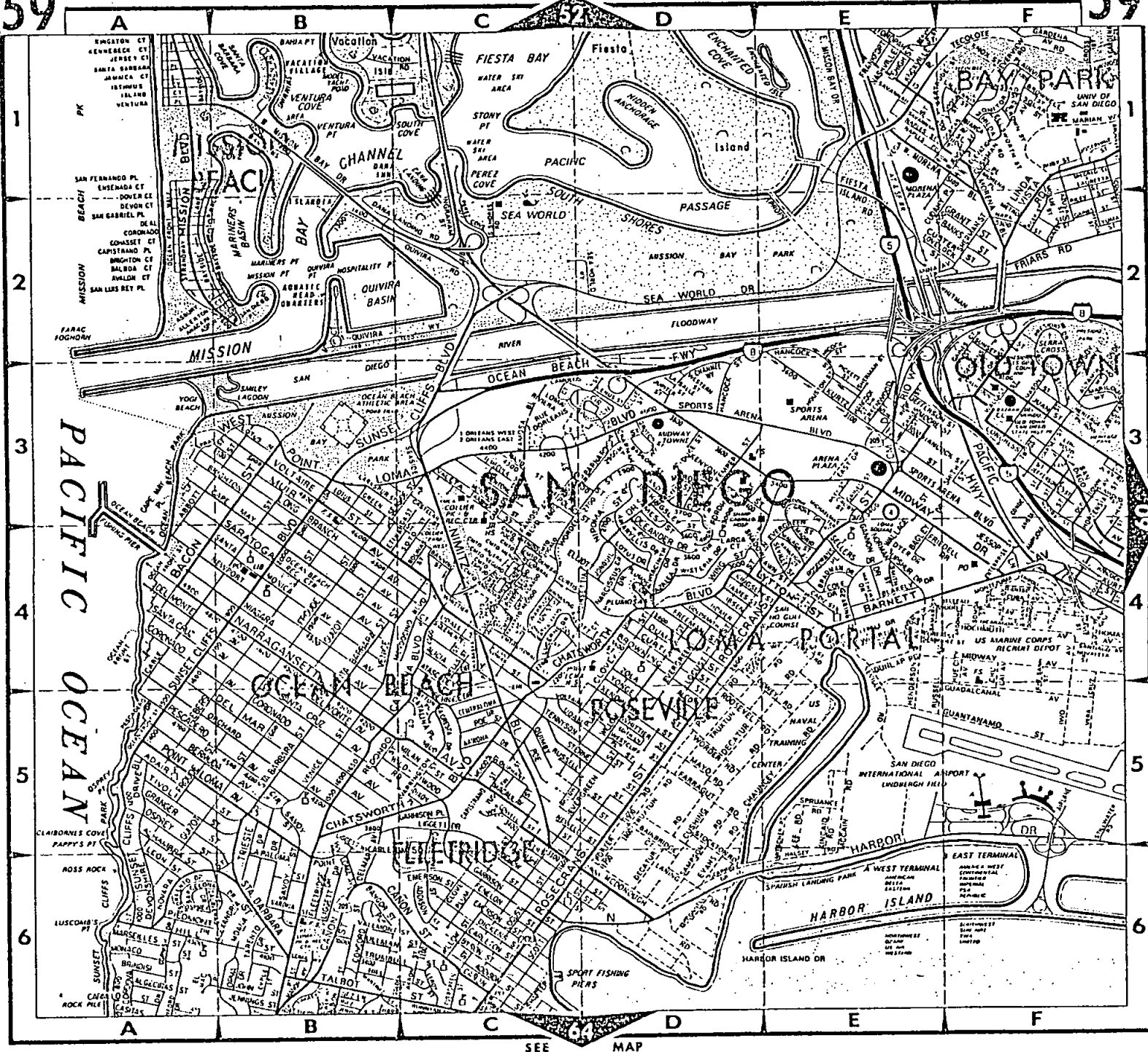
**CORPORATE SEAL**

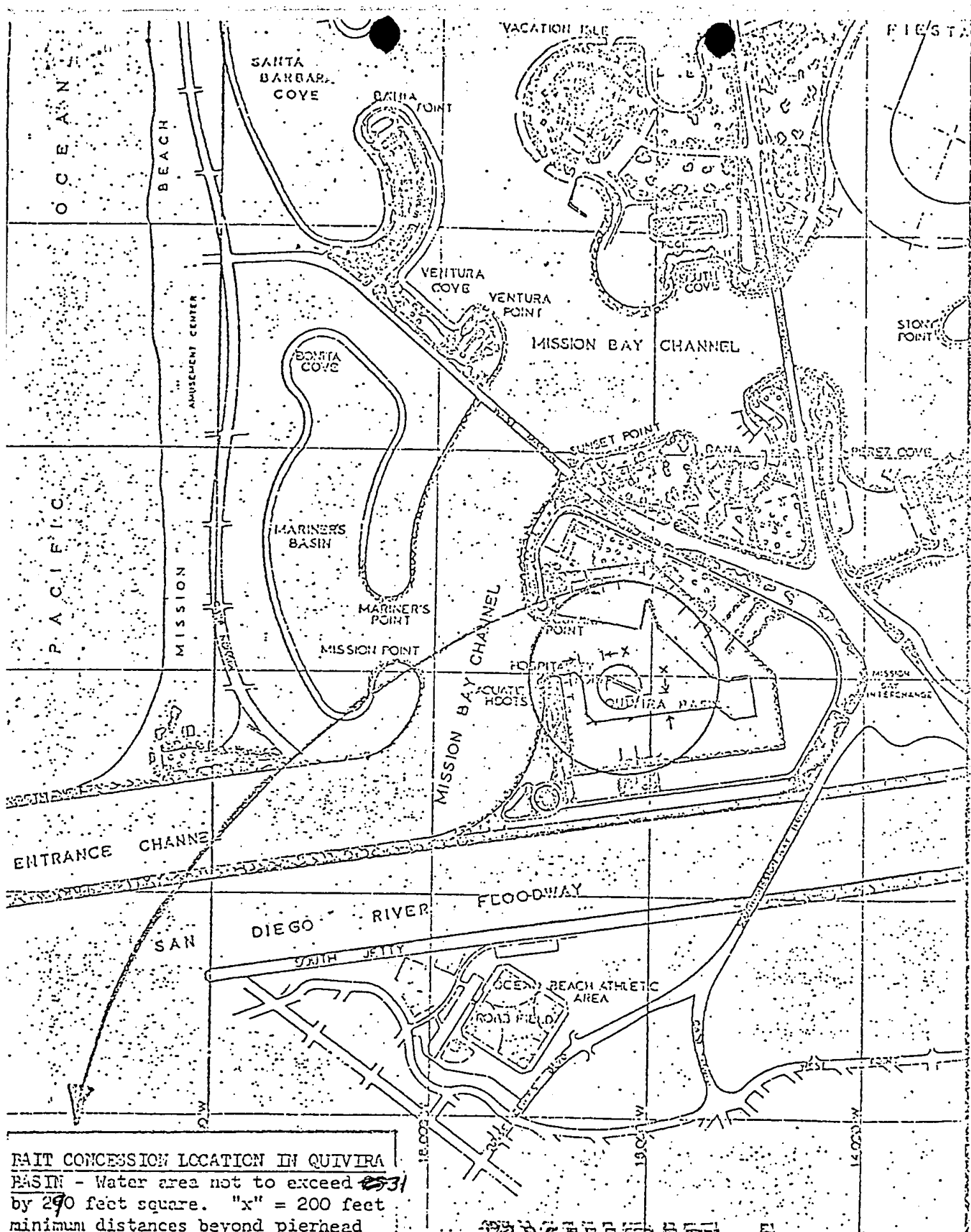
Name Roy R. Everingham  
Title President and Director

Name Gladys H. Lynn  
Title Secretary, Treasurer and Director

Name \_\_\_\_\_  
Title \_\_\_\_\_

Name \_\_\_\_\_  
Title \_\_\_\_\_





RAIT CONCESSION LOCATION IN QUIVIRA  
 BASIN - Water area not to exceed ~~2531~~  
 by 290 feet square. "x" = 200 feet  
 minimum distances beyond pierhead  
 or marina lease lines, whichever are  
 closer.

EXHIBIT A  
 MISSION BAY DADK

*Proposed 51A  
Lamb*  
(R-87-1910)

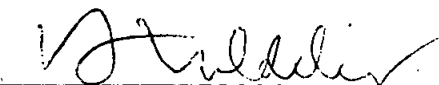
RESOLUTION NUMBER R- **268045**

ADOPTED ON **APR 6 1987**

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a ten (10)-year lease agreement with EVERINGHAM BROS. BAIT COMPANY, INC., for the operation and maintenance of a retail and wholesale live bait sales concession in Quivira Basin, Mission Bay Park, at an annual rent of \$19,200 for the first five years, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **268045**.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug  
Deputy City Attorney

HOV:ps  
03/23/87  
Or.Dept:Prop.  
Job:218932  
R-87-1910  
Form=r.none

RECEIVED

R-77-510

Property  
51-A

OCT 15 1976

PROPERTY DEPT.

RESOLUTION No.

216922

Adopted on OCT 6 1976

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

That the acceptance by the City Manager of the Proposal of EVERINGHAM BROTHERS BAIT COMPANY, in response to the Prospectus of June 14, 1976, soliciting proposals for the operation and maintenance of live bait barges in Quivira Basin, Mission Bay Park, is hereby approved.

APPROVED: JOHN W. WITT, City Attorney

By Harold Valderhaug  
Harold Valderhaug, Deputy

HOV:n  
9-20-76  
Job:12041  
Or. Dept. Property

RECEIVED

OCT 15 1976

PROPERTY  
R-77-511 574

RESOLUTION No. 216923 PROPERTY DEPT.

Adopted on OCT 6 1976

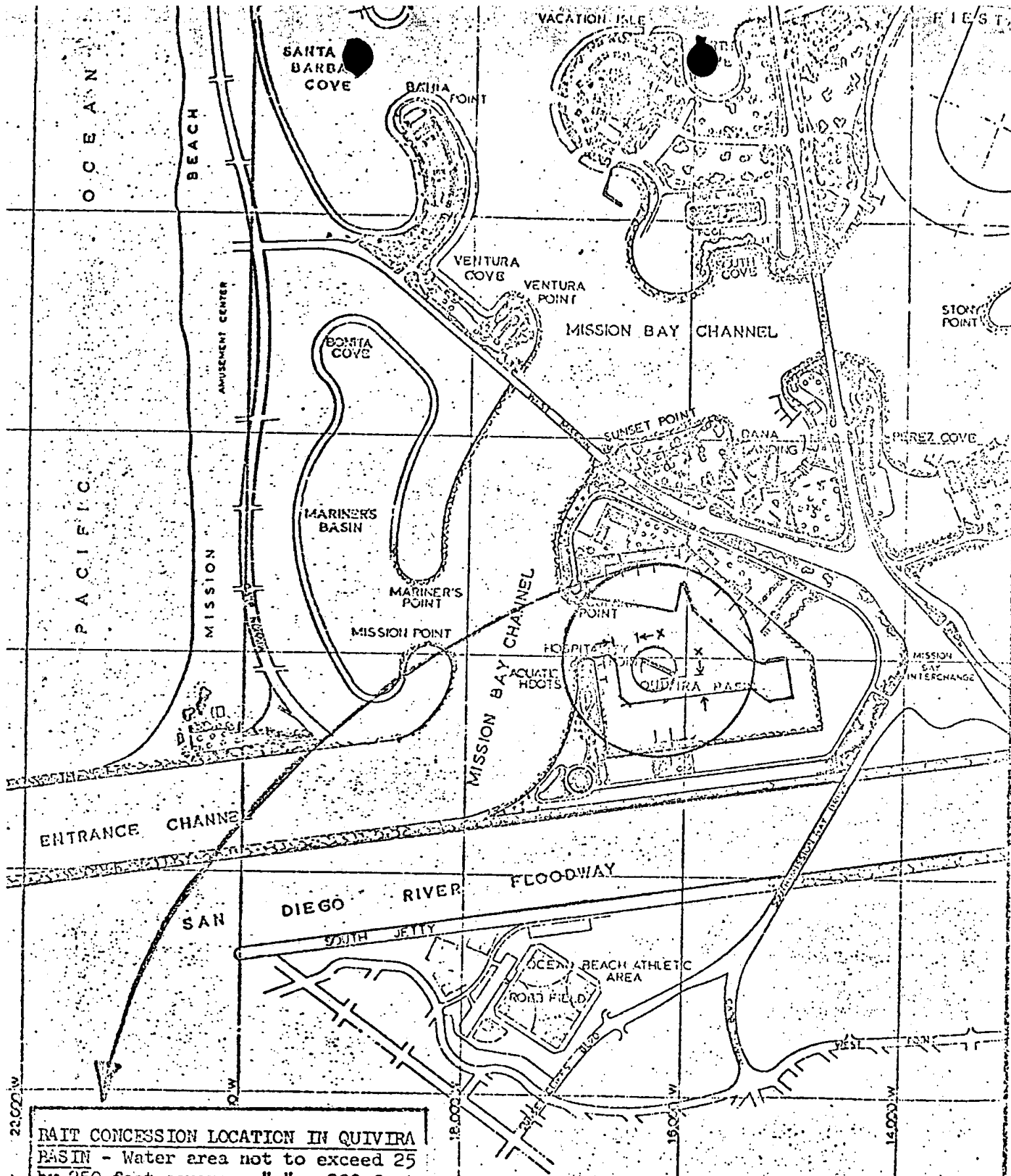
BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the Property Department of The City of San Diego is hereby authorized to negotiate a lease with the EVERINGHAM BROTHERS BAIT COMPANY for the operation and maintenance of live bait barges in Quivira Basin, Mission Bay Park, in accordance with Alternate No. 1 of the proposal submitted in response to the Prospectus of June 14, 1976.

APPROVED: JOHN W. WITT, City Attorney

By H. Valderhaug  
Harold Valderhaug, Deputy

HOV:n  
9-20-76  
Job:12041  
Or. Dept. Property



RAIT CONCESSION LOCATION IN QUIVIRA  
 BASIN - Water area not to exceed 25  
 by 250 feet square. "x" = 200 feet  
 minimum distances beyond pierhead  
 or marina lease lines, whichever are  
 closer.

# EXHIBIT A MISSION BAY PARK