

COPY



THE CITY OF SAN DIEGO

EVERINGHAM BROS. BAIT COMPANY, INC.

Lease Agreement

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SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into between THE CITY OF SAN DIEGO, a municipal corporation, ("CITY") and EVERINGHAM BROS. BAIT COMPANY, INC., a California corporation, ("LESSEE").

SECTION 1: USES

1.1 Premises.

CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property situated in the City of San Diego, County of San Diego, State of California, being that certain area of water in Mission Bay Park containing approximately 7,841 square feet with a length of 313 feet by a width of 30 feet, more or less described in Section 10.1 "General Location" attached to this Lease and by this reference made part of this Lease. The real property is hereinafter called the "Premises."

1.2 Uses.

The Premises are leased to LESSEE solely and exclusively for the purposes of the maintenance and operation of a fishing bait barge with an enclosed area for live-aboard staff and for storage of necessary supplies and twenty-six (26) underwater bait receivers for the retail and wholesale live-bait supply on the Premises, in accordance with the Development Plan referenced in Section 6.12 of this Lease, and for other related or incidental purposes as may be first approved in writing by the City Manager or his authorized representatives and for no other purpose whatsoever. The use of the Premises for any unauthorized purpose shall constitute a default and subject this Lease to termination at the sole option of the CITY. LESSEE shall use the Premises for the above-specified purposes and diligently pursue the purposes throughout the Term (defined in Section 2.1) of this Lease. Failure to continuously use the Premises for the purposes, or the use of the Premises for purposes not expressly authorized in this Lease, shall be grounds for termination by CITY.

1.3 Related Council Actions.

By entering into 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 rezoning, variances, environmental clearances, or any other governmental agency approvals which

may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the uses contemplated by this Lease, all at no cost to CITY.

1.4 Coastal Commission Approval.

LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the California Coastal Commission or other authorized body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE shall proceed with diligence to obtain any necessary permits. If LESSEE is unable to obtain the necessary permits within six (6) months after the Commencement Date of this Lease, this Lease will terminate at either CITY'S or LESSEE'S option expressed by thirty (30) days written notice to the other party.

1.5 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements in this Lease, 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 Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

1.6 Easements and Reservations.

- a. CITY 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 Premises for utilities, thoroughfares, or access as it deems advisable, in its sole discretion, 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 Premises resulting from CITY exercising the rights reserved in this section. The

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.

1.7 Competent Management.

Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a fishing bait concession and related activities in a safe and fiscally responsible manner.

1.8 Operation of Facilities.

A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 10.7 Schedule of Days and Hours of Operation of this Lease. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representatives. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

1.9 Political Activities.

The leased premises shall be used exclusively for the purposes specified in Section 1.2, 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.

SECTION 2: TERM

2.1 Term.

The term of this Lease shall be ten (10) years "Term". The Term of this Lease is effective following execution by the City Manager, and approval by City Attorney ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date, so that the Term shall expire on the last day of a calendar month. "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, and each succeeding 12-month period thereafter.

2.2 Option to Extend – Refurbishment and Renovation of Existing Boat House.

Within three (3) years from the Commencement Date of this Lease, and in accordance with the General Development Plan described in Section 10.4, of the Lease, the existing boat house shall be removed from the water for refurbishment and renovation, in order to assure seaworthiness and fitness for its purpose, and in order to accomplish aesthetic enhancements. The architecture of the boat house shall have a nautical theme and it will complement the Quivira Basin area. The new boat house shall be lengthened by approximately three feet to extend to (but not exceed), the leasehold "footprint" as identified in Exhibit 10.2 hereto, and shall be expanded in width by approximately three (3) feet, in order to accommodate the enclosure of an electrical generator and also to provide for the LESSEE'S installation of onboard restroom facilities. The refurbished boat house shall, in no event, extend beyond the leasehold "footprint" as identified in Exhibit 10.1 hereto. The completion of the new boat facility shall entitle LESSEE to an option to extend the Lease for an additional ten (10) years. This option must be exercised within one (1) year from the date of completion of the new boat house facility or by the end of the fourth Lease Year, whichever comes first. "Completion" shall mean the refurbishment and renovation work is done to the satisfaction of the City Manager. In no event shall the refurbishment of the existing boat house exceed more than twelve (12) consecutive months from the date the boat house is removed from the water.

2.3 Holdover.

Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect. 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.

2.4 Surrender of Premises.

At termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

SECTION 3: RENT

3.1 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of the calendar month. Checks should be made payable to the City Treasurer and mailed to:

Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

The place 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 the 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.

3.2 Rent.

- a. Rent Amount. The initial rent is four thousand dollars (\$4,000) per month. Rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and gross income rent adjustment as hereinafter provided.
- b. CPI Index Adjustments. At the end of the fourth Lease Year following the Commencement Date and at the end of every four (4) years thereafter during the Term, rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the

base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

1. Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the Commencement Date of this Lease.

To illustrate, if the Lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- c. Gross Income Rent Adjustment. In addition to said CPI adjustments, and if the option to extend is exercised in accordance with Section 2.2 Option to Extend – Refurbishment and Renovation of Existing Boat House of this Lease, the rent shall be adjusted at the beginning of the eleventh Lease Year. The rent, subject to aforesaid CPI adjustments, shall be determined by multiplying the percentage rate of six percent (6%) by the annual average of Lessee's gross income for the three consecutive Lease Years preceding the expiration of the Term. "Gross Income" as used in this Lease is defined in Section 3.3 Income Statements and shall include all income resulting from occupancy of the Premises from whatever source derived whether received or to become due. The adjustment shall be calculated by the CITY within thirty (30) days after receipt of the income statement. Lessee shall be bound by the valuation determined by the CITY.

The date of the adjustment shall be the date as hereinabove established. If the calculation is not completed in time to permit the adjustment to be made upon the date specified, LESSEE, agrees to continue to pay rent in accordance with then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In the event the deficiency is

not paid within thirty (30) days after determination of the new rental rate, any amounts found to be owing shall be paid promptly together with interest thereon from the date it should have been paid, at the greater of ten percent (10%) per annum or the prime rate of the Bank of America from the time to time in effect. IN NO EVENT SHALL THE ADJUSTED RENT, AS ESTABLISHED BY GROSS INCOME RENT ADJUSTMENT AS PROVIDED FOR HEREIN, BE LESS THAN THE RENT IN EXISTENCE IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE.

3.2 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, ten percent (10%) 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 fifteen percent (15%)], 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. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

3.3 Income Statements.

Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its expense, submit to CITY a statement in which the total Gross Income for the year is calculated according to all categories of business permitted by the Lease and for any other business conducted on or from the Premises. The statement shall be signed by LESSEE or its authorized agent attesting to the accuracy of the Gross Income and shall be legally binding upon LESSEE.

3.4 Unauthorized Use Charge

LESSEE shall pay CITY fifty percent (50%) 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 fifty percent (50%) charge in this section 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 hold LESSEE in default for participating in or allowing any unauthorized use of the Premises.

SECTION 4: ASSIGNMENT

4.1 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 in this Lease, 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.

4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises, 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 of the Premises, without the prior written consent of the City Manager or his authorized representatives 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 assignment or subletting without consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager or his authorized representatives.

4.3 Encumbrance.

Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the condition that the proceeds of the loan or loans be devoted exclusively to the purpose of developing the Premises in accordance with Section 10.4 General Development Plan of this Lease. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to the construction.

Any subsequent encumbrances on the Premises or on any permanent improvements on the Premises must first have the approval in writing of the City Manager or his authorized representatives. Subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. After the Premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager or his authorized representatives, proceeds from refinancing

or from subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.7 Additional Consideration to CITY of this Lease, and further that LESSEE understands and specifically agrees that the City Manager or his authorized representatives shall have the sole and absolute discretion to approve, disapprove, or condition any proposed subsequent encumbrance, including but not limited to amending the Lease to provide then-current rents and provisions.

If any approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease. Upon prior written approval by CITY, the mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions of this Lease. Pursuant to City Charter Section 225, the City Manager or his authorized representatives must review and approve every person or entity which will have a financial interest in this Lease. The City Manager or his authorized representatives approval will not be unreasonably withheld, provided all persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

- a. Defaults. Each of the following shall constitute an event of default under this Lease:
1. LESSEE'S failure to make any payment required under this Lease when due; or
 2. LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those requiring payment to CITY, is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within thirty (30) days period and diligently pursue such cure to completion; or
 3. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law.
 4. LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed

by a court of competent jurisdiction within ninety (90) days of filing, or;

5. LESSEE is adjudicated a bankrupt; or
6. LESSEE makes a general assignment for the benefit of creditors; or
7. LESSEE uses the Premises for any unauthorized purpose.

b. Remedies.

1. For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.4a (1), CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, written Three-Day Notice to Pay or Quit, if the default is based upon Section 4.4 a(1), or CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may receive the sum set forth below.
2. For Any Other Default. Upon default by LESSEE based upon Section 4.4a (2) – (7) of this Lease, CITY may, at its option, terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or possession of the Premises, and CITY may enter and receiver from LESSEE the sums set forth below. If any default described in Section 4.4 a (2) – (7) of this Lease is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.
3. CITY Recovery Upon LESSEE Default. If any default described in Section 4.4a (2)- (7) Default and Remedies of this Lease, is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion and upon termination of the Lease due to default, CITY may recover the sum of:
 - (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after

termination until the time of award exceeds (ii) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided;

- (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the terms after the time of the award exceeds (ii) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this Section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clauses (c) of this Section, the "worth at the time of award" is computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the terms "rent" shall include rent, and any other payments required by LESSEE.

4. If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the mortgagee or beneficiary, CITY will give the mortgagee or beneficiary written notice of the defaults complained of, and the mortgagee or beneficiary will have thirty (30) days from the notice to cure the default(s) or, if any default is not curable within thirty (30) days, to commence to cure the defaults and diligently pursue the cure to completion. The thirty (30) day period may be extended upon written request by mortgagee or beneficiary if mortgagee or beneficiary is pursuing the cure with reasonable diligence.

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

- (a) CITY may correct the default(s) and charge the costs incurred 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 the costs.

- (b) CITY may correct the default(s) and may recover the costs incurred 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 cost of correction performed by or at the direction of CITY.
- (c) 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 shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in entering into a new lease with the same terms and conditions as this Lease with the new tenant will be the responsibility of the terminated LESSEE, and LESSEE hereby shall reimburse CITY for any 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, will have the right to substitute itself in the place of LESSEE under this Lease and to assume all the obligations of LESSEE under this Lease. If the mortgagee or beneficiary gives notice in writing of its election to so substitute itself within the thirty (30) day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary and LESSEE shall assign all its interest in this Lease and to mortgagee or beneficiary.

- c. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, 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 under this Lease, 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 or his authorized representatives 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. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by the City Manager or his authorized representatives 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, have the legal right to require the cure of any default.

4.5 Eminent Domain.

If all or part of the Premises is 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. Full Taking. If the entire Premises is taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking – Remainder Unusable. If a partial taking of the Premises, and, 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. Partial Taking – Remainder Usable. If a partial taking of the Premises, and, if, in the opinion of CITY, the remaining part 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 rent shall be equitably reduced to reflect the portion of the Premises taken.

- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. 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.

4.6 Control by Specified Individuals or Entities.

The corporation named in this Lease as LESSEE shall remain owned and controlled by Roy Everingham at least to the extent of fifty-one percent (51%) of the issued stock of the corporation, and he shall, actively administer and supervise the business enterprise operated on the Premises. CITY agrees that control may be in the form of Trustees of a Living or other Trust which may already be in existence, or one which may be created subsequent to the execution of this Lease. If the above-named person becomes incapacitated, then the stockholders shall select an experienced manager acceptable to CITY to administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in the corporation by the above-named persons in excess of five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2 Assignment and Subletting, and Section 4.7 Additional Consideration to CITY of this Lease. The stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager or his authorized representatives must review and approve every person or entity which will have a financial interest in this Lease as an assignee. The City Manager or his authorized representative's approval will not be unreasonably withheld, provided all persons and entities are of good character and reputation in the community.

4.7 Additional Consideration to CITY.

In the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 10.4 of this Lease, LESSEE shall

pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the Premises over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. An assignment for which the City Manager or his authorized representatives determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced by the leasehold.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

LESSEE shall defend, indemnify, protect, and hold the 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 LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against damage or injuries. LESSEE'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 the CITY, its elected officials, officers, representatives, agents, and employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the Term of this Lease the following insurance at its sole expense:
 1. Commercial General Insurance. Commercial general liability coverage with limits of not less than two million dollars (\$2,000,000) per occurrence. This policy shall cover all claims for property damage and/or personal or bodily injury, 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, and
 2. Fire, Extended Coverage and Vandalism. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3 Encumbrance of this Lease, the proceeds may be paid to the approved mortgagee or beneficiary if mortgagee or beneficiary has provided CITY with evidence that all proceeds shall be used for repair and restoration of damaged or destroyed improvements on the Premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
 1. Additional Insured. All insurance policies, by separate endorsement, shall name CITY, its elected officials, officers, representatives, agents and employees as additional insureds, protect CITY against any legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY.
 2. Insurer Qualifications. All insurance required by this Lease must be provided by insurers licensed to do business in California. The insurer must be rated "A-, VI" or better by the AM Best Rating Guide and must be acceptable to CITY. Non-admitted or "surplus lines" carriers will be accepted if the carrier appears on the current California LESLI (List of Eligible Surplus Lines Insurers) list.

3. Effective Date of Policy. All policies shall be in effect on or before the Commencement Date, 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.
4. Evidence of Insurance. A copy of the insurance policy or insurance certificate along with any required endorsements shall be furnished to CITY prior to the Commencement Date and shall remain on file with CITY during the entire Term of this Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s), along with any required endorsements, showing that a new or extended policy has been obtained which meets the terms of this Lease.
5. Modifications. CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term of this Lease by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the extent of risk existing on the Premises. LESSEE shall obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
6. 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.
7. 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. The 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 (7), 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 a default.

8. Worker Compensation. For all of the LESSEE employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives. This policy shall also include coverage for claims made under the Long Shoreman Harbor Workers Compensation Act and the Jones Act.

5.3 Waste, Damage, or Destruction.

LESSEE shall give notice to CITY of any fire or any other damage that occurs on the Premises within three (3) days of the fire or damage. LESSEE shall not commit or allow 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. The Premises must have holding tank with pump-out connection for both sewage and gray water. LESSEE is required to document disposal of both and to keep the records for at least five (5) years on the Premises. If the Premises is damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the 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 the damage, using for either purpose the insurance proceeds set forth in Section 5.2 Insurance of this Lease. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days, of the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement within ninety (90) days of the occurrence of the fire or damage. CITY may determine an equitable deduction in the rent for the period or periods that the Premises are untenable by reason of the damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 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 its independent inspection, tests, investigations, and observations in making this Lease. LESSEE 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 whether apparent or latent, in the Premises, including the presence of any hazardous substances. It is the LESSEE'S responsibility to investigate the Premises for the presence of any hazardous substances. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any hazardous substances on the premises. If LESSEE fails to investigate the Premises for the presence of any hazardous substances, or fails to notify CITY of the presence of hazardous substances after its investigation, LESSEE waives any claims against CITY which may result from the presence of hazardous substances on the Premises.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by CITY discloses that said the 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 shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the 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. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE will make all 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 the Development Plan described in Section 10.4 General Development Plan of this Lease and with all applicable laws. LESSEE must regularly clean receivers defined in Section 1.2 Uses, to ensure that dead fish do not accumulate inside receivers. The floating dead fish must be removed and disposed daily.

6.4 Improvements/Alterations.

LESSEE shall not construct any improvements, structures, or installations on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager or his authorized representatives. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without prior written approval by the City Manager or his authorized representatives and that 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.

6.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities that will be installed underground or under water must be approved by CITY in advance in writing.

6.6 Construction Bond.

Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) 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.

6.7 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 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 the 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.

6.8 Taxes.

LESSEE shall 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 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 the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees and assessments will not reduce any rent due CITY.

6.9 Signs.

LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without the prior written consent of CITY. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours notice by CITY. After the twenty-four (24) hour period, CITY may remove the item at LESSEE'S cost. The minimum cost of removal shall not be less than two hundred fifty (\$250) dollars.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises existing on the Commencement Date or constructed on the Premises by LESSEE during the Term shall at the expiration or earlier termination of this Lease be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to the early termination of this Lease or one hundred eighty (180) days prior to the expiration of this Lease, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before the expiration or earlier termination of this Lease. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE shall pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE prior to the date of the expiration or earlier termination of this Lease. Any 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 the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination of this Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to the expiration or earlier termination of this Lease.
- f. If LESSEE desires to dispose of any of its personal property used in the operation of said the Premises upon the expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.

6.11 Unavoidable Delay, Catastrophic Events.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. As used in this Section, "other causes beyond the reasonable control" of LESSEE shall include, but not be limited to, the following: denial of access to Mexican waters, severe restrictions upon access to Mexican waters, or the unavailability of Mexican fishing or touring permits imposed upon U.S. sportfishing vessels generally by Mexican federal regulatory agencies; severe weather or other conditions causing substantial damage to Premises, federal or state regulations imposing area closures or other severe restrictions on fishing operations (including but not limited to the Marine Life Protection Act and similar regulations); closures of Mission Bay; local (within Southern California and Mexican waters) chronic fishing droughts (those lasting in excess of two consecutive fishing seasons and resulting in catches of less than fifty percent (50%) of 5-year historical season averages as reported by all Southern California commercial passenger fishing vessels to the California Department of Fish and Game, Commercial Passenger Fishing Project, or a substitute data base generally accepted as authoritative, should this Project be discontinued); acts of war and other catastrophic events resulting in substantial interference with or interruption of LESSEE's business operations. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the

fact within ten (10) days after the beginning of any claimed delay. Should the occurrence of any of the foregoing catastrophic events result in substantial, material and irreparable interference with LESSEE's ability to profitably continue the business activities contemplated under this Lease, LESSEE shall have the right, but not the obligation, to terminate this Lease, which termination shall be subject to CITY's consent, which consent shall not be unreasonably withheld

6.12 Development Plan.

LESSEE shall develop the Premises in accordance with the Development Plan approved by the City Manager or his authorized representatives. The Development Plan is attached to this Lease as Section 10.4 "General Development Plan". The City Manager shall have the authority to authorize changes to the General Development Plan provided that the basic concept may not be modified without City Council approval. Failure by LESSEE to comply with the General Development Plan shall constitute a default and subject this Lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the General Development Plan of up to one (1) year without further City Council approval.

6.13 Failure to Meet Development Schedule.

If LESSEE fails to complete construction in accordance with the development schedule of the General Development Plan of this Lease, LESSEE shall pay CITY damages in the amount of fifty dollars (\$50.00) for every day of failure to meet the development schedule until completion of development. If construction is not completed within twelve (12) months following the date specified for completion in the General Development Plan, CITY may, at its option, terminate this Lease and elect to assume ownership of any or all improvements, free and clear of any and all liens.

6.14 Hazardous/Substances.

- a. LESSEE shall not allow the release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

- b. If any release of a hazardous substance occurs, LESSEE shall be responsible for all costs of remediation and removal of the substances in accordance with all applicable rules and regulations of governmental authorities.
- c. LESSEE shall defend indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- d. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within three (3) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE and LESSEE'S sublessees shall not store, utilize or sell any hazardous substance on the Premises without the prior written consent of CITY.
- e. At least twelve (12) months prior to the expiration or earlier termination of this Lease, LESSEE, shall obtain an environmental assessment of the Premises conducted by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than existed on the Commencement Date or greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to restore the Premises to the environmental condition which existed on the Commencement Date to comply with those laws or statutes and estimates of the cost of the remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to CITY:

City Manager
Attention Real Estate Assets Director
Civic Center Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4155

If to LESSEE:

Everingham Bros. Bait Company, Inc.
P. O. Box 2449
La Mesa, CA 91943

or to any mortgagee, trustee, or beneficiary, as applicable, at the address designated in writing by that 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.

7.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all current and future applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by the City Manager or his authorized representatives or his authorized representative under the authority of all current and future laws, statutes, ordinances, or regulations.

7.3 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.

7.4 San Diego's Strong Mayor Form of Governance.

All references to "City Manager" in this Lease and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section becomes effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.

7.5 Nondiscrimination.

LESSEE 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 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.

7.6 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708 as amended), EQUAL EMPLOYMENT OUTREACH PROGRAM, a copy of which is on file in the of in the Office of the city clerk and by this reference is incorporated into the Lease. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE shall insert the foregoing provisions in all subcontracts for any work covered by this Lease so that the provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE shall hire qualified local residents and firms whenever feasible.

LESSEE understand that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

7.7 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.

7.8 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 attorneys' fees.

7.9 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.

7.10 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. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

7.11 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the 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 to 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 to 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.

7.12 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 may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) months immediately preceding the 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.

7.13 Drug-free Workplace.

LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace.
 2. The LESSEE'S policy of maintaining a drug-free workplace.
 3. Any available drug counseling rehabilitation, and employees assistance programs.
 4. The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the foregoing provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.14 Disabled Access Compliance.

LESSEE shall at all times, in the construction, maintenance, occupancy, and operation of the Premises, comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 California Code of Regulations ("Building Code") as defined in Section 18910 of California Health and Safety Code ("Title 24"); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE shall comply with Council Policy 100-04, incorporated into this Lease by reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. LESSEE will be individually responsible for administering its own ADA and Title 24 program. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place on the Premises.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions of disabled access compliance. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
- f. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

SECTION 8: SPECIAL PROVISIONS

8.1 Bylaws.

Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes to restrictions, rules, bylaws, and fees proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager or his authorized representatives. Bylaws shall be on file in the office of the Real Estate Assets Department prior to CITY execution of this Lease.

8.2 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 the corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation attached in Section 10.10 Resolution of the Board of Directors of the Corporation. This Lease is binding upon the corporation in accordance with its terms. On or before the Commencement Date, LESSEE shall provide CITY with evidence, satisfactory to the Mayor or his authorized representatives, that LESSEE is a duly qualified corporation and is qualified to do business in California.

8.3 Schedule of Prices.

All prices of merchandise, equipment, and services of LESSEE and its sublessees shall be commensurate with the prevailing prices of like bait quantities sold in San Diego Bay. All prices charged by LESSEE and its sublessees shall be approved in writing by the City Manager or his authorized representatives. LESSEE and its sublessees shall not be required to sell any merchandise at a loss. Current schedule of rates and charges is approved by the CITY and described in Section 10.6 Schedule of Rates and Charges.

8.4 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

8.5 Supersedure.

This Lease, upon the Commencement Date, supersedes and annuls that lease executed on the 22nd day of April, 1987, between CITY and EBBCO Industries, Inc., filed as Document 268045 in the Office of the City Clerk, which is 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.

8.6 Relocation Payments.

LESSEE shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

8.7 Damaged Equipment.

LESSEE shall salvage within twenty-four (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 upon the Premises. CITY may require that any boats not kept in a clean and operable condition be removed from the Premises. In the event of a sinking of a vessel or other property on the Premises which is not owned in whole or part by the LESSEE, it shall immediately upon discovery: (1) notify the Marine Safety Office of the United States Coast Guard; (2) complete a Marine Casualty Report, if required by the U. S. Coast Guard; (3) notify the CITY of the fact of the sinking and, if known, the circumstances surrounding the sinking; (4) cooperate with the CITY and/or the U. S. Coast Guard in connection with investigations concerning such sinking.

8.8 Enforcement of Live-Aboard Regulation.

LESSEE shall be responsible for the enforcement, both within and in connection with the Premises, of the following live-aboard regulation:

No person shall remain overnight on board any watercraft or houseboat in Mission Bay Park unless the watercraft or houseboat has a self-contained toilet on board that does not discharge into the waters of the Bay. No owner of any watercraft or houseboat shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A watercraft or houseboat is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park lands are primarily responsible for the enforcement of this subsection on the water abutting their leased premises.

The above Live-Aboard Regulation is presently set forth in the San Diego Municipal Code Section 63.25.71 and is subject to amendment or modification by the City Council. LESSEE shall comply or secure compliance with any amendment or modification to this provision.

CITY acknowledges that LESSEE operates a commercial facility that remains open 24 hours/day, and is necessarily staffed around the clock. LESSEE is specifically permitted to maintain personnel on the bait barge 24 hours/day throughout the year.

8.9 Trash and Refuse.

LESSEE shall provide containers on the Premises to receive trash and refuse generated aboard vessels using LESSEE'S docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.

8.10 Local Coastal Program.

Should a local coastal program (hereinafter the "Local Coastal Program") ever be adopted for the Mission Bay Park segment of the CITY Local Coastal Program, and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park in order to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements. LESSEE shall pay its fair and equitable share, as calculated pursuant to the Local Coastal Program, to a traffic impact mitigation program; provided that the amount payable by LESSEE shall be reasonable and shall not exceed the amount payable by LESSEE had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park. This section shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-93-75/EL.

8.11 Water Quality and Best Management Practices.

The CITY and LESSEE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the waters of Mission Bay in violation of Section 43.03, Stormwater Ordinance.

Therefore, LESSEE shall, at minimum, implement and comply, as applicable, with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the waters of Mission Bay. Therefore, the LESSEE will identify and implement any

additional BMPs that may be required to avoid the discharge of pollutants to the waters of Mission Bay.

8.12 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 that will properly serve the public in the opinion of the City Manager or his authorized representatives. LESSEE shall maintain wholesale and retail prices for 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 or his authorized representatives and prominently displayed on the premises by LESSEE during all hours of operation. LESSEE shall not thereafter increase the prices without approval of the City Manager or his authorized representatives. LESSEE shall not be required to sell fishing bait on the Premises at prices lower than the prevailing prices of like bait quantities sold in San Diego Bay. LESSEE may increase bait prices in Mission Bay independent of San Diego Bay prices upon the written approval of the City Manager or his authorized representatives.

8.13 Bait Shortage.

In the event of bait shortages beyond the reasonable control of LESSEE to supply adequate quantities of bait in accordance with Section 8.12, Operation, of this Lease, then, to the best of LESSEE'S ability and judgment to do so, 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.

8.14 Equipment.

LESSEE shall maintain a minimum of twenty-six (26) bait receivers approximately 22 by 14 surface feet each and one (1) attending barge of approximately 17 x 31 surface feet with shelter house. LESSEE shall also maintain sufficient oceangoing fishing vessels fully equipped for catching live-bait and hauling the bait to the Mission Bay bait receivers as required. LESSEE may add additional bait receivers, barges and other equipment as necessary in its opinion to fulfill the purposes of this Lease provided that the addition does not occupy an area in excess of the Premises. LESSEE will equip and maintain its installation with adequate utilities, self-contained or otherwise, without cost to CITY and shall provide at all times throughout the Term navigational aids required by CITY to be placed upon any of LESSEE'S equipment. LESSEE shall maintain the equipment in good repair and in a clean and safe condition

throughout the Term. LESSEE will provide for night operation 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 (24) hours any property of LESSEE, real or personal, declared by the City Manager or his authorized representatives 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 Premises.

8.15 Maintenance Program for Bird and Sea Lion Control.

LESSEE shall establish a maintenance program for the purpose of controlling the congregation of birds on the Premises. This program shall include, but not be limited to, the installation of owl statues, horizontal rotating whip antennas as appropriate, and other measures reasonably employed in discouraging congregating bird activity. LESSEE shall establish a maintenance program for the purpose of controlling the congregation of sea lions on the Premises. This program shall include, but not be limited to, attempting to chase away sea lions by way of crew members approaching the animals with a shield, moving chains and/or shackles along the deck, the use of mace, and such other methods as may be demonstrably effective in discouraging the congregation of sea lions on deck. LESSEE shall not be required to undertake any activity which will place it in violation of any state or federal law or regulation, and will not be required to undertake any action or otherwise act so as to inhibit, harm, or in any way obstruct endangered species or otherwise protected wildlife.

8.16 No Cleaning of Bait Receivers in Mission Bay Park.

LESSEE shall not clean bait receivers within the boundary of Mission Bay Park. LESSEE shall be permitted to utilize the services of a maintenance barge for the purpose of removing bait receivers from the water at the Premises, for subsequent maintenance to be accomplished ashore. LESSEE shall guard against water pollution during removal and replacement of the bait receivers.

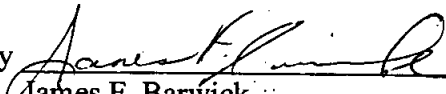
SECTION 9: SIGNATURES

9.1 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.

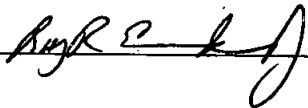
THE CITY OF SAN DIEGO

Date 5/18/09

By 
James F. Barwick
Director, Real Estate Assets Department

LESSEE: EVERINGHAM BROS. BAIT
COMPANY, INC.

Date 2-5-09

By  Roy R. Everingham Jr.
By President

APPROVED as to form and legality this 20th day of MAY, 2009.

JAN I. GOLDSMITH

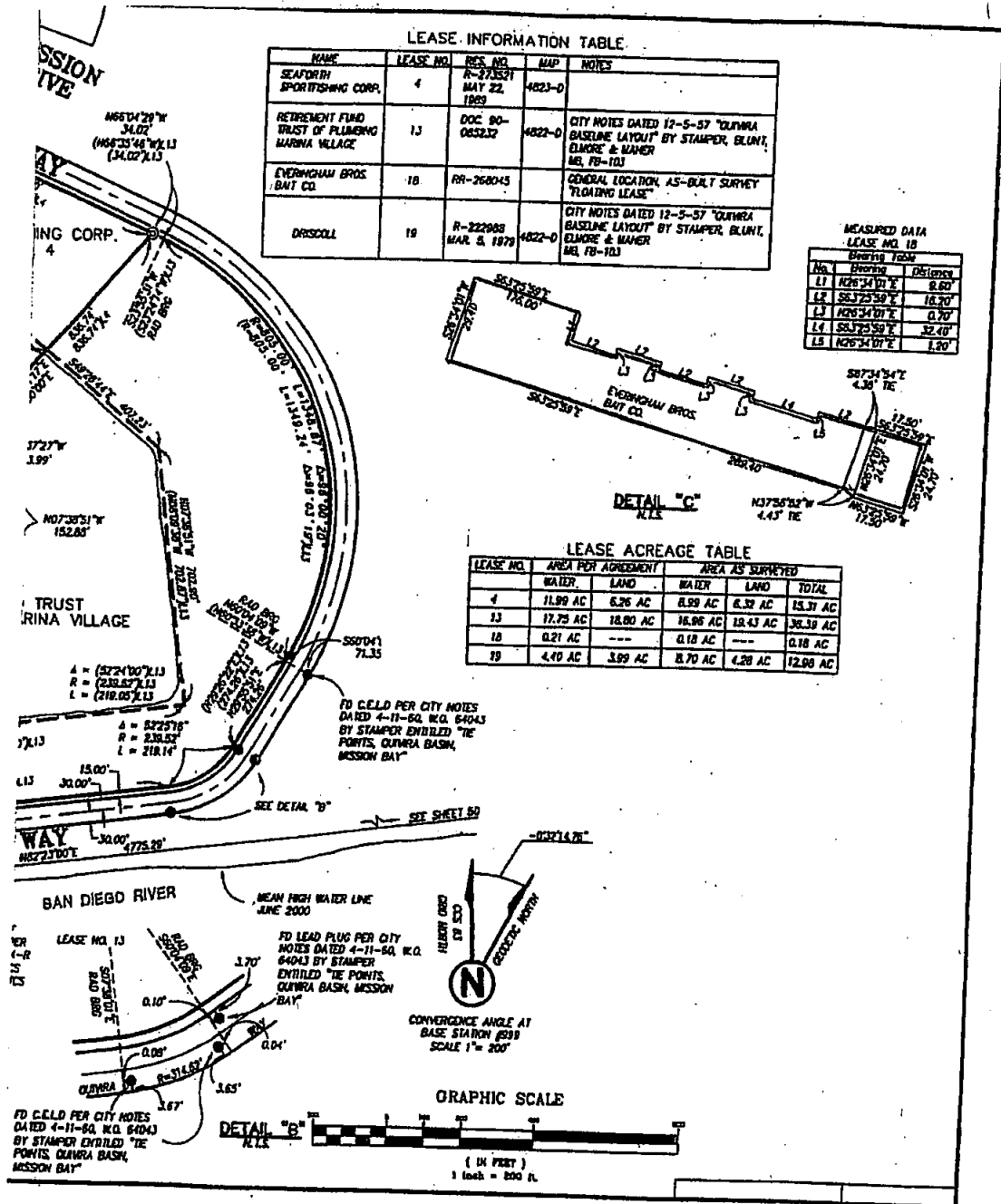
By 
Deputy City Attorney
Brock Ludwig

VEB/cb
02-13-09

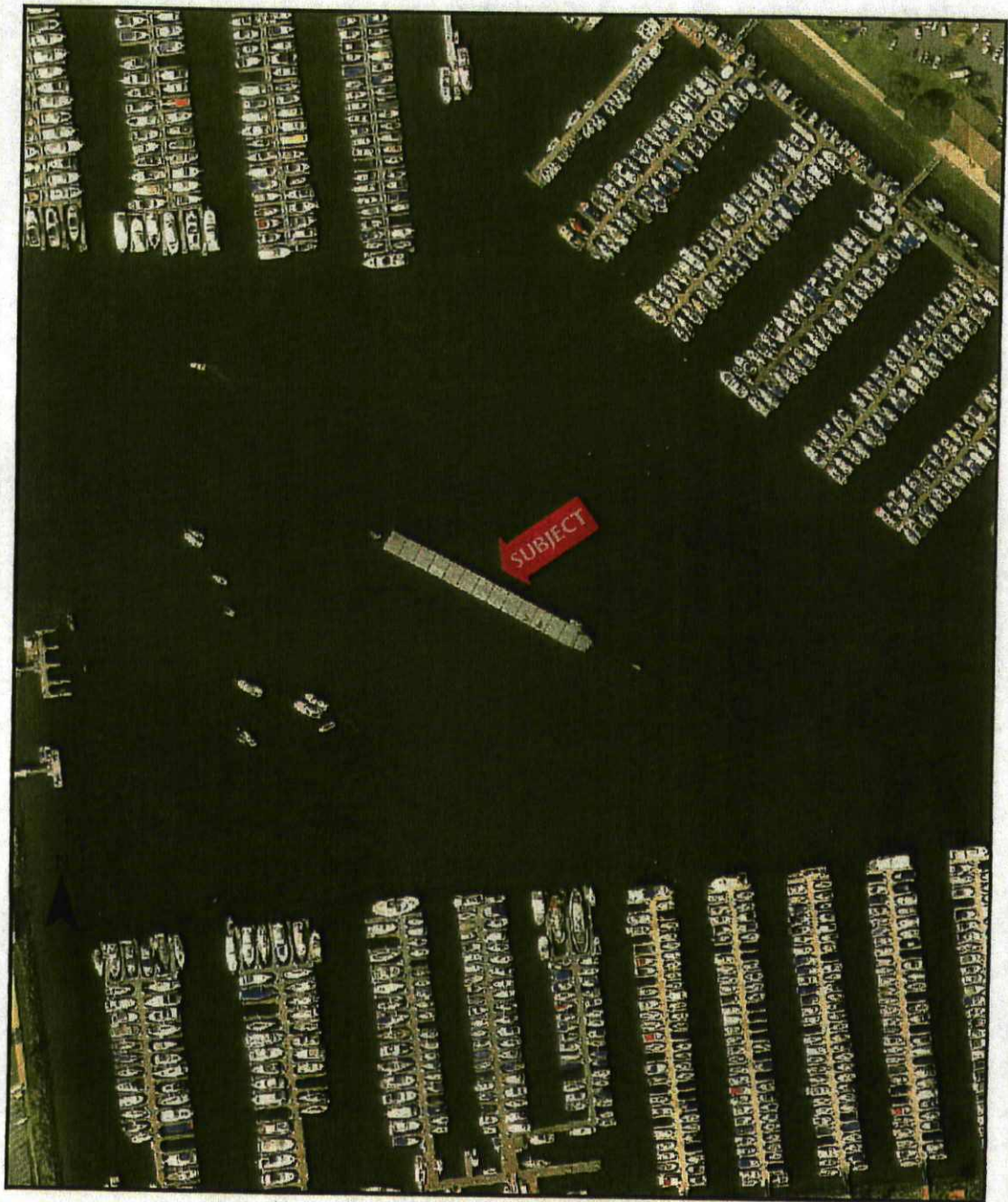
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SECTION 10: EXHIBITS

10.1 General Location.



10.2 Aerial View of the Leasehold.



10.3 Description and Listing of LESSEE-owned Improvements.

Everingham Bros. Bait Co.

2 Buoys (4' diameter)

House Barge – 31'x17'

26 Bait Receivers – 22'x14'

2 Skiffs

10.4 General Development Plan.

Within three (3) years from the Commencement Date of this Lease the current boat house shall be removed from the water for refurbishment and renovation, in order to assure seaworthiness and fitness for its purpose, and in order to accomplish aesthetic enhancements. LESSEE shall conduct a thorough inspection and survey in order to confirm the condition of the vessel and for purposes of identifying actual and potential problems that must be corrected in order to assure seaworthiness, and problems or issues that should be corrected in the interest of good seamanship. While out of the water the boat house shall undergo extensive maintenance pursuant to a long-term periodic maintenance schedule, including a complete repainting, installation of new or refurbished cleats and other marine fittings as necessary or prudent, replacement of wood and other components identified in the survey as in need of substitution, and all other remedial actions necessary or prudent to assure the boathouse is staunch, tight and otherwise reasonably fit for her intended use. In connection with the refurbishment the boathouse shall be lengthened by approximately three (3) feet in order to accommodate the enclosure of an electrical generator and also to provide for LESSEE'S installation of a portable self-contained marine toilet and sink. The dimensions of the barge shall not exceed the maximum permitted "footprint" of the Premises. The LESSEE estimates the cost of this refurbishment and enhancement will total approximately \$56,217, which costs shall be paid by LESSEE.

The boathouse shall also undergo upgrades while out of the water designed to enhance its aesthetic value. The boathouse, while utilizing the existing structure (except as to portions that are replaced or repaired during the haul out) will bear a nautical spar or mast with rigging necessary to hoist the flag of the United States, the State of California and other approved flags that do not bear advertising. As painted and configured following the haul out, the boathouse is intended to suggest resemblance to the house aboard the historic vessel Star of India, as depicted in Exhibit 10.9 of this Lease.

During the refurbishment of the existing boat house, LESSEE shall utilize a temporary boat house. LESSEE shall obtain all necessary permits and CITY approval prior to installation of a temporary boat house.

10.5 Corporate Name.

Everingham Bros Boat Co
CORPORATE NAME

I I, Roy R. Everingham Jr, certify that I am the
President of the corporation named in the attached agreement; that
Roy R. Everingham Jr, who signed this Lease on behalf of the corporation, was then
President of the corporation; that the Lease was duly signed for and on
behalf of the corporation by authority of its governing body, pursuant to a resolution duly
adopted by its Board of Directors on 1-12, 2009, and is within the scope
of its corporate powers; and that set out below are the names of the officers and directors of the
corporation.

By

CORPORATE SEAL

Name Roy R. Everingham Jr
Title

Name Roy R. Everingham Jr
Title

Name President
Title

10.6 Schedule of Rates and Charges.

Sardines or Anchovies (or both)

½ scoop (5 pounds) \$25.00

1 scoop (10 pounds) \$35.00

1½ scoop (15 pounds) \$55.00

1 scoop cured bait (10 pounds) \$45.00
(upon availability, 3 scoop minimum)

10.7 Schedule of Days and Hours of Operation.

Bait barge is open 24 hours every day, 364 days per year. The barge closes at 4:00 p.m. PST on December 24th and re-opens at 5:00 a.m. PST on December 26th of each Lease Year.

10.8 Best Management Practices.

Everingham Bros. Bait Co. Best Management Practices

The Mission Bay Bait Barge is a documented floating vessel with receivers (live bait boxes) located in Quivera Basin accessible by boat only. We serve live bait year round to the fleet of sport boats at Seaforth Sportfishing and Islandia Sportfishing and the general public.

Everingham Bros. Bait Co. recognizes that Mission Bay is a very important water resource to the community of San Diego and is an aquatically oriented recreational resource. We are aware of the need to preserve and improve the water quality in Mission Bay and that poor circulation within the Bay can exacerbate the problem of deteriorating water quality.

Our operation at the Mission Bay Bait Barge strives to be a safe and an environmentally responsible operation. Many of our existing policies and procedures help to protect the water quality of Mission Bay by reducing or eliminating pollutants.

Pollution Prevention Measures: Prevention BMPs eliminate the sources of potential water pollutants. Prevention BMPs examples include efficient water conservation practices, proper waste management and off site maintenance repairs.

Staff Training: Bait barge staff are trained as to the safe and proper use of barge equipment and follow procedures to prevent pollutants into the bay as part of their initial and ongoing training at the bait barge.

The BMPs in this report are further organized around the major functions of the Mission Bay Bait Barge site that might affect water quality.

Marine Operations Policies

Fueling: Our fuel is purchased at one of the fuel docks located in Mission Bay. All staff is trained in safe handling and clean up procedures of fuel, oil use and products.

Waste Management: Since our customers are generally confined to their boats, there are no public trash receptacles or hazardous materials disposal facilities on the bait barge. Trash cans and trash bags are provided for employee use. All debris is maintained in trashcans and when full are bagged and emptied into the dumpster at Seaforth Sportfishing (with their permission).

Best Management Practices (Continued)

Facility Maintenance: Safety and maintenance inspections of all lighting, walking surfaces, receivers and barge connections are made daily by barge staff. Minor repairs are made as needed with extreme caution taken to eliminate any pollutants to the bay. Employees are instructed to dispose of all petroleum wastes at an off-site facility.

Barge Maintenance: The bait barge is hauled out and maintained in a nearby boat yard when needed. The bait boxes are maintained on a separate facility and all debris is maintained, bagged and put into dumpsters and removed from the site. This eliminates several potential sources of bay water pollution.

Off-Site Skiff Maintenance: An independent company routinely maintains the barge skiff off-site. This practice eliminates possible pollutants to the bay.

Bird and Mammal Management: Site walking patrols are made to deter bird and mammal (sea lion) congregation. Gull sweeps (rotating whip antennas) and decoy owls are in place to help minimize bird activity. The bait receivers have converted bottoms in order to minimize the ability of the sea lions to cause bait to swim out of the boxes thus reducing mammal and bird activity. Company policy states that all employees must strictly observe all state and federal laws pertaining to the protection and treatment of marine life.

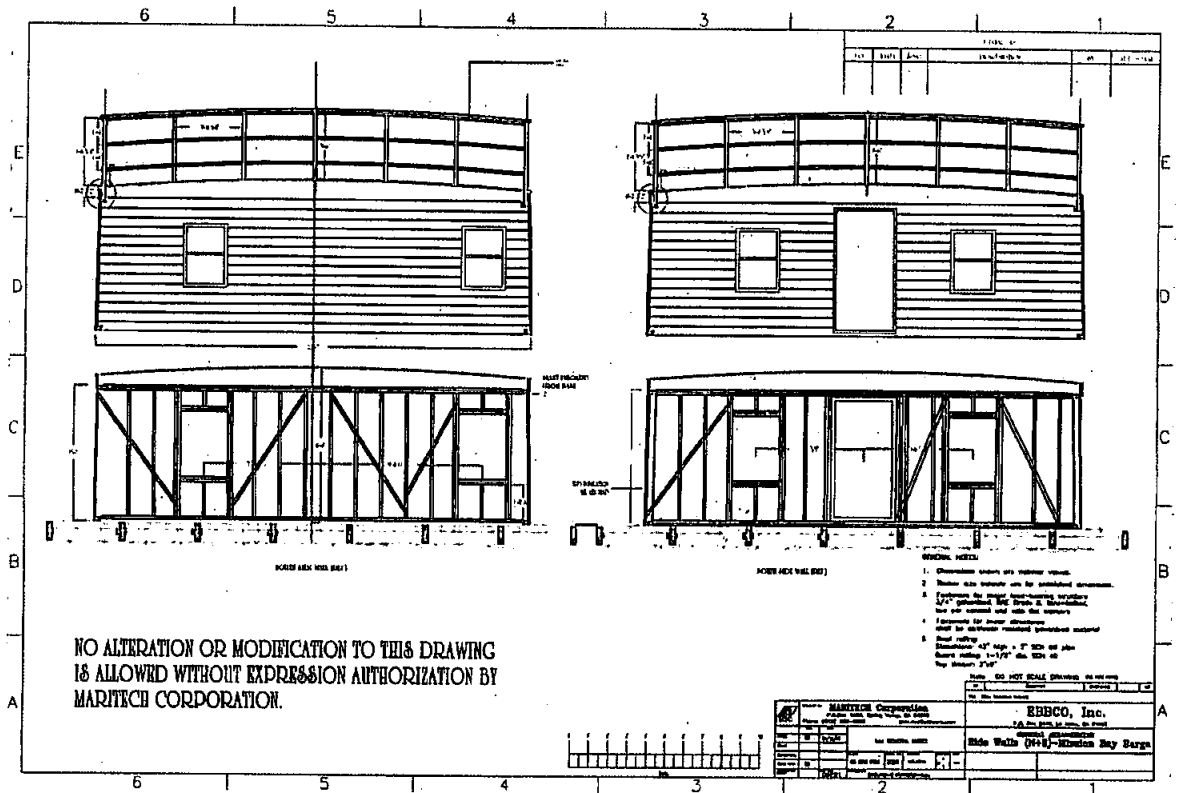
Fishing Operations: Live bait is supplied daily or as needed by our fleet of bait boats and sold live to the sportfishing fleet and private boaters. If employees clean any game fish, they place the fish wastes in plastic trash-bags and place the trash bags into the dumpster at Seaforth Sportfishing.

Domestic Wastewater Management: There are no sewage pump-outs at the bait barge. Employees are referred to nearby facilities for sewage disposal. Bathrooms are provided for employees on shore at Seaforth Sportfishing. A portable toilet system is in place for emergency use. The system is taken to Dana Fuel Dock and pumped out at the proper waste facilities they provide. All staff is trained as to the proper handling of the portable waste system.

Water Conservation: All deck washing is done with saltwater only. No soaps or chemicals are used. A portable wash down system is used a minimum of three times per week.

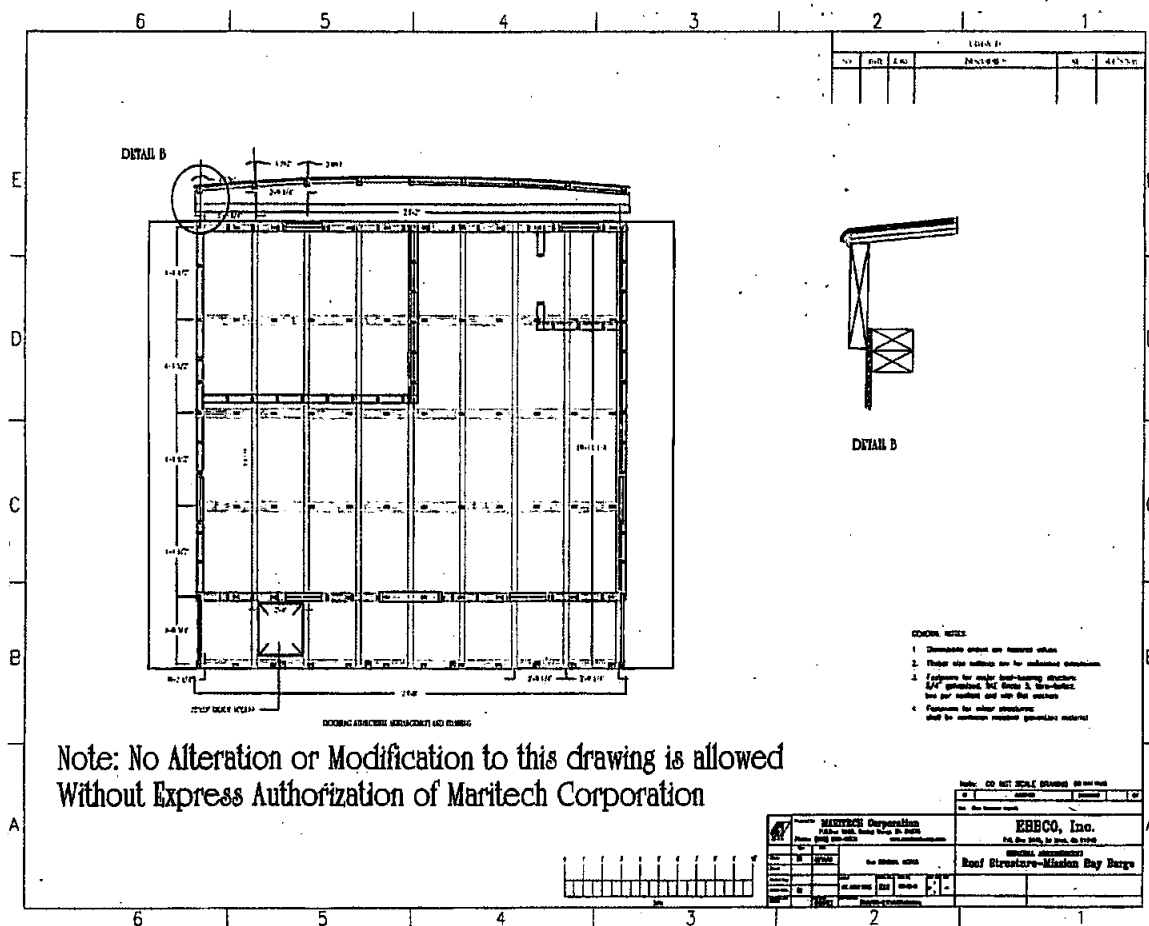
Education and Outreach: The Mission Bay Bait Barge provides education and outreach to its customers to make them aware that proper boating practices protect water quality and sensitive habitat. Customers are encouraged to follow Mission Bay Park regulations, California boating and all laws pertaining to the protection of marine life. We lead by example as well as giving verbal counsel when needed.

10.9 a. Elevation Drawing of Proposed Refurbished Boat House.

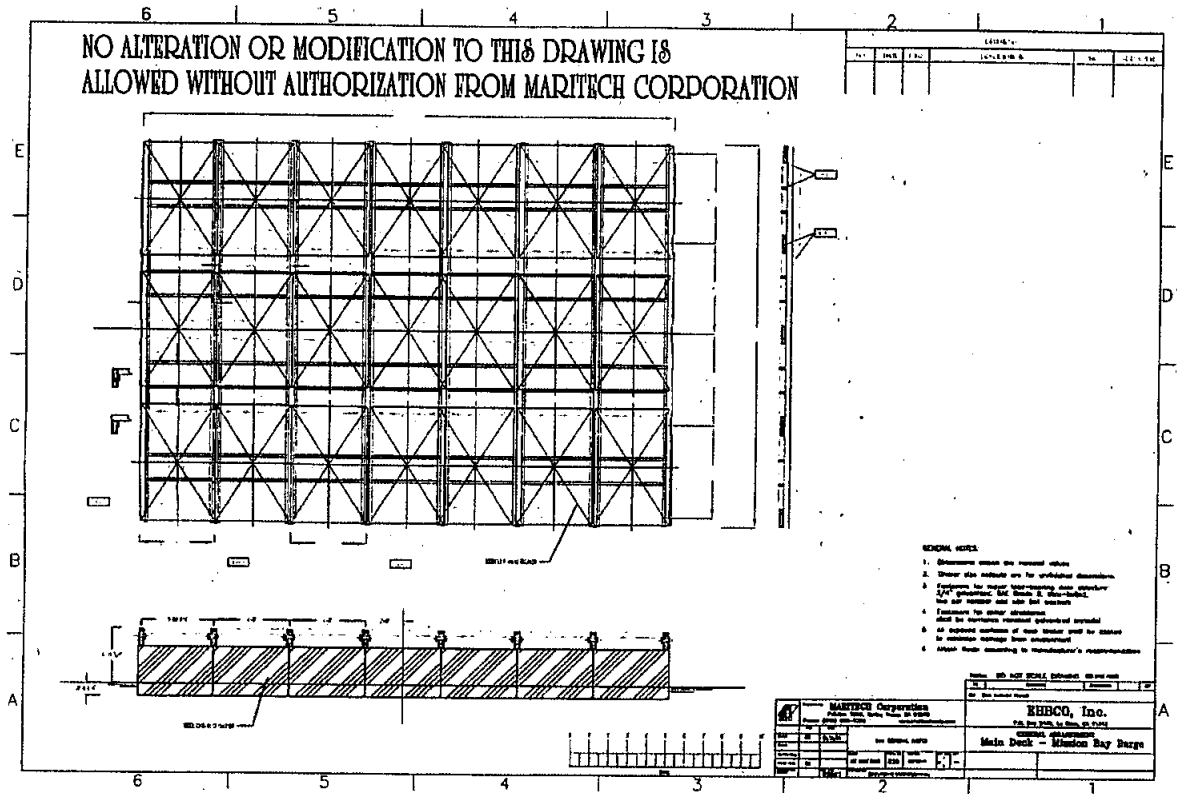


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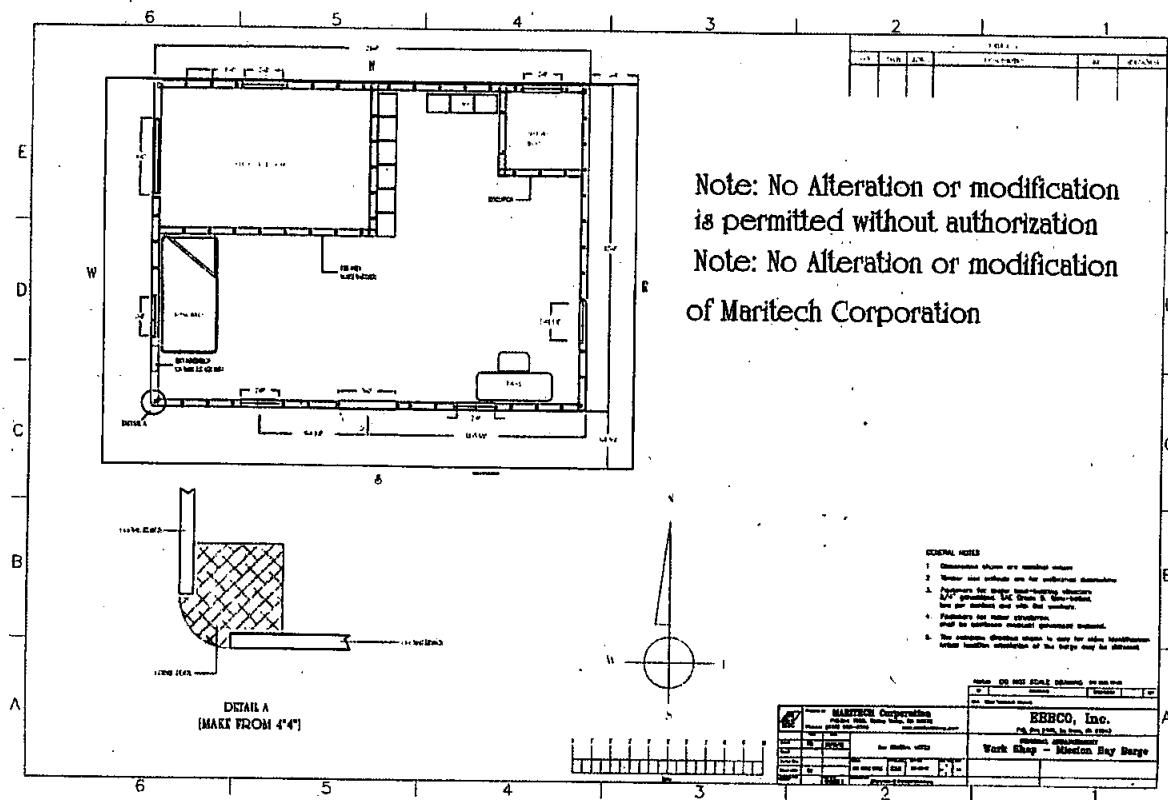
c. Elevation Drawing of Proposed Refurbished Boat House.



d. Elevation Drawing of Proposed Refurbished Boat House.



e. Elevation Drawing of Proposed Refurbished Boat House.



10.10 Resolution of the Board of Directors of the Corporation.

Feb. 3. 2009 1:03PM EVERINGHAM BROS BAIT

No. 3771 P. 2

BOARD APPROVAL OF PROPOSED CONTRACT AND AUTHORIZATION TO EXECUTE

The Board of Directors was presented a proposed Lease Agreement with the City of San Diego which provides for the continued leasing for an initial period of ten years of the space used by Everingham Bros. Bait Company, Inc. for use in connection with its Mission Bay operation.

After consideration by the Board, including the terms of the referenced Lease Agreement, it was decided that the transaction of the business covered by the contract was in the best interest of the corporation, and the proposed contract and Exhibits were approved by the Board.

The President was authorized and instructed to execute the Lease Agreement in the name of and on behalf of the corporation, and to see to it that a copy of the contract executed by all parties, together with all Exhibits, be placed in the corporate records of the corporation.

Dated: January 2, 2009


Corporate Secretary

RESOLUTION NUMBER R- **304841**DATE OF FINAL PASSAGE MAY 04 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING THE MAYOR TO EXECUTE A 10-
YEAR LEASE AGREEMENT WITH EVERINGHAM BROS.
BAIT COMPANY IN MISSION BAY PARK.

WHEREAS, since 1965, Everingham Bros. Bait Company, Inc. [Everingham], has leased
a 0.181-acre water area in Quivira Basin within Mission Bay Park; and

WHEREAS, Everingham provides services to commercial sportfishing and individual
boaters operating out of Mission Bay, and operates and maintains the anchored bait barge
consisting of 26 submerged receivers used for the retail and wholesale of live bait; and

WHEREAS, the barge has operated under a month-to-month tenancy since their lease
expired in 1997; and

WHEREAS, under the proposed 10-year lease [Lease] with a 10-year extension option,
Everingham will commit \$56,217, for renovation of leasehold improvements;

WHEREAS, City staff has determined by appraisal the current market rent to be charged
under the Lease to be \$48,000 per year, which will be adjusted using the Consumer Price Index
periodically during the term of the Lease; NOW, THEREFORE,

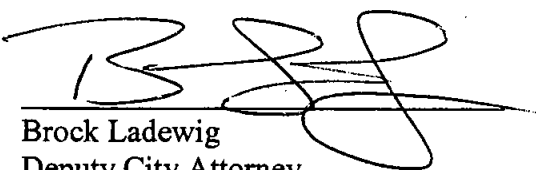
BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor or his
designee is authorized to execute a 10-year lease agreement, with one 10-year option to extend,
with Everingham Bros. Bait Company, a California corporation, under the terms and conditions

set forth in that lease agreement on file in the Office of the City Clerk as Document No.

RR- 304841

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Brock Ladewig
Deputy City Attorney

BL:mm

04/03/09

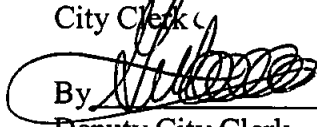
Or.Dept: READ

R-2009-987

MMS #8328

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 28 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5-4-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on April 28, 2009, by the following vote:

YEAS: **LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAYO, FRYE,
EMERALD, HUESO.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **SARA RICHARDSON**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-304841**, approved by the Mayor of The City of San Diego, California
on **May 4, 2009**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy