

STAFF REPORT*CITY OF OCEANSIDE*

DATE: January 26, 2011

TO: Honorable President and Members of the Harbor Board of Directors

FROM: Economic & Community Development Department
Property Management Division

SUBJECT: **AMENDMENT 3 TO THE LEASE AGREEMENT WITH ALOHA PARTNERS, LP, FOR THE PREMISES LOCATED AT 1325 HARBOR DRIVE NORTH**

SYNOPSIS

Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 3 to the Lease with Aloha Partners, LP, for the premises located at 1325 North Harbor Drive, increasing the size of the premises and extending the term of the agreement ten additional years through December 31, 2046; and authorize the City Manager to execute the amendment.

BACKGROUND

In September 1983 the Oceanside Small Craft Harbor District ("District") entered into a Lease with Monterey Bay Cannery No. 10, predecessor in interest to Aloha Partners, LP ("Lessee"). The Lease, as amended and assigned (collectively the "Lease") was for approximately 13,836 square feet of real property to construct a Monterey Bay Cannery Restaurant at 1325 North Harbor Drive.

The term of the Lease currently expires on December 31, 2036. Lessee has requested a ten-year extension of the Lease term. Additionally, Lessee has also requested that the premises be increased by 171 square feet bringing the total size of the premises to 14,007 square feet.

ANALYSIS

The proposed Amendment 3 to the Lease ("Amendment") extends the term of the Lease for ten additional years, expiring on December 31, 2046 and increases the premises by 171 square feet. In consideration for the extension and additional square footage to the premises Lessee will agree to spend a minimum of \$600,000 in improvements to remodel the premises.

Lessee has requested the extension of the Lease term to put Lessee in a better position to seek more suitable financing of the significant capital improvements needed to remodel and update the premises. The improvements to the premises would freshen up the appearance of the premises, originally constructed in 1983, which could potentially generate more revenue for Lessee, and in turn increase the rental revenue to the District.

The expansion of the premises by 171 square feet will increase the outdoor patio area. The 171 square feet is a small area that lies between the public walkway and the existing outdoor patio that is currently not used by the District other than as a landscaped area. The increase to the outdoor patio area will allow Lessee to put in additional improvements, which in turn could potentially service more customers and generate more revenue to Lessee and to the District.

All other terms of the Lease remain unchanged including the payment of rent at the greater of a minimum rent or percentage of gross revenue.

FISCAL IMPACT

As the Lessee pays the greater of minimum rent or percentage rent, thus the additional 171 square feet of outdoor space to the premises does not directly impact the rent. In Fiscal Year 2009-10 Lessee paid \$81,746 in percentage rent. Assuming the same annual percentage rent over the additional ten-year period, the District could receive an additional \$817,460 in revenue. Potentially the new improvements to the premises could increase the percentage rent paid annually to the District.

Additionally, there is no cost or loss of revenue to the District by allowing Lessee to expand the premises by the additional 171 square feet previously used as landscaping. However, there is an expense savings of approximately \$1,000 annually to the District by not having to maintain the area as landscaping.

INSURANCE REQUIREMENTS

Lessee will be required to maintain the District's standard insurance requirement over the term of the Lease.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

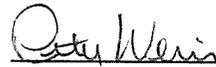
Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 3 to the Lease with Aloha Partners, LP, for the premises located at 1325 North Harbor Drive, increasing the size of the premises and extending the term of the agreement ten additional years through December 31, 2046; and authorize the City Manager to execute the amendment.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

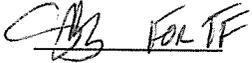
Jane McVey, Economic & Community Development Director

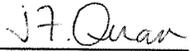
Teri Ferro, Financial Services Director

Frank Quan, Harbor and Beaches Coordinator









AMENDMENT NO. 3 TO LEASE

This Amendment No. 3 to Lease ("Amendment") dated January 5, 2011, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter called "DISTRICT") and ALOHA PARTNERS, LP, a California limited partnership (hereinafter called "LESSEE").

RECITALS

WHEREAS, DISTRICT and LESSEE are parties to the Lease dated September 13, 1983 ("Agreement"), between DISTRICT AND LESSEE's predecessor-in-interest, Monterey Bay Cannery No. 10, a California limited partnership ("Monterey"); which Agreement was amended per Amendment to Lease dated August 3, 1984 ("First Amendment"); which Agreement as amended was assigned from Monterey to Aloha Partners, a California general partnership ("Aloha GP") per Assignment of Lease dated October 1, 1984; which Agreement as amended was further amended by Amendment No. 2 to Lease dated September 8, 1987 (collectively the Agreement, the First Amendment and the Second Amendment are hereinafter referred to as the "Lease"); which Lease was further assigned from Aloha GP to LESSEE per Assignment of Lease dated December 18, 1998;

WHEREAS, LESSEE is agreeable to providing additional improvements to the leased premises in consideration for expanding the size of the lease premises and an extension of the term of the Lease;

WHEREAS, DISTRICT and LESSEE are desirous of expanding the size of the leased premises by approximately 171 square feet from 13,836 square feet to 14,007 square feet and extending the termination date of the Lease for an additional ten (10) years from December 31, 2036 to December 31, 2046.

NOW, THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. The description of the premises as set forth on page no. 1 of the Lease shall be amended by changing the portion of the sentence which reads "...consisting of a total of approximately 13,836 square feet..." to the following:

"...consisting of a total of approximately 14,007 square feet (13,836 + 171), with said additional 171 square feet more particularly described on Exhibit "A-1", attached hereto and incorporated herein by this reference..."

2. Section 2. TERM. shall be deleted in its entirety and replaced with the following:

“The term of this Lease shall commence on September 13, 1983 and terminate on December 31, 2046 subject to the provisions of Section 52.”

3. Section 52 shall be added to the Lease to read as follows:

“Lessee shall spend a minimum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) in improvements to the premises prior to December 31, 2036. Said improvements and replacements shall include the improvements to the building and restaurant made during calendar year 2010, as more particularly set forth on Exhibit “D-3”, attached hereto and incorporated herein by this reference. All improvements made shall be subject to supportive documentation substantiating the improvements made and the cost associated therewith. In the event that said improvements are not completed as set forth herein prior to December 31, 2036, the term of the Lease shall not be extended to December 31, 2046 and the Lease shall terminate on December 31, 2036.”

4. All other terms, conditions, covenants and provisions of the Lease shall remain in full force and effect.

IN WITNESS THEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment No. 3 to Lease.

“DISTRICT”

THE OCEANSIDE SMALL CRAFT
HARBOR DISTRICT

APPROVED AS TO FORM:

By _____
Administrative Officer

By *Antonia Hamilton, ABSF*
City Attorney

“LESSEE”

ALOHA PARTNERS, LP

By: Pelican Development Company
Its: General Partner

By: *Douglas L. Salisbury*
Douglas L. Salisbury
Its: President

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

}

On December 9, 2010 before me, Lola J. Horvath
Date Here Insert Name and Title of the Officer

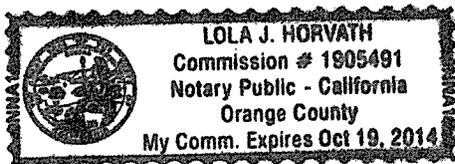
personally appeared Douglas L. Salisbury
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lola J. Horvath
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amentment No. 3 to Lease

Document Date: January 5, 2011 Number of Pages: 3 (incl notary)

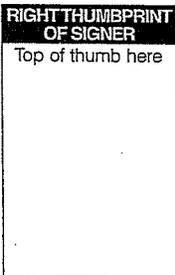
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

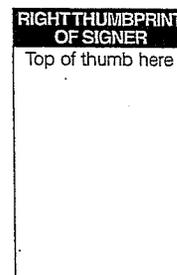
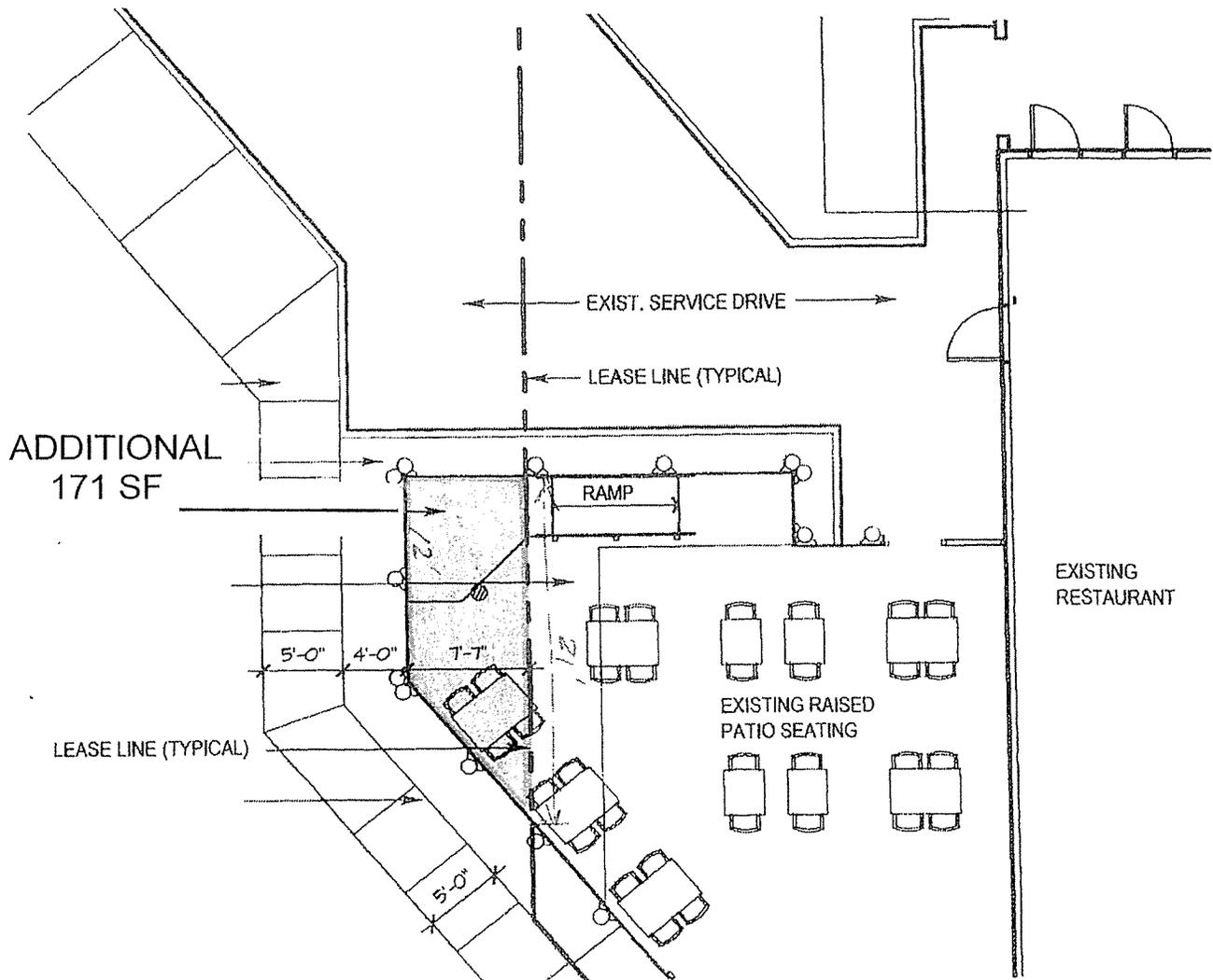
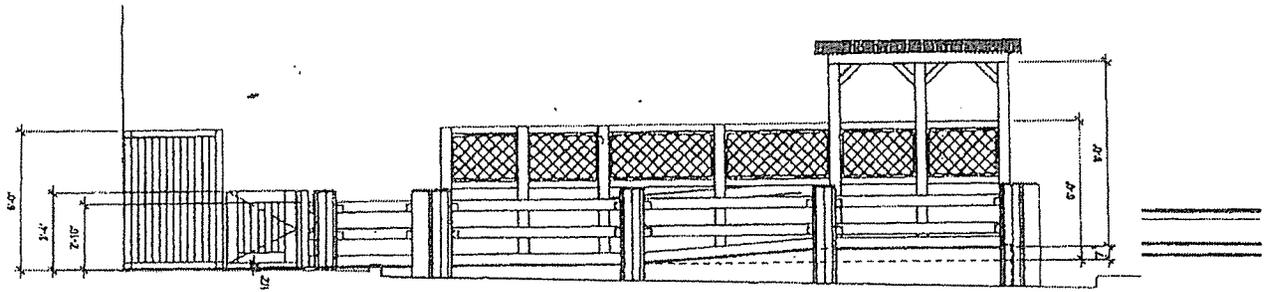


EXHIBIT "A-1"



BUSINESS OWNER: **STEVEN MOYER, ALOHA REST.**
 BUSINESS ADDRESS: **1325 HARBOR DR. N. OCEANSIDE**
 BUSINESS NAMES: **MONTEREY BAY CANNERS**
 ENGINEER: N/A
 APN 760-080-19-00

CITY OF OCEANSIDE
 ENGINEERING DIVISION

EXHIBIT "D-3"

BUILDING AND PREMISES IMPROVEMENTS AND REPLACEMENTS MADE DURING CALENDAR YEAR 2010 INCLUDE:

- EXTERIOR PATIO EXPANSION
- ADDITION OF NEW ADA UNISEX RESTROOM
- INTERIOR AND EXTERIOR BUILDING REPAIRS
- INTERIOR AND EXTERIOR PAINTING
- NEW AWNINGS
- NEW CARPETING AND HARDWOOD FLOORS
- REFRIDGERATION UPGRADES
- NEW TABLES, CHAIRS & STOOLS
- WALL TREATMENTS
- GRANITE BAR & RESTROOM COUNTERS

EXHIBIT "D-3"

DESCRIPTIONS	DESIGN	PROFES. SERVICES	REPAIR & MAINT.	FURNITURE	EQUIPMENT	FIXTURES	MISC.	TOTAL
OUTDOOR PATIO EXPANSION & RELATED FIXTURE						2300.00	128.00	
Misc.								
PATIO Plans	3000.00							
CALCULATIONS FOR THE AD OF PATIO		2500.00						
Misc.							48.88	
CITY OF OCEANSIDE							346.46	
ADMIRAL - STACKING CHAIRS				4903.86				
ARCHITECTURAL SERVICES		550.00						
ARCHITECTURAL SERVICES		222.00						
ARCHITECTURAL SERVICES		540.50						
ARCHITECTURAL SERVICES		3995.35						
ARCHITECTURAL SERVICES		687.63						
CITY OF OCEANSIDE - PLANNING FEE		263.53						
SD CNTY HEALTH DEPT.-PLAN REVIEW		375.00						
PLUMBING DESIGN	600.00							
ELECTRICAL ENGINEERING & DRAWINGS		700.00						
ARCHITECTURAL SERVICES		500.00						
ARCHITECTURAL SERVICES		962.00						
ARCHITECTURAL SERVICES		1287.50						
ART WORK FOR RESTAURANT	2879.84							
CARPETING						3000.00		
FANS FOR DINING ROOM							892.38	
TENANT IMPROVEMENTS		126035.93						
PILLOWS/CUSHIONS FOR LOBBY BENCH				385.01				
REMOVE VARIOUS ITEMS, Light/Fan INSTALLATON			1280.00					
INTERIOR DESIGN SERVICE	4000.00							
INSTALL DOOR & WINDOW	1299.63							
PAINTING & LANDSCAPING	5686.88							
REWORK MBC LOGO W/NEW COLOR PALETTE	1185.56							
ADD'L TENANT IMPROVEMENT (deck table, door, Etc)		15924.38						
Patio Chairs and Stools				5709.12				
MIXER					1092.50			
CARPETING						5750.00		
Labor, material, Misc.							2561.67	
FREEZER UNIT					4189.23			
TOTAL	18651.91	154543.82	1280.00	10997.99	5281.73	11050.00	3977.39	\$205,782.84

1 This amendment is entered into this 8th day of September,
2 1987, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT,
3 hereinafter referred to as "District," and MONTEREY BAY CANNERS
4 NO. 10, hereinafter referred to as "Lessee."

5 WHEREAS, The District and Lessee entered into a lease dated
6 September 13, 1983, amended August 3, 1984; and

7 WHEREAS, on February 27, 1987, the District consented to an
8 assignment by Monterey Bay Cannery No. 10 to ALOHA PARTNERS, a
9 California general partnership (hereinafter "LESSEE"); and

10 WHEREAS, the District and Lessee are desirous of making an
11 amendment to said Lease;

12 NOW, THEREFORE, BE IT COVENANTED AND AGREED BY AND BETWEEN
13 THE PARTIES HERETO AS FOLLOWS:

14 1. That the third paragraph (line 21 through line 25) on the
15 first page of the original lease shall be amended in its entirety
16 to read as follows:

17 "Together with a non-exclusive right to use parking at
18 no charge for lessee's customers for up to two hours for
19 each customer visit in that area outlined in green on
20 said attached Exhibit 'A', the Lessee shall be assigned
21 the north side of the main walkway from L Dock to K Dock
22 (measuring approximately 55 lineal feet in length) as
23 guest berthing at no additional charge for the term of
24 this lease."

25 2. That page 1 of Exhibit "C" of the original lease shall
26 be amended to reflect a new location for the Guest Dock sign, for
27 the benefit of Lessee's guest berthing, at the north side of the
28 main walkway from L Dock to K Dock which location is more



1 specifically outlined in red on Exhibit "I" to this Amendment
2 No. 2 and which is attached hereto and made a part hereof. The
3 Guest Dock sign reflected on Exhibit "I" attached hereto shall
4 be the existing Guest Dock sign (Sign "F" on page 4 of Exhibit
5 "C" of the original lease) and said relocation shall be accom-
6 plished by Lessor at no expense to Lessee.

7 3. That the Exhibit "C" of the original lease shall be
8 amended to reflect relocation and modification, of L Dock, K Dock
9 and the main walkway adjoining L Dock to K Dock, for the benefit
10 of Lessee's guest berthing. Such dock relocations and modifica-
11 tions shall be performed at the sole cost and expense of the
12 District.

13 4. That all other terms and conditions of the aforesaid
14 lease and any amendments thereto shall be continued in full force
15 and effect.

16 IN WITNESS WHEREOF, this Amendment to Lease is executed as
17 of the date first written hereinabove.

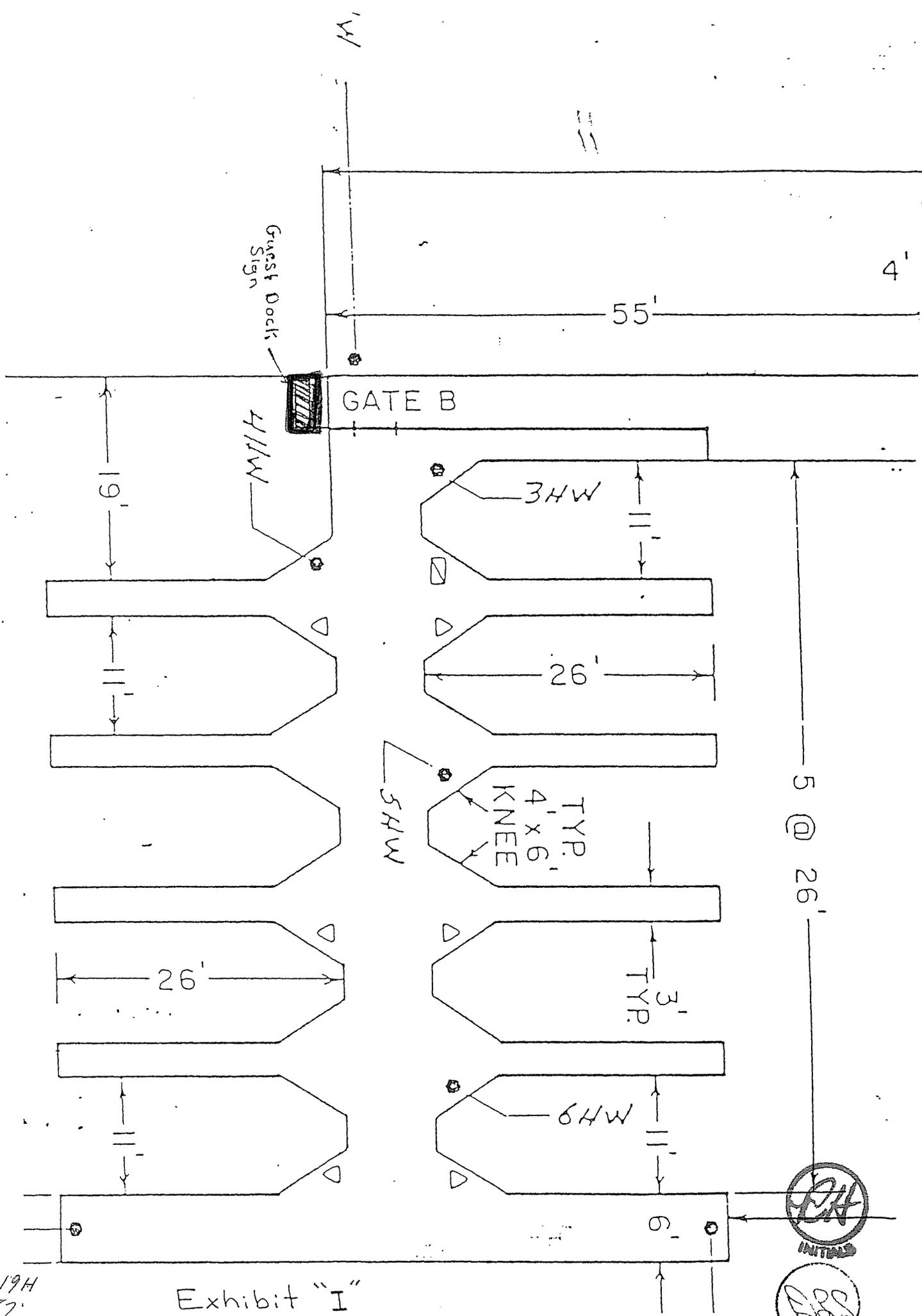
18
19 ATTEST:
20 *Miriam Deshpande*
21 Secretary

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
Eric Bagley
President

22 APPROVED AS TO FORM:
23 Harbor Attorney's Office
24 *Charles Kerlett*
25 Harbor Attorney

ALOHA PARTNERS, A California general
partnership
Douglas L. Salisbury
Douglas L. Salisbury, Partner
Ronald F. Higgins
Ronald F. Higgins, Partner

26
27
28



PH
INITIALS

ABS

Doc. 87-19H
9-8-87

Exhibit "I"

Amendment No. 2 to Lease between Harbor District & Monterey Bay Landers #10

87 709412

RECORDING REQUESTED BY AND MAIL TO: J.V. 361

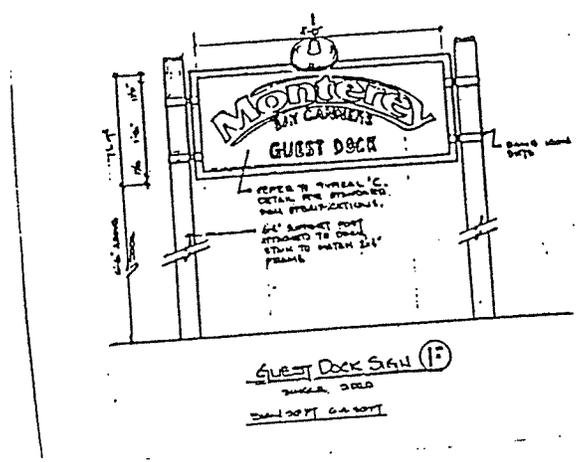
RECORDED IN OFFICIAL RECORDS OF SAN DIEGO COUNTY, CA

1987 DEC 28 PM 2:35

VERA L. LYLE COUNTY RECORDER

City Clerk
City of Oceanside
704 3rd St.
Oceanside, Ca 92054

NO FEE



RF
AR
MG

Exhibit "I"

Page 2 of 2

RH
INITIALS

AS
INITIALS

Doc. 87-1911 7-8-87

AMENDMENT TO ~~SECOND~~-AMENDED LEASE

IT IS AGREED this 3rd day of August, 1984, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, hereinafter referred to as "District," and MONTEREY BAY CANNERS NO. 10, a California general partnership, hereinafter called "Lessee," that Exhibit 'C' of that certain Lease by and between District and Lessee shall be, and hereby is, amended as follows:

1. That monument sign 'B' shall be deleted.

2. That monument sign 'A' shall be not more than six feet in height.

3. That post sign 'F' shall be not more than six feet in height and shall read "Guest Slip."

IN WITNESS WHEREOF, the parties have executed this amendment to said lease as of the day and year first above written.

OCEANSIDE SMALL CRAFT HARBOR DISTRICT

By [Signature]
President

By [Signature]
Secretary

MONTEREY BAY CANNERS NO. 10

By [Signature]
General Partner

By [Signature]
General Partner

APPROVED AS TO FORM:

[Signature]
Harbor Attorney

DOC. NO. '83 - 0 1 8 H

L E A S E

MONTEREY BAY CANNERS NO. 10

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LEASE

THIS LEASE made this 13th day of September, 1983, by the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, hereinafter called "DISTRICT," AND MONTEREY BAY CANNERS NO. 10, a California general partnership, hereinafter called "LESSEE," WITNESSETH:

That in consideration of the terms, conditions, and covenants herein contained, to be kept and performed by the parties hereto and the strict, prompt and punctual performance of each of the terms, conditions and covenants by Lessee on his part agreed to be kept and performed, District by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire, and take from District the following parcel or parcels of land, as outlined in red on the attached Exhibit "A" hereto, and more particularly described on Exhibit "B" hereto, consisting of a total of approximately 13,836 square feet and situated in the Oceanside Small Craft Harbor District, City of Oceanside, State of California, and further described as follows:

Parcel #4, described in Miscellaneous Map No. 448, filed in the Office of the County Recorder, County of San Diego, State of California;

Together with a non-exclusive right to use parking at no charge for lessee's customers for up to two hours for each customer visit in that area outlined in green on the said attached Exhibit "A", the lessee shall be assigned Slip K-1 for guest use at no additional charge for the term of this lease.

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

.....



1 1. DEFINITION OF TERMS.

2 The following words have in this Lease the significance at-
3 tached to them in this section, unless otherwise apparent from
4 the context:

5 STATE OF CALIFORNIA (Commission) means the Department of
6 Boating and Waterways, State of California.

7 BUREAU OF OUTDOOR RECREATION means the agency responsible
8 for compliance with the terms of the quitclaim deed with the City
9 of Oceanside.

10 ADMINISTRATIVE OFFICER means the Administrative Officer of
11 the Oceanside Small Craft Harbor District.

12 BOARD means the Board of Directors of the Oceanside Small
13 Craft Harbor District, City of Oceanside.

14 DISTRICT means the Oceanside Small Craft Harbor District.

15 The word PROPERTY includes both real and personal property.

16 SECRETARY means Secretary of the Oceanside Small Craft Har-
17 bor District.

18 The word SECTION means a section of this lease.

19 The words SHALL and WILL are mandatory and the word MAY is
20 permissive.

21 SPECIFICATIONS means the Specifications which are a part of
22 the legal documents approved by the Directors.

23 The word SUBLESSEE includes licensee, permittee, concession-
24 aire, assignee, or transferee of or from Lessee with respect to
25 any interest in the property demised under this Lease.

26 TREASURER means Treasurer of the Oceanside Small Craft Har-
27 bor District.

28


INITIALS

1 Words and phrases contained herein shall be construed ac-
2 cording to the context and the approved usage of the American
3 language, but technical words and phrases, and such others as
4 have acquired a peculiar and appropriate meaning by law, or are
5 defined in the preceding paragraphs of this section, are to be
6 construed according to such technical, peculiar and appropriate
7 meaning or definition.

8 Words used in this Lease in the present tense include the
9 future as well as the present; words used in the masculine gender
10 include the feminine and the neuter and the neuter includes the
11 masculine and feminine; the singular number includes the plural
12 and the plural the singular; the word "person" includes a corpor-
13 ation as well as a natural person.

14 2. TERM.

15 The term of this Lease shall commence upon the final execu-
16 tion hereof by District, and terminating on the 31st day of
17 December, A.D., 2036.

18 3. PURPOSE OR USE OF PROPERTY.

19 The leased premises shall be used only and exclusively for a
20 restaurant, with or without alcoholic beverage services and en-
21 tertainment, and uses related thereto, (including the sale of
22 fish for off premise consumption, shirts, cookbooks, wine openers
23 and other incidental merchandise), and such other uses and pur-
24 poses incidental thereto or which are specifically approved by
25 Lessor in writing, and for no other purposes whatsoever without
26 the written approval of District, which District agrees not to
27 withhold unreasonably.

28



1 It is also expressly understood that the uses of the said
2 premises which are permitted hereinabove do not include commer-
3 cial sportsfishing, for which there is an exclusive permit.

4 There shall be no actual construction upon said premises ex-
5 cept that required by Sections 5, 6, and 8 hereof.

6 Lessee shall conform to and abide by all rules and regula-
7 tions relating to the operations herein authorized and shall be
8 subject at all times to applicable rules, regulations, resolu-
9 tions, ordinances and statutes of the District, City of Ocean-
10 side, State of California, the Federal Government, and all other
11 governmental agencies where applicable; and where permits are
12 required for such operations the same must be first had and ob-
13 tained from the regulatory body having jurisdiction thereof
14 before such operation is undertaken. Minimum hours of operation
15 shall be from 11:30 A.M. to 10:00 P.M. Lunch and dinner will be
16 offered. There shall be no minimum hours of operation required
17 on legal holidays.

18 Parking in Lot #4 shall be as shown on Exhibit "A" attached
19 hereto, and shall be retained as 2-hour parking and slip renters'
20 permit parking for the duration of this lease.

21 4. ACTIVE PUBLIC USE.

22 The ultimate object of this Lease is the complete and con-
23 tinuous use of the premises herein demised by and for the benefit
24 of the public, without discrimination as to race or religion, the
25 immediate object being the development and realization of the
26 greatest possible revenue therefrom. It is agreed that said im-
27 mediate and ultimate objects are consistent and compatible. Ac-
28 cordingly, Lessee covenants and agrees that he will operate said

APP

1 premises fully and continuously to the end that the public may
2 enjoy maximum benefits and District and Lessee may obtain maximum
3 revenue therefrom.

4 In the event of any dispute or controversy relating hereto,
5 this Lease shall be construed with due regard to the aforesaid
6 objects.

7 The United States Government requires that the following
8 non-discriminatory clause be a part of each lease:

9 "The leasee is prohibited from (i) Publicizing facilities
10 operated hereunder in any manner that would directly or inferen-
11 tially reflect upon or question the acceptability of any person
12 because of race, creed, color, ancestry, or national origin; (ii)
13 discriminating by segregation or other means against any person
14 because of race, creed, color, ancestry, or national origin in
15 furnishing or refusing to furnish such person the use of any such
16 facility."

17 "Facilities: As used in this Lease, facility shall mean any
18 and all services, facilities, privileges, and accommodations, or
19 activities made possible by this agreement. The Lessee shall re-
20 quire provisions identical with those stated above to be incorpo-
21 rated in all of its contracts or other forms of agreement for use
22 of land made in pursuance of this agreement."

23 In the event of any dispute or controversy relating hereto,
24 this Lease shall be construed with due regard to the aforesaid
25 objects.

26 5. PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION.

27 Lessee has filed with District, two (2) sets of preliminary
28 plans and outline specifications, and sign package as reflected

1 on Exhibit "C," which have been approved by District and the City
2 of Oceanside. Within One Hundred Twenty (120) days after the
3 approval of this Lease by all parties hereto and receipt thereof
4 by Lessee, Lessee shall file two (2) sets of final plans and
5 specifications for the construction of the following improvements
6 upon the aforesaid premises: A Monterey Bay Cannery Restaurant
7 and Cocktail Lounge, the cost of which restaurant and related
8 improvements shall be estimated to be not less than the total sum
9 of Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

10 District shall not impose construction restrictions differ-
11 ing from those imposed by City building ordinances. Such final
12 plans and specifications shall conform to the specifications for
13 the Oceanside Small Craft Harbor as heretofore adopted by the
14 Board on September 13, 1962, and amended July 25, 1963, and shall
15 be subject to approval by Administrative Officer. Administrative
16 Officer will not unreasonably withhold approval of the final
17 plans and specifications, and Administrative Officer will approve
18 the final plans and specifications within thirty (30) days of
19 their receipt if they comply or are consistent with the prelimi-
20 nary plans and outline specifications previously approved by
21 District and the City of Oceanside. Construction shall begin
22 within a reasonable time after District has approved said final
23 plans and specifications and other necessary approvals are ob-
24 tained by Lessee. However, construction must begin within twelve
25 (12) months after final execution of this agreement.

26 No material modification of the approved plans and specifi-
27 cations or of said improvements, including landscaping, shall be

28



1 made by Lessee without the prior approval of said Administrative
2 Officer which will not be unreasonably withheld.

3 6. REQUIRED CONSTRUCTION SCHEDULE.

4 Lessee expressly covenants and agrees that within Six (6)
5 months after obtaining all of necessary approvals of the final
6 plans and specifications as provided for in Section 5, and after
7 approvals from all other required agencies, but not more than
8 Twelve (12) months after final execution of this agreement, Les-
9 see shall in good faith commence construction of the improvements
10 described therein, including required underground laterals within
11 the demised premises for power, light, telephone, television,
12 sewer, water (including fire lines, if required), gas lines and
13 landscaping, in accordance with said approved plans and specifi-
14 cations, and shall diligently prosecute such construction and
15 shall complete the same not later than Two Hundred Eighty (280)
16 days thereafter; provided that any delay in construction due to
17 fire, earthquake, war, labor dispute, or other event beyond the
18 control of Lessee shall extend the time in which said construc-
19 tion must be completed by the length of the time of such delay.
20 In addition, Lessee shall not be obligated to pay any rent for
21 any period during which Lessee is prevented from commencing or
22 prosecuting construction by reason of the failure of the District
23 to provide to the demised premises adequate roadway and utility
24 easements under control of the District. Lessee will provide all
25 of above mentioned utilities, in required sizes and locations,
26 and District will provide all required easements to the demised
27 premises prior to Lessee's commencement of construction.

28 Subject to Lessee's rights to cure defaults as set forth in



1 Section 20, if Lessee does not commence construction within the
2 time periods specified in this Section 6, excluding excusable
3 delays as herein provided for, or if Lessee should otherwise
4 default prior to the commencement of construction, the District
5 shall have the right, as its sole remedy, to terminate this Lease
6 after providing not less than Thirty (30) days advance written
7 notice to Lessee.

8 7. RENTAL PAYMENT SECURITY.

9 District shall receive from Lessee the sum of Five Thousand
10 Dollars (\$5,000.00) equal to one-half of the first year's minimum
11 annual rental for the demised premises, which shall be retained
12 by District as a guarantee to cover delinquent rent and shall be
13 so applied.

14 Upon expiration of Lease, any remaining portion of said
15 deposit of Lessee shall be returned. One-half of said rental
16 payment security (\$2,500.00) shall be refunded to Lessee at the
17 end of the fifth year of the term of this lease.

18 At any time subsequent to the first five (5) years of the
19 term of this lease Lessee may substitute for said cash deposit to
20 cover delinquent rent a corporate surety bond, issued by a surety
21 company licensed to transact business in the State of California,
22 said bond and company to be in all respects satisfactory to Dis-
23 trict, in an amount equal to said deposit.

24 At any time during said lease term Lessee may provide said
25 deposit to District in the form of a time certificate or cash
26 deposit in the names of both District and Lessee, with all in-
27 terest payable or accruing thereunder from time to time payable
28 to Lessee.



1 8. ADDITIONAL CONSTRUCTION.

2 After completion of the improvements described in Section 5,
3 Lessee shall be authorized, with the approval of the District, to
4 make improvements, additions, alterations, repairs, or changes to
5 the interior of the restaurant and cocktail lounge if such im-
6 provements, additions, alterations, repairs, or changes do not
7 impair structural soundness. Lessee shall be authorized to make
8 improvements, additions, alterations, and changes to the exterior
9 of the restaurant and cocktail lounge with the prior written
10 consent of the District, which consent shall not be withheld
11 unreasonably.

12 In addition, Lessee may make such other improvements, addi-
13 tions, alterations, repairs, or changes to the restaurant, cock-
14 tail lounge and to the leased premises as are approved by the
15 District. District agrees that it will not unreasonably withhold
16 approval of such other improvements, additions, alterations, re-
17 pairs, or changes.

18 The District shall approve or disapprove additions, altera-
19 tions, repairs, or changes which require its approval within
20 thirty (30) days after they are submitted.

21 9. LANDSCAPING.

22 Lessee shall, at its own cost and expense and to the satis-
23 faction of the District, install and maintain landscaping upon
24 the demised premises. A general layout of proposed landscaping
25 shall be submitted as part of the plans and specifications for
26 all proposed improvements of the site. This will include the
27 landscaping of all demised areas between any street and set back
28 lines and such other demised areas as are necessary to create a

1 pleasing development in harmony with the adjacent structures.
2 All landscaping plans and layout must have the approval of the
3 Administrative Officer, which approval will not be unreasonably
4 withheld.

5 10. PERFORMANCE AND SURETY BONDS.

6 Lessee shall, at its own cost and expense, furnish District
7 the security set forth below, in all respects satisfactory to the
8 District, as follows:

9 (a) Within ten (10) days prior to commencement of any con-
10 struction hereunder, Lessee or Lessee's Building Con-
11 tractor shall furnish reasonably acceptable security or
12 a corporate surety performance bond, issued by a surety
13 company licensed to transact business in the State of
14 California in an amount equal to one hundred percent
15 (100%) of the contract price of any construction re-
16 quired of Lessee pursuant to Sections 5 and 6, said bond
17 and said company to be in all respects, including amount
18 thereof, satisfactory to District, naming Lessee as
19 principal and said company as surety, and District as
20 obligee, to assure full and satisfactory performance by
21 Lessee of Lessee's obligation contained in Sections 5
22 and 6 to build, construct and install improvements upon
23 the demised premises.

24 (b) Within ten (10) days prior to commencement of any con-
25 struction hereunder, Lessee or Lessee's Building Con-
26 tractor shall furnish a corporate surety bond, issued by
27 a surety company licensed to transact business in the
28 State of California, with Lessee as principal, and said



1 company as surety, and District as obligee, in a sum
2 equal to fifty percent (50%) of the aforesaid contract
3 price of any construction, guaranteeing payment for all
4 materials, provisions, provender, supplies and equipment
5 used in, upon, for or about the performance of said con-
6 struction work or for labor done thereon of any kind
7 whatsoever and protecting District from any and all
8 liability, loss or damages arising from failure to make
9 such payment. In the event that Lessee employs a
10 licensed contractor for the construction hereinbefore
11 required and obtains from said contractor or contractors
12 similar bond or bonds in like amount, in all respects
13 satisfactory to District, District, upon application by
14 Lessee and upon naming of District as an obligee under
15 such bond or bonds, will accept said contractor's bonds
16 in lieu of the bonds otherwise required by this para-
17 graph and paragraph "a" of this Section.

18 (c) The Lessee shall have the option to deposit with the
19 District, cash or United States Government securities,
20 or other security which is in all respects satisfactory
21 to the District in lieu of any corporate surety bonds
22 required herein. Said cash, securities or other securi-
23 ty shall be deemed deposited with the District for all
24 the purposes enumerated herein and shall be so deposited
25 for the benefit of the District under the same terms and
26 conditions as set forth herein with respect to corporate
27 surety bonds.

28



1 (d) Security acceptable to the Board of Directors at their
2 sole discretion, may be substituted for the security
3 required by subparagraphs (a), (b) and (c) above or
4 waived or reduced by the Board of Directors.

5 11. GROSS RECEIPTS.

6 The term "gross receipts" as used in this Lease is defined
7 to be all money, cash, receipts, assets, property or other things
8 of value, including but not limited to, gross charges, sales,
9 rentals, fees, and commissions made or earned, and all gross sums
10 received or earned by Lessee, his assignees, sublessees, li-
11 censees, permittees or concessionaires, whether collected or
12 accrued, from any business, use or occupation, or any combination
13 thereof, originating, transacted or performed, in whole or in
14 part on the premises, including but not limited to, rental, the
15 rendition or supplying of services, and the sale of goods, wares
16 or merchandise; less sales and excise taxes applicable thereto
17 required to be collected by Lessee, his assignees, sublessees,
18 licensees and permittees in connection with the rendering or sup-
19 plying of services or goods, wares or merchandise.

20 There shall be no deduction from gross receipts for any
21 overhead or cost or expense of operation, such as, but without
22 limitation to, salaries, wages, cost of goods, interest, debt
23 amortization, discount, collection, credit card and bad debt
24 charges, insurance and taxes, except as specifically provided for
25 herein.

26 Gross receipts shall include the amount of any manufac-
27 turer's or importer's excise tax included in the prices of any
28 property or material sold even though the manufacturer or im-



1 porter is also the retailer thereof, and it is immaterial whether
2 the amount of such excise tax is stated as a separate charge.
3 Gross receipts, however, shall not include Federal, State, Muni-
4 cipal or other taxes collected from the consumer (regardless of
5 whether the amount thereof is stated to the consumer as a sepa-
6 rate charge) and paid periodically by Lessee to a governmental
7 agency, accompanied by a tax return or statement, but the amount
8 of such taxes shall be shown on the books and records elsewhere
9 herein required to be maintained, nor shall gross receipts in-
10 clude bad credit charges or bad debts, unless these funds are
11 collected at a later time. However, such amounts collected shall
12 be the net after collection expense is deducted.

13 Gross receipts shall not include meals served upon said
14 premises to Lessee's employees during their daily meal periods or
15 tips and gratuities given to Lessee's employes by patrons and all
16 service charges collected and turned over to such employees in
17 lieu of such tips and gratuities.

18 12. MINIMUM RENTALS.

19 Lessee shall pay to District continuing minimum annual
20 rental in twelve (12) equal monthly installments. Said install-
21 ments shall be due and payable in advance upon the tenth day of
22 the calendar month, commencing with the tenth day of the calendar
23 month next succeeding the earlier of (i) the day upon which said
24 restaurant shall have opened for business, or (ii) the effective
25 date of a final certificate of occupancy or equivalent document
26 issued by the City Building Department covering the restaurant
27 and cocktail lounge.

28



1 The aforesaid minimum annual rental for the whole of the
2 premises herein demised shall be:

- 3 \$10,000 for the first year
- 4 \$16,000 for the second year
- 5 \$18,000 for the third year
- 6 \$20,000 for the fourth year
- 7 \$22,000 for the fifth through tenth year

8 The minimum annual rental for the eleventh year, through and
9 including the fifty-third year, would be subject to automatic
10 adjustment as specified under Section 14 of this Lease.

11 13. PERCENTAGE RENTALS.

12 The minimum rental is a minimum guaranteed annual rental,
13 payable in lawful money of the United States. The money received
14 as minimum rental for any year shall be applied to the payment of
15 the percentage rental provided for in this Section 13.

16 Within fifteen (15) days after the close of each and every
17 calendar month of the term hereof, Lessee shall pay to District a
18 sum in like money, less the amount of the computed monthly in-
19 stallment of minimum rental previously paid for said calendar
20 month under Section 12, equal to the total of the following for
21 said previous calendar month:

- 22 (a) Three percent (3%) of gross receipts from the sale of
23 food or food products served on the demised premises or
24 prepared on the premises and served off the demised
25 premises;
- 26 (b) Four percent (4%) of gross receipts from the sale of
27 packaged liquor;

28



1 (c) Four percent (4%) of gross receipts from the sale of
2 alcoholic beverages prepared and served on the demised
3 premises or prepared on the premises and served off the
4 demised premises.

5 (d) Six percent (6%) of gross receipts from coin vending
6 machines on premises of Lessee per agreement between
7 Lessee and vending machine agent;

8 (e) Twenty percent (20%) of gross receipts received by
9 Lessee from telephone company as compensation for pay
10 telephones in leasehold;

11 (f) Six percent (6%) of gross receipts from any or all other
12 activities.

13 If the total of the percentages of gross receipts agreed to
14 be paid by Lessee for any accounting year exceeds the sum of the
15 minimum rental, but is less than the total of monthly payments
16 actually made by the Lessee for said accounting year, Lessee
17 shall be allowed credit at the end of said accounting year for
18 the difference between the said total of percentages agreed to be
19 paid and said total of payments actually made.

20 If any of the items, services, goods or facilities mentioned
21 above in this Section other than meals or tips for Lessee's em-
22 ployees, be provided by Lessee or its sublessees, assignees, con-
23 cessionaires or permittees, without the usual charges therefor
24 fixed by Lessee or approved by District in accordance with Sec-
25 tion 15, or if said usual charge be not collected in full, the
26 proper amount thereof (fixed by Lessee or approved by District in
27 accordance with Section 15) shall nevertheless be included in the
28 gross receipts reported by Lessee and its sublessees, assignees,

1 licensees, concessionaires and permittees, and subject to the
2 provisions of Section 11 with respect to bad credit charges and
3 bad debts, the applicable percentage thereof paid to District.

4 14. ADJUSTMENT OF ANNUAL RENTAL.

5 Beginning on the January 1st date following the tenth year
6 of the premises opening for business, and every ten years there-
7 after, the minimum annual guaranteed rental will be automatically
8 adjusted to equal ninety percent (90%) of the average annual
9 rental paid by Lessee to Lessor for the preceding three years
10 of the term thereof, but in no event will the minimum annual
11 guaranteed rental be reduced below Twenty-Two Thousand Dollars
12 (\$22,000).

13 The percentage rentals, as specified in Section 13 of this
14 lease, will remain constant for the first twenty-five (25) full
15 calendar years calculated from the first day of January following
16 the date Lessee opens the restaurant for business and commences
17 the payment of percentage rentals to District. Thereafter, said
18 percentage rentals applicable to gross receipts from the sale of
19 food or alcoholic beverages may become subject to one (1) only
20 adjustment or renegotiation by either Lessee or District by pro-
21 viding a 180 day written notice to the other party. During said
22 180 day period District and Lessee shall attempt to agree to any
23 adjustment through good faith negotiations, but if agreement is
24 not reached within said period, District and Lessee shall each
25 select a qualified real estate appraiser, and the two shall
26 select a third qualified real estate appraiser. After selection
27 of the appraisers, the appraisers shall have 120 days to each
28 prepare a fully documented written report containing his opinion

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1 of the current fair percentage rental for food and/or alcoholic
 2 beverage sales payable by Lessee to District for Lessee's use of
 3 the land only comprising the demised premises and they shall
 4 simultaneously deliver copies to the District, to Lessee, and to
 5 the other appraisers promptly on the same day. Within thirty
 6 (30) days thereafter, the appraisers shall meet and make a final
 7 joint written determination of the fair percentage rental to be
 8 payable by Lessee to District on the gross receipts of food
 9 and/or alcoholic beverages for the then remaining term of this
 10 lease or any extensions thereto. District and Lessee shall each
 11 pay the fee of the appraiser each has selected and shall each pay
 12 one-half of fee of the third appraiser.

13 15. CONTROLLED PRICES.

14 The Lessee shall fix and determine rates so that they will
 15 be reasonable and consistent with those charges by representative
 16 groups of similar type operations in Southern California. Prices
 17 and rate schedules will be provided to the District by Lessee
 18 upon written request.

19 16. MONTH TO MONTH TENANCY.

20 If Lessee holds over after the expiration of this Lease for
 21 any cause, such holding over shall be deemed to be a tenancy from
 22 month to month only, at the same rental per month and upon the
 23 same terms, conditions, restrictions and provisions as herein
 24 contained.

25 Such holding over shall include any time employed by Lessee
 26 to remove machines, appliances, and other equipment during the
 27 thirty-day period hereinafter provided for such removal.

28



1 17. DISPOSITION OF INSTALLATIONS OR IMPROVEMENTS.

2 Title to all structures, buildings or improvements construc-
3 ted by Lessee upon the demised premises, and all alterations, ad-
4 ditions, or betterments thereto, shall remain in Lessee until
5 termination of this Lease; and upon such termination, whether by
6 expiration of the term thereof, cancellation for good cause, for-
7 feiture, or otherwise, title to said structures, buildings,
8 leasehold improvements and all alterations, additions, or better-
9 ments thereto, and all leasehold improvements made to or upon
10 said premises, shall, if not removed by Lessee in accordance with
11 the next succeeding paragraph of this Section, and then only at
12 the option of the District, vest in the District without compen-
13 sation therefor to Lessee, and said structures, buildings and
14 unremoved leasehold improvements shall remain upon and be sur-
15 rendered with the premises as part thereof. Subject to the pro-
16 visions of the next succeeding paragraph, Lessee shall, upon the
17 termination of this Lease, immediately restore, and quit, and
18 peacefully surrender possession of, said premises to District in
19 at least as good and useable condition, reasonably acceptable to
20 the Administrative Officer, as the same were in at the time of
21 first occupation thereof by Lessee or others, ordinary wear and
22 tear and matters with respect to which Lessee has no repair obli-
23 gation excepted.

24 Within fifteen (15) days after termination of this lease
25 Lessee shall in any event, be entitled to remove, at its cost and
26 expense all machinery, appliances, signing, furniture, equipment,
27 decorative items, fixtures and all items of personal property
28 belonging to Lessee; should Lessee fail to so remove said items



1 prior to said fifteen (15) day period, Lessee shall lose all
2 right, title, and interest in and thereto, and District may elect
3 to keep the same upon the premises or to sell, remove or demolish
4 the same, in event of which sale, removal or demolition Lessee
5 shall reimburse the District for any cost or expense thereof in
6 excess of any consideration received by the District as a result
7 of said sale, removal or demolition.

8 Title to all utility lines, switchboards, transformer vaults
9 and all other utility service facilities constructed or installed
10 by Lessee upon the demised premises shall vest in the District
11 upon termination or expiration of this Lease.

12 18. PLACE OF PAYMENT AND FILING.

13 All rentals shall be paid to and all statements and reports
14 herein required shall be filed with the District. Checks, drafts
15 and money orders shall be made payable to the Treasurer of the
16 Oceanside Harbor District, 1540 Harbor Drive North, Oceanside,
17 California 92054.

18 19. SERVICE OF WRITTEN NOTICE OR PROCESS.

19 If Lessee is not a resident of the State of California, or
20 is an association or partnership without a member or partner
21 resident of said State, or is a foreign corporation, Lessee shall
22 file with the District, a designation of a natural person resid-
23 ing in the County of San Diego, State of California, giving his
24 name, residence, and business address, as the agent of Lessee for
25 the service of written notice or for service of process in any
26 court action between Lessee and the District, arising out of or
27 based upon this Lease, and the delivery to such agent of written

28



1 notice or a copy of any process in such action shall constitute a
2 valid service upon Lessee.

3 If for any reason service of such written notice or of such
4 process upon such agent is not possible, the Lessee may be per-
5 sonally served with each written notice or process outside of the
6 State of California and such service shall constitute valid ser-
7 vice upon Lessee; and it is further expressly agreed that Lessee
8 is amenable to such process and submits to the jurisdiction of
9 the court so acquired and waives any and all objection and pro-
10 test thereto.

11 Written notice shall be deemed sufficient if said notice is
12 deposited in the United States mail, postage prepaid, addressed
13 to Lessee at 17042 Gillette Avenue, Irvine, California 92714, or
14 to such other address that Lessee may in writing file with Ad-
15 ministrative Officer; provided, however, that nothing herein
16 contained shall preclude or render inoperative service of such
17 notice upon the Lessee in the manner prescribed by law.

18 20. DEFAULT.

19 This Lease is made upon the condition that if the rents or
20 other sums which Lessee herein agrees to pay, or any part there-
21 of, shall be unpaid on the date on which the same shall become
22 due, or if other default be made in any of the terms, agreements,
23 conditions or covenants herein contained on the part of the Les-
24 see, or should Lessee abandon or cease to use the premises after
25 commencement of construction for a period of thirty (30) days at
26 any one time, except when prevented by fire, earthquake, repairs,
27 strikes or other calamity or cause beyond Lessee's control, then
28 and in such event, at the option of the District as evidenced by

1 resolution of the Board, and written notice to Lessee, this Lease
2 shall be forfeited, and the District may exercise all rights of
3 entry and re-entry upon the demised premises and may operate for
4 its own and sole benefit said premises and all improvements
5 hereon.

6 No default shall be declared by the District, as to any
7 breach which may be cured or obviated by Lessee, if Lessee cures
8 any default in the payment of money within fifteen (15) days af-
9 ter receiving written notice thereof from the District, if Lessee
10 cures any other default within sixty (60) days after receiving
11 written notice thereof, or if Lessee commences to cure such de-
12 fault within said sixty (60) day period and diligently prosecutes
13 curing it thereafter.

14 21. SUBLEASE, ASSIGNMENTS AND SUCCESSORS.

15 At least thirty (30) days written notice of intention to
16 assign or sublet portions of the demised premises to others
17 shall be given to the District. During the said thirty (30) day
18 period, the District shall approve or disapprove said proposed
19 assignment or sublease. Approval shall not be withheld unrea-
20 sonably by the District. Disapproval may be appealed to the
21 Board of Directors at any regular meeting of the Board within
22 thirty (30) days of the time notice of disapproval is mailed to
23 Lessee. In the event the appeal to the Board is denied, said
24 proposed sublease or assignment shall not be made. Such appeal
25 will not unreasonably be denied by the Board. Any and all sub-
26 lessees shall be subject to and bound by each and all of the
27 terms and conditions of this Lease and in particular those per-
28 taining to determining rates pursuant to Section 15. The term



1 "Sublease" as used in this paragraph shall include any license,
2 permit, concession, assignment or transfer of any interest in or
3 to said property by Lessee, and the term "Sublessee" shall
4 include any licensee, permittee, concessionaire, assignee, or
5 transferee of or from Lessee. However, nothing contained herein
6 shall require the Lessee to obtain the consent of Lessor to nor-
7 mal business rentals or normal business transactions which are a
8 usual and necessary part of the use for which the parcel has been
9 leased. The purpose of the foregoing clause is to permit the
10 Lessee to conduct the approved business of his leased parcel in
11 its normal and usual manner, and shall not be construed to in
12 any way authorize assignments or subleases as hereinbefore
13 prohibited.

14 Lessee may, with the consent of District, which shall not be
15 unreasonably withheld, give, assign, transfer, mortgage, hypothecate,
16 grant control of, or encumber Lessee's interest under this
17 Lease and the leasehold estate so created, to a bona fide lender
18 on the security of the leasehold estate, and Lessee may execute
19 any and all instruments in connection therewith necessary and
20 proper to complete such loan and perfect the security therefor to
21 be given to such lender. Any such bona fide lender shall have
22 the right at any time during the term of the loan and while this
23 Lease is in full force and effect:

24 (a) To do any act or thing required of Lessee in order to
25 prevent a forfeiture of Lessee's rights hereunder and
26 all such acts or things so done shall be as effective to
27 prevent a forfeiture of Lessee's rights hereunder as if
28 done by Lessee including acts to cure defaults as pre-



1 viously allowed Lessee herein, and such lender shall
2 have the same amount of time after written notice to
3 such lender as Lessee has after written notice to Lessee
4 to cure any breach or default hereunder.

5 (b) To realize on the security of the leasehold estate, or
6 to acquire and succeed to the interest of Lessee here-
7 under, by foreclosure or by a deed or assignment in lieu
8 of foreclosure, and thereafter such lender, with Dis-
9 trict approval which shall not unreasonably be withheld,
10 may convey, assign, or sublease the interest or title to
11 said leasehold estate to any other person subject to all
12 the terms, conditions and covenants of this Lease.

13 (c) Two (2) copies of any and all security devices or in-
14 struments shall be filed with the Administrative Officer
15 prior to the effective date thereof, and Lessee shall
16 give the Administrative Officer prior written notice of
17 any changes or amendments thereto.

18 Except as in this Section 21 specifically hereinabove pro-
19 vided, Lessee shall not, either directly or indirectly give, as-
20 sign, hypothecate, encumber, transfer, or grant control of this
21 Lease or any interest, right or privilege therein, or sublet the
22 whole or any portion of the demised premises or license the use
23 of the same in whole or in part. Neither this Lease nor any in-
24 terest therein shall be assignable, or transferable in proceed-
25 ings in attachment, garnishment, or execution against Lessee, or
26 in voluntary or involuntary proceedings in bankruptcy or insol-
27 vency or receivership taken by or against Lessee or by any pro-
28 cess of law, and possession of the whole or any part of the

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1 demised premises shall not be divested from Lessee in such pro-
2 ceedings or by any process of law, without written consent of the
3 District. Any breach of the provisions of this paragraph shall
4 give District the right to terminate this Lease immediately.

5 The foregoing, notwithstanding, Lessee may, with the Board
6 of Directors' consent, which shall not be unreasonably withheld,
7 transfer, assign or sublet this Lease to a corporation, partner-
8 ship or other entity in which not less than eighty percent (80%)
9 of the voting stock or interest of which is held by Lessee or, if
10 Lessee is a corporation, by any parent or subsidiary of Lessee,
11 or, if Lessee is a partnership, by the partners of Lessee, and/or
12 the immediate family of such partners.

13 Further, notwithstanding the foregoing, Lessee shall have
14 the right, within two (2) years of opening the restaurant, to
15 assign this lease, without approval of Lessor, to Monterey Bay
16 Cannery, Inc.

17 District agrees that it will not terminate said Lease be-
18 cause of any default or breach thereunder on the part of Lessee
19 if the holder of a trust deed:

20 (a) Shall cure such default or breach within the same time
21 after service of written notice on said holder by the
22 District of its intention to terminate this Lease for
23 such default or breach as must be given to Lessee after
24 written notice to Lessee to cure such breach or default,
25 or

26 (b) Within thirty (30) days after service of written notice
27 on said holder by the District of its intention to ter-
28minate this Lease for such default or breach, shall com-



1 mence and thereafter diligently pursue to completion
2 proceedings for foreclosure and sale under and pursuant
3 to the trust deed, and shall keep and perform all of the
4 covenants and conditions of this Lease provided herein
5 to be kept and performed by Lessee until such time as
6 said leasehold shall be sold upon foreclosure pursuant
7 to said trust deed or shall be released or reconveyed
8 thereunder, provided, however, that if the holder of a
9 trust deed shall fail or refuse to comply with any and
10 all of the conditions of this paragraph, then and there-
11 upon the District shall be released from the covenant of
12 forbearance herein contained; and any notice provided
13 for in this paragraph shall be served in the same manner
14 as provided in Section 19 of this Lease, and shall be
15 delivered or directed to said holder at its address as
16 last shown on the records of the District.

17 Upon assignment or sale by the trust deed holder of the
18 leasehold interest, the holder shall be relieved of all liability
19 under the Lease.

20 Each and all of the provisions, agreements, terms, cove-
21 nants and conditions herein contained to be performed, fulfilled,
22 observed and kept shall be binding upon the heirs, executors,
23 administrators, successors and assigns of the respective parties
24 hereto, and all rights, privileges, and benefits arising under
25 this Lease and in favor of either party shall be available in
26 favor of the heirs, executors, administrators, successors and
27 assigns thereof respectively; provided, that no assignment or
28 subletting by or through Lessee in violation of the provisions



1 of this Lease shall vest any rights in any such assignee or
2 sublessee.

3 22. LIENS.

4 At least ten (10) days prior to commencement of any
5 construction, Lessee shall furnish the District with written
6 notice of intention to commence construction so that the
7 District may post upon premises hereby demised a notice of
8 non-responsibility.

9 23. WAIVER OF CONDITIONS OR COVENANTS.

10 Any waiver by District of any breach of any one or more of
11 the covenants, conditions, terms and agreements of this Lease
12 shall not be construed to be a waiver of any subsequent or other
13 breach of the same or of any other covenant, condition, term or
14 agreement of this Lease nor shall failure on the part of the
15 District to require or exact full and complete compliance with
16 any of the covenants, conditions, terms or agreements of this
17 Lease be construed as in any manner changing the terms hereof or
18 stopping the District from enforcing the full provisions hereof,
19 nor shall the terms of this Lease be changed or altered in any
20 manner whatsoever other than by written agreement of District and
21 Lessee. No delay, failure or omission of the District to re-
22 enter the demised premises or to exercise any right, power, pri-
23 vilege or option, arising from any default, nor any subsequent
24 acceptance of rent then or thereafter accrued shall impair any
25 such right, power, privilege or option or be construed as a
26 waiver of or acquiescence in such default or as a relinquishment
27 of any right. No notice to Lessee shall be required to restore
28 or revive time as of the essence after the waiver by the District



1 of any default. No option, right, power, remedy, or privilege of
2 the District shall be construed as being exhausted by the exer-
3 cise thereof in one or more instances.

4 The rights, powers, options and remedies given the District
5 by this agreement shall be cumulative.

6 24. PROPERTY INSURANCE.

7 Throughout the term of this Lease and during Lessee's occu-
8 pancy of the demised premises, Lessee, at its own cost and ex-
9 pense, shall insure against loss of or damage to all buildings,
10 structures, equipment, and improvements thereon, resulting from
11 fire, lightening, vandalism, malicious mischief, and those risks
12 ordinarily defined in "extended coverage."

13 Such insurance shall be in an amount equal to 90% of the
14 full replacement value of said buildings, structures, equipment
15 and improvements, exclusive of foundations and underground utili-
16 ties and shall be placed and maintained with such insurance com-
17 pany or companies and in such form as shall be reasonably satis-
18 factory to the District.

19 All such insurance policies, along with their endorsements
20 shall name the District as an insured; upon the occurrence of any
21 loss, the proceeds of such insurance shall be held by the Dis-
22 trict in trust for the named insureds as their interests appear.
23 In the event of such loss, Lessee shall be obligated to rebuild
24 or replace the destroyed or damaged buildings, structures, equip-
25 ment and improvements to the reasonable satisfaction of the Dis-
26 trict. Said obligation to rebuild or replace is not dependent
27 upon the existence of insurance. District shall reimburse Lessee
28 for said rebuilding or replacement out of and to the full extent

1 of the proceeds of said insurance as payments are required for
2 such purposes. Any surplus or proceeds after said rebuilding or
3 replacement shall be distributed to the named insureds as their
4 interests appear.

5 However, in the event of a loss during the last ten years of
6 the term for which Lessee is obligated to carry insurance (i) if
7 the loss amounts to less than twenty percent (20%) of the then
8 replacement value of the destroyed or damaged buildings, Lessee
9 shall be obligated to rebuild or replace the destroyed or damaged
10 buildings, and (ii) if such loss is equal to or greater than
11 twenty percent (20%) of the then replacement value of the de-
12 stroyed or damaged buildings, Lessee shall have the option (A) of
13 terminating the Lease in which event the District shall be en-
14 titled to the minimum rental for the remaining period of the term
15 out of the insurance proceeds, with any remaining proceeds to be
16 paid to Lessee, or (B) of rebuilding the destroyed or damaged
17 buildings up to the amount of the insurance proceeds.

18 In the event of a loss for which Lessee is not obligated to
19 carry insurance, Lessee, at his option, can terminate the Lease
20 without further liability thereunder or replace or rebuild the
21 destroyed or damaged buildings.

22 25. INDEMNITY CLAUSE AND CASUALTY INSURANCE.

23 Lessee shall at all times relieve, indemnify, protect and
24 save harmless the District and the City of Oceanside and its
25 Boards, Councils, officers, agents and employees from any and all
26 claims and liability, including reasonable attorneys fees and any
27 other reasonable expenses incurred in defending against the same,
28 for the death of or injury to persons or damage to property, in-



1 cluding property owned or controlled by or in the possession of
2 the District, any of its officers, agents or employees, that may
3 in whole or in part arise from or be caused by (a) the operation,
4 maintenance, use or occupation of the herein demised premises by
5 Lessee, (b) the acts, omissions or negligence of Lessee, its
6 agents, officers, employees or permittees, or (c) the failure of
7 Lessee to observe and abide by any of the terms or conditions of
8 this Lease or any applicable law, ordinance, rule or regulation
9 of the District or City of Oceanside. The obligation of Lessee
10 to so relieve, indemnify, protect and save harmless the District,
11 and each of its Boards, officers and employees, shall continue
12 during any periods of occupancy or of holding over by Lessee, its
13 agents, officers, employees or permittees, beyond the expiration
14 or other termination of this Lease.

15 Lessee shall maintain in full force and effect during the
16 term of this Lease, comprehensive general liability insurance
17 with bodily injury and property damage liability limits of not
18 less than Five Hundred Thousand Dollars (\$500,000) per person and
19 One Million Dollars (\$1,000,000) per occurrence of death or bodi-
20 ly injury and One Hundred Thousand Dollars (\$100,000) per occur-
21 rence of property damage; and Lessee agrees that the District and
22 the City of Oceanside, its Boards, its Council and members there-
23 of, and the City and District's officers, agents and employees,
24 shall be named as additional insureds under such liability insur-
25 ance policy or policies.

26 A duplicate policy evidencing such insurance coverage shall
27 be filed with the Secretary within ten (10) days prior to any
28 entry upon the premises herein demised and said policy shall pro-



1 vide that such insurance coverage shall not be cancelled or re-
2 duced without at least thirty (30) days prior written notice to
3 Administrative Officer. At least ten (10) days prior to the ex-
4 piration of any such policy, a policy showing that such insurance
5 coverage has been renewed or extended shall be filed with the
6 Secretary.

7 26. WORKERS' COMPENSATION INSURANCE.

8 Lessee shall maintain in force from the date Lessee has
9 employees on the premises through the remainder of the term of
10 this Lease, in an amount and with coverage as required by law,
11 Workers' Compansation Insurance. Upon request, a certificate
12 evidencing such insurance coverage shall be filed with Secretary
13 prior to permitting any employees to work on the premises.

14 27. FAILURE TO PROCURE INSURANCE.

15 In case of failure on the part of Lessee to procure or renew
16 the herein required insurance, the District may, at its discre-
17 tion, procure or renew such insurance and pay any and all prem-
18 iums in connection therewith and all monies so paid by the Dis-
19 trict shall be repaid, by Lessee, to the District upon demand.

20 28. TAXES AND ASSESSMENTS.

21 Lessee agrees to pay before delinquency all lawful taxes,
22 assessments, fees or charges which at any time may be levied by
23 the State, County or any tax or assessment levying body upon any
24 interest in this Lease or any possessory right which Lessee may
25 have in or to the premises covered hereby or to the improvements
26 thereon by reason its use or occupancy thereof or otherwise, as
27 well as all taxes, assessments, fees and charges on goods, mer-
28 chandise, fixtures, appliances, equipment and property owned by



1 it in, on, or about said premises.

2 29. ACCOUNTING RECORDS.

3 In order to determine the amount of and provide for the pay-
4 ment of the rental due hereunder, Lessee shall at all times dur-
5 ing the term of this Lease, and for twelve (12) months there-
6 after, cause to be kept, in the counties of Orange or San Diego,
7 in a manner reasonably satisfactory to the Administrative Offi-
8 cer, true, accurate and complete records to show all transactions
9 relative to the conduct of operations (but not necessarily sup-
10 ported by documents of original entry such as, but without limit
11 to, credit card invoices, sales slips, cash register tapes and
12 purchase invoices) or Board of Equalization Sales Tax reports in
13 lieu thereof.

14 No later than the 15th day of each calendar month, Lessee
15 shall render to District a detailed statement showing gross re-
16 ceipts during the preceding calendar month, together with the
17 amount payable to District as elsewhere herein provided, and
18 shall accompany same with remittance of amount so shown to be
19 due.

20 Books of account and records hereinabove required shall be
21 kept or made available at the demised premises or elsewhere with-
22 in the counties of Orange or San Diego, and the District shall
23 have the right at any and all reasonable times to examine and
24 audit said books and records without restriction for the purpose
25 of determining the accuracy thereof and of the monthly statements
26 of gross receipts derived from occupancy of the demised prem-
27 ises.

28



1 30. ACCOUNTING YEAR.

2 The term accounting year as used herein shall mean a period
3 of twelve (12) consecutive calendar months, the first accounting
4 year commencing concurrently with the beginning of the term of
5 this Lease and ending on the last day of the twelfth calendar
6 month following the beginning of said term; thereafter the ac-
7 counting year shall be each period of twelve (12) consecutive
8 calendar months.

9 31. COST OF AUDIT.

10 In the event Lessee does not make available its original
11 records and books of account at the leased premises or within the
12 territorial limits of the counties of San Diego, or Orange, Les-
13 see agrees to pay all necessary expenses reasonably incurred by
14 District in conducting any audit at the location where said
15 records and books of account are maintained.

16 32. ENTRY BY DISTRICT.

17 District and its duly authorized representatives or agents
18 may enter upon said demised premises at any and all reasonable
19 times during the term of this Lease for the purpose of determin-
20 ing whether or not Lessee is complying with the terms and condi-
21 tions hereof, or for any other purpose incidental to the rights
22 of the District.

23 33. RIGHT OF ENTRY AS AGENT.

24 In any and all cases in which provision is made herein for
25 termination of this Lease, or for exercise by the District of
26 right of entry or re-entry upon the demised premises to take
27 possession thereof, or in case of abandonment or vacation of the
28 premises by Lessee, Lessee hereby irrevocably appoints the Dis-

1 trict the agent of Lessee to enter upon the demised premises and
2 remove any and all persons and property whatsoever situated upon
3 the demised premises and place all or portion of said property,
4 except such property as may be forfeited to the District, in
5 storage for the account of and at the expense of the Lessee.

6 In such case the District may relet the premises upon such
7 terms as the District may reasonably deem fit, and if sufficient
8 sum shall not be thus realized, after paying the expenses of such
9 reletting and collecting, to satisfy the rent and other sums
10 herein reserved to be paid, Lessee agrees to pay any deficiency,
11 and to pay the expenses of such reletting and collecting. If the
12 District terminates the Lease in connection with reletting the
13 premises after re-entry by the District, Lessee's obligation to
14 pay rent for the period subsequent to such termination shall
15 cease.

16 Lessee hereby exempts and agrees to save harmless the Dis-
17 trict from any cost, loss or damage arising out of or caused by
18 any such entry or re-entry upon the demised premises and the
19 removal of persons and property and storage of such property by
20 District and its agents.

21 34. MAINTENANCE OF PREMISES.

22 Lessee shall give prompt notice to the District of any fire
23 or damage that may occur from any cause whatsoever. Lessee
24 shall, to the reasonable satisfaction of the Administrative Of-
25 ficer, keep and maintain the leased premises and all improvements
26 of any kind which may be erected, installed or made thereon by
27 Lessee in good and substantial repair and condition, including
28 painting, ordinary wear and tear excepted, and shall make all

1 necessary repairs and alterations thereto.

2 Except as herein specifically provided, District shall not
3 at any time be required to make any improvements or repairs what-
4 soever except that the District or City at its sole discretion
5 will do any necessary dredging, filling, grading, slope protec-
6 tion, construction and maintenance of sea walls or repair and
7 maintenance of water system, sewer facilities, roads, or other
8 District or City facilities in order to protect the leased prem-
9 ises or the adjoining premises.

10 The District has constructed or will construct prior to com-
11 mencement of construction by Lessee, and will maintain in good
12 condition and repair on a continuous basis, (i) seawall and land
13 access to the premises for pedestrian and automotive traffic (ii)
14 all sewer and water utility lines to the demised premises.

15 Lessee expressly agrees to maintain the leasehold in a safe,
16 clean, wholesome and sanitary condition, to the reasonable satis-
17 faction of the Administrative Officer and in compliance with all
18 applicable law. Lessee further agrees to provide proper con-
19 tainers for trash and garbage and to keep the demised premises,
20 free and clear of rubbish and litter. District shall have the
21 right to enter upon and inspect the said premises at any time for
22 cleanliness and safety.

23 Notwithstanding the above, Lessor shall retain the full re-
24 sponsibility to maintain Slip K-1 and the non-exclusive parking
25 area.

26 35. REPAIRS BY DISTRICT.

27 Lessee shall from time to time make any and all necessary
28 repairs to or replacement of any equipment, structure, struc-

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1 tures, or other physical improvements, upon the demised premises,
2 in order to comply with any and all regulations, laws, or ordi-
3 nances of the Federal Government, State of California, County of
4 San Diego, City of Oceanside, California, Oceanside Small Craft
5 Harbor District or other governmental body, which may be applica-
6 ble.

7 If Lessee fails to make any such repairs or replacement as
8 required, the District may notify Lessee of said default in writ-
9 ing, and should Lessee fail to cure said default and make said
10 repairs or replacements within a reasonable time as established
11 by District, District may make such repairs or replacement and
12 the cost thereof, including, but not limited to, the cost of la-
13 bor, materials and equipment, shall be charged against Lessee, and
14 shall become a part of the rental for the period next following
15 the period of default, or the same may be pro rated over a period
16 of time to be determined by the District.

17 36. NAVIGABLE WATERS.

18 Under Federal law no construction, installation, dredging,
19 filling, or other activity which would have an effect on naviga-
20 tion may be conducted in or adjoining navigable waters without a
21 permit therefor first being issued by the Secretary of the Army.

22 37. SPECIAL SERVICES.

23 In addition to the rental charges as herein provided Lessee
24 shall pay all service charges for furnishing water, power, sewage
25 disposal, light, telephone service, garbage and trash collection
26 and all other utility rate use charges applicable to said prem-
27 ises as charged to comparable users.

28



1 38. SIGNS, AWNINGS, UTILITY LINES, AERIALS AND ANTENNAE.

2 No signs or awnings shall be erected or maintained upon the
3 demised premises (other than inside any buildings constructed by
4 Lessee or sublessee), except such signs and awnings used to show
5 the business or trade name or trademarks of Lessee or sublessee.
6 All such signs and awnings must be approved by the Board of
7 Directors who will not unreasonably withhold their consent. All
8 utility lines, and specifically the ones for the utilities men-
9 tioned in Section 6, shall be underground. Aerials and antennae
10 shall conform to the minimum standards of construction and archi-
11 tectural treatment mentioned in Section 5.

12 39. HAZARDOUS SUBSTANCES.

13 No goods, merchandise, or material shall be kept, stored, or
14 sold in or on said demised premises which are in any way explo-
15 sive or hazardous; and no offensive or dangerous trade, business
16 or occupation shall be carried on therein or thereon, and nothing
17 shall be done on said premises, which will cause a suspension or
18 cancellation of the insurance upon said or other premises and the
19 improvements thereon.

20 No machinery or apparatus shall be used or operated on said
21 leased premises which will in any way injure said premises, or
22 improvements thereon; provided, however, that nothing in this
23 Section contained shall preclude Lessee from bringing, keeping or
24 using on or about said premises such materials, supplies, equip-
25 ment and machinery as are appropriate or customary in carrying on
26 its said business, or from carrying on its business in all usual
27 respects.

28 Open flame welding, gasoline or other fuel storage is ex-

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1 pressly prohibited without prior written consent of the Adminis-
2 trative Officer.

3 40. NUISANCE.

4 Lessee shall not use the property hereby demised for any
5 unlawful purpose and shall not perform any act of omission or
6 commission upon or about said property or any buildings or con-
7 struction thereon which would result in a nuisance or a violation
8 of the laws of and ordinances of the United States, State of
9 California, the County of San Diego or the City of Oceanside, as
10 the same may be now or hereafter be in force and effect. Lessee
11 will use its best efforts to prevent others from so using the
12 premises or performing such acts thereon.

13 41. RULES AND REGULATIONS.

14 Lessee shall abide by all applicable rules, regulations,
15 resolutions, ordinances, and statutes of the District, City of
16 Oceanside, County of San Diego, State of California, or other
17 governmental body, where applicable, respecting the use, opera-
18 tion, maintenance, repair or improvement of the leased premises
19 and equipment, and shall pay for any and all licenses required in
20 connection with the use, operation, maintenance, repair or im-
21 provement of the leased premises.

22 42. RESERVATIONS.

23 This Lease may be terminated by Lessee, within ninety (90)
24 days after the commencement of the term hereof, if Lessee cannot
25 obtain, at Lessee's expense, within said period a CLTA Standard
26 Coverage Leasehold Policy of Title Insurance, from a company
27 satisfactory to Lessee and with liability in an amount determined
28 by Lessee, showing Lessee as Lessee and subject only to such ex-



1 ceptions of record as are approved by Lessee. In the event of
2 such termination, District shall return to Lessee the amount of
3 any deposits received from Lessee and neither party shall have
4 any further obligations or liability hereunder.

5 If this Lease is not terminated pursuant to the immediately
6 preceding paragraph:

7 (a) Lessee expressly agrees that this Lease and all rights
8 hereunder shall be subject to all prior exceptions,
9 reservations, leases, licenses, easements, and rights-
10 of-way of record now existing in, to, over or affecting
11 the leased premises for any purpose whatsoever, and

12 (b) Lessee expressly agrees that this Lease and all rights
13 hereunder shall be subject to conditions, covenants,
14 restrictions, rights-of-way and easements as shown on
15 map attached hereto and made a part hereof, including
16 but not limited to the right of the District to provide
17 for, or install, construct, maintain, service and oper-
18 ate sanitary sewers, fire access roads, storm drains,
19 drainage facilities, electric power lines, telephone
20 lines and access and Harbor utility easements, together
21 with the right of the District to convey such easements
22 and transfer such rights to others, provided the same
23 does not affect the use and occupancy of the Lessee or
24 any sublessee.

25 43. EMINENT DOMAIN.

26 If the whole or any substantial part of the premises hereby
27 leased shall be taken by any paramount public authority under the
28 power of eminent domain then the term of this Lease shall cease



1 as to the part so taken from the day the possession of that part
2 shall be taken for any public purpose and from that day Lessee
3 shall have the right to either cancel this Lease or to continue
4 in the possession of the remainder of the premises under the term
5 herein provided, except that the minimum annual rental shall be
6 reduced in proportion to the amount of the premises taken.

7 All damages awarded for such taking shall belong to and be
8 the property of the District; provided, however, that the Dis-
9 trict shall not be entitled to any portion of the award made for
10 (i) the value of Lessee's leasehold interest or (ii) the loss of
11 business installation or improvements belonging to Lessee.

12 If an insubstantial part of the premises is taken by eminent
13 domain, the term of the Lease shall cease as to the part so taken
14 and the minimum annual rental shall be reduced in proportion to
15 the amount of the premises so taken.

16 44. FREE USE OF FACILITIES.

17 There shall be no free use of services or facilities pro-
18 vided on or from said premises which would in any way violate
19 Covenant 8 of the Resolution No. 61-8, Oceanside Small Craft
20 Harbor District, incorporated by reference in this agreement.

21 45. QUIET ENJOYMENT.

22 Lessee, upon performing its obligations hereunder shall have
23 the quiet and undisturbed possession of the demised premises
24 throughout the term of this Lease.

25 46. BOND RESOLUTION.

26 Reference is hereby made to Resolution No. 61-8 of the Board
27 authorizing and providing for the issuance of \$4,500,000 of Small
28 Craft Harbor Revenue Bonds for said District and providing the

1 terms and conditions for the issuance of said bonds as adopted by
2 said Board on April 13, 1961, which are incorporated by reference
3 in full as part of this agreement.

4 47. TIME.

5 Time is of the essence of this Lease and applies to all
6 times, restrictions, conditions, and limitations contained
7 herein.

8 48. LEASE - CITY OF OCEANSIDE.

9 This Lease shall be subject to and Lessee shall be obligated
10 by all the applicable provisions, terms and conditions of that
11 certain Lease (the "Master Lease") between the City of Oceanside,
12 a municipal corporation, and the Oceanside Small Craft Harbor
13 District, dated November 22, 1961, as amended, and as hereinafter
14 may be amended, and the provisions of such Lease are referred to
15 and incorporated herein by reference as though the same were
16 fully set forth in length herein and all applicable obligations
17 of the Oceanside Small Craft Harbor District under said Lease
18 shall be the obligations of the Lessee herein. District agrees
19 that the Master Lease will not be amended in any way which would
20 adversely affect the rights of Lessee under this Lease. Lessee's
21 obligations under this Lease are subject to the District obtain-
22 ing and delivering to Lessee within thirty (30) days after the
23 commencement of the term hereof, of (i) the agreement of the City
24 that Lessee's use of the premises is within the uses specified in
25 Section III of the Master Lease, (ii) the agreement of the City
26 that if the City terminates the Master Lease, the City will be
27 bound by the terms of this Lease, in exchange for Lessee's at-
28 tending to the City, and (iii) the consent of the City in accor-

1 dance with Section VIII of the Master Lease, to the construction
2 of the improvements to be erected by Lessee on the premises. In
3 the event District does not obtain and deliver the said agree-
4 ments and consent, Lessee may terminate his Lease without any
5 further liability or obligations hereunder and District shall
6 return to Lessee the amount of any rent received from Lessee.

7 49. LEASE SUBJECT TO QUITCLAIM DEED.

8 This Lease shall be subject to and Lessee shall be obli-
9 gated by all of the applicable terms, conditions, covenants and
10 restrictions of that certain quitclaim deed dated December 11,
11 1959, under which the United States acting by and through the
12 Administrator of the General Services Agency granted sixty-seven
13 (67) acres of land to the City of Oceanside, a portion of which
14 forms the area now known as Parcel 4.

15 50. PUBLIC WALKWAY.

16 Lessee agrees, if so required, to construct and maintain a
17 public walkway access on that portion of the demised premises
18 abutting the public parking area to assure public access around
19 the restaurant facility and to the existing tenant dock facili-
20 ties located on the easterly edge of the subject property.
21 Lessee agrees to so construct any buildings or make any use of
22 the property in such a manner as to not unreasonably interfere
23 with the access to the existing tenant dock from the public
24 street as hereinabove more particularly set forth. The proposed
25 Lessee's site plan and floor plan is attached hereto as Exhibit
26 "A" and "A-1" and is hereby approved by the District.

27 51. HOLDING RENTAL AND RENTAL DEFERRAL.

28 Lessee shall pay to District Ten Thousand Dollars (\$10,000)



1 as holding rental for the first year of this lease. Upon the
2 full execution of this Lease, Lessee shall deposit with District
3 the sum of Ten Thousand Dollars (\$10,000) to be applied as the
4 first year's holding rent. One Thousand Dollars (\$1,000) shall
5 be due as monthly holding rent on the first day of each succeed-
6 ing month until the date upon which Lessee opens the restaurant
7 to the public. Such holding rent shall be non-refundable to
8 Lessee. If the restaurant design and/or concept proposed by
9 Lessee does not receive all the necessary approvals and permits
10 required to proceed with the development and construction pro-
11 posed by Lessee within a period of Twelve (12) months following
12 the full execution of this Lease, unless extended in writing by
13 both parties hereto, District shall promptly refund to Lessee,
14 Lessee's full Rental Payment Security as provided by Lessee in
15 accordance with Article 7 of this Lease and this Lease shall
16 become null and void unless extended in writing by the parties
17 hereto. Notwithstanding the above provisions, District agrees to
18 promptly refund to Lessee one-half of the total holding rent paid
19 if Lessee is able to open the restaurant premises within eighteen
20 (18) months following the date upon which this Lease is fully
21 executed by all parties.

22 The minimum Rentals and Percentage Rentals payable by Lessee
23 to District pursuant to Articles 12 and 13 of this Lease for the
24 first full nine (9) calendar months following the opening of the
25 restaurant premises to the public shall be deferred and paid in
26 equal monthly installments to District over a thirty-six (36)
27 month period commencing on the tenth day of the calendar month
28 following the termination of said rental deferral period. Said



1 deferred rental payments shall be paid to District by Lessee in
2 addition to such other rental payments due under this Lease.

3 IN WITNESS WHEREOF, District has, by order of its Board,
4 caused this Lease to be subscribed by the President of said Board
5 and attested by the Secretary thereof, and the Lessee has
6 executed the same the day and year first hereinabove written.

7 DATE OF FINAL EXECUTION
8 BY DISTRICT:

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
"DISTRICT"

9 Sept. 23, 1983
(To be completed by
10 District Secretary)

By [Signature]
President

By [Signature]
Secretary

12 DATE OF FINAL EXECUTION
13 BY LESSEE:

MONTEREY BAY CANNERS NO. 10
"LESSEE"

14 August 24, 1983

By [Signature]
General Partner

By [Signature]
General Partner

17 APPROVED AS TO FORM:

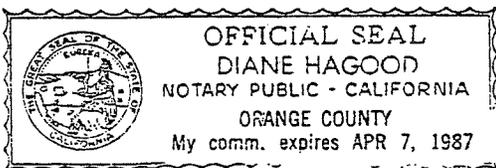
18 [Signature]
19 Harbor Attorney

Sept 19, 1983

STATE OF CALIFORNIA
COUNTY OF ORANGE } ss.

ON August 24, 1983,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Douglas L. Salisbury and Ronald F. Higgins
two, known to me,
to be two of the partners of the partnership that executed the within Instrument, and acknowl-
edged to me that such partnership executed the same.

WITNESS my hand and official seal.



17042 Gillette Avenue, Irvine, CA 92714

[Signature]
DIANE HAGOOD

NAME (TYPED OR PRINTED)
Notary Public in and for said State.

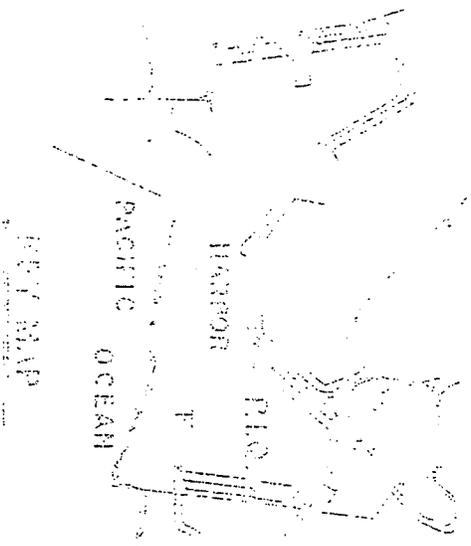
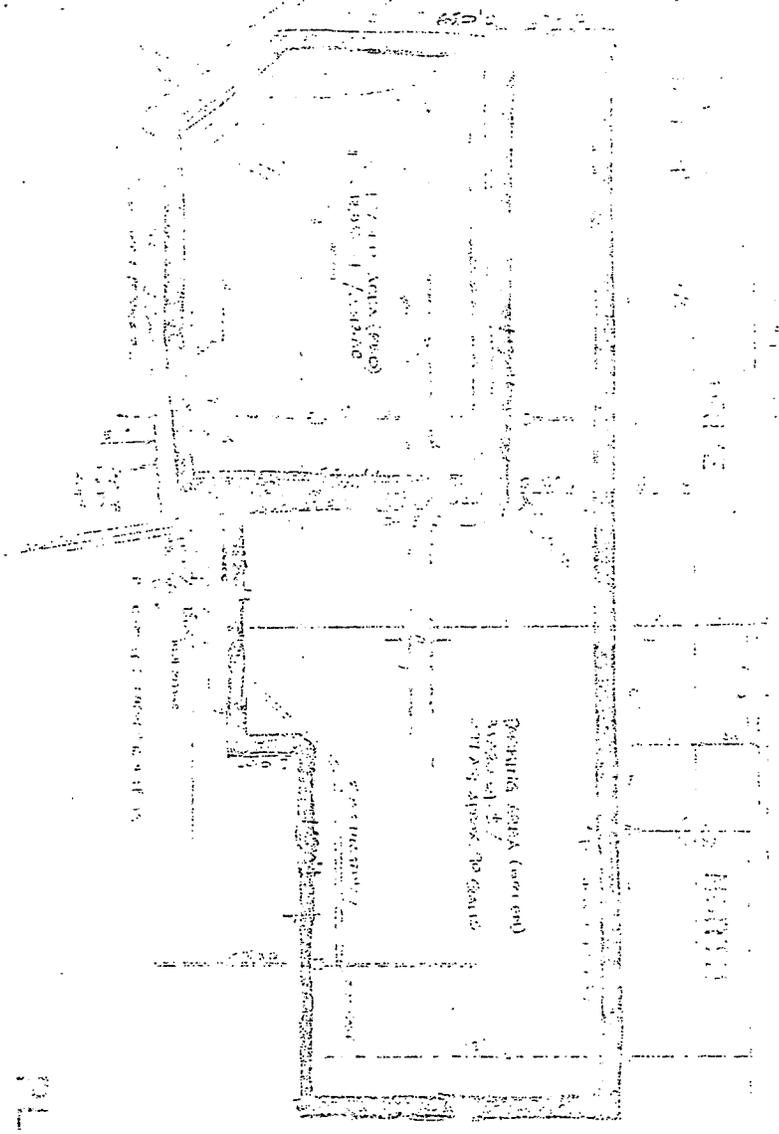
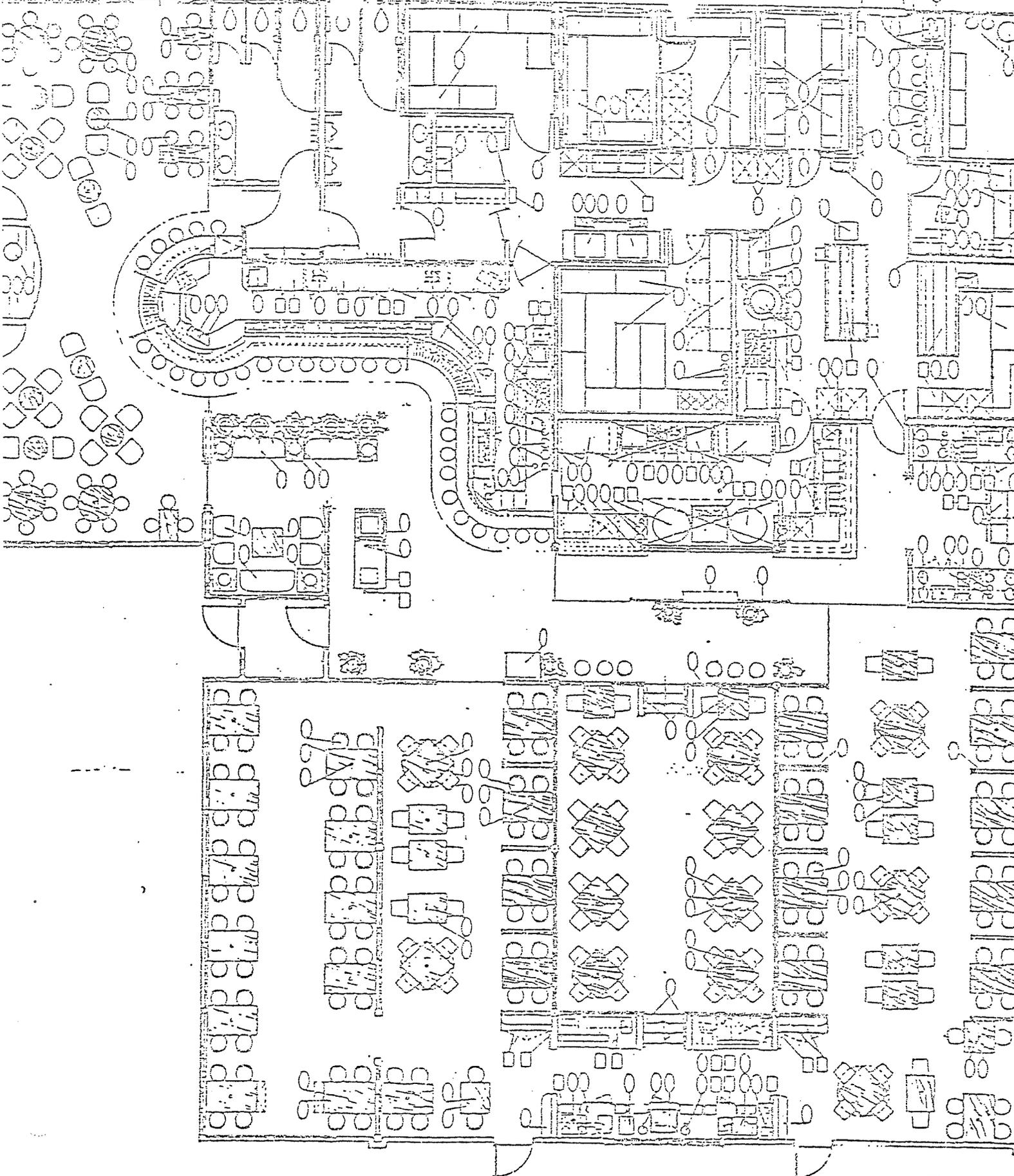


EXHIBIT "A"
 PLAN OF PARCEL A
 SHOWING ADJACENT FACILITIES



Top Deck




 RSP
 INITIALS

EXHIBIT "A-1"

EXHIBIT "B"

LEGAL DESCRIPTION - "LEASE PARCEL 4"
(MONTEREY BAY CANNERS NO. 10)

That portion of Section 22, Township 11 South, Range 5 West, San Bernardino Meridian, in the Rancho Santa Margarita y Las Flores, City of Oceanside, County of San Diego, State of California, as shown on Sheet 5 of the Map of the Oceanside Small Craft Harbor, recorded on September 17, 1963 as Miscellaneous Map No. 448, in the Office of the County Recorder of San Diego County, described as follows:

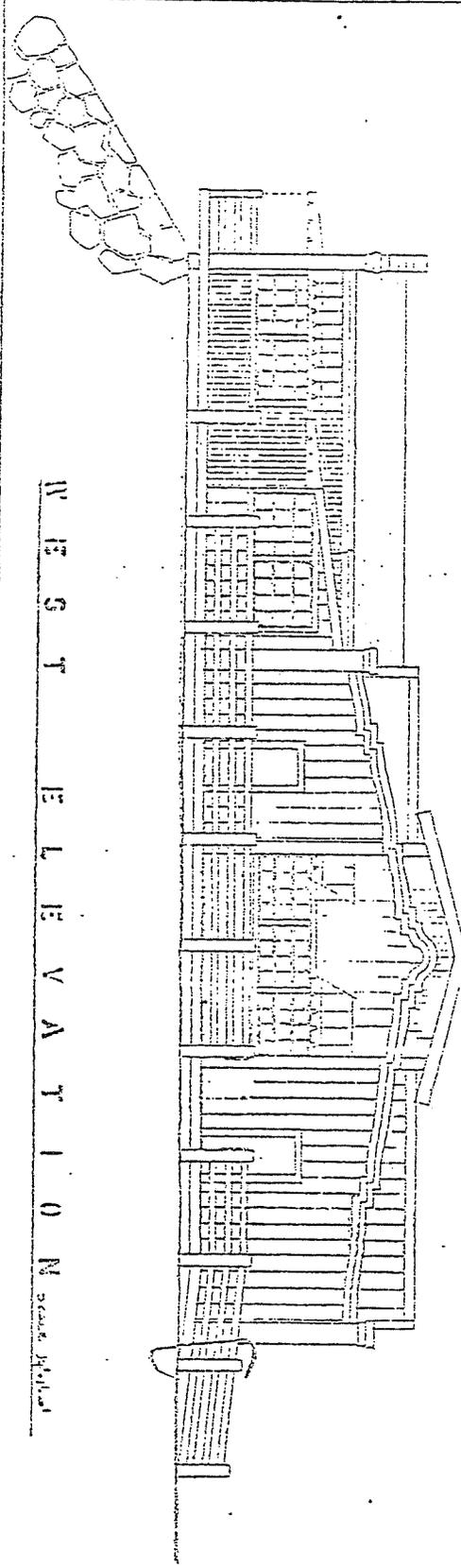
Beginning at a point in the centerline of Harbor Drive North, 42.00 feet wide, as shown on Sheet 5 of said Miscellaneous Map No. 448, distant thereon North $87^{\circ}15'21''$ East, 195.00 feet from the Point of Intersection (P.I.) of the tangents of an 82.00 foot radius curve in said centerline, said Point of Intersection lying Southwesterly Corner No. 13 as shown on said Map No. 448; Thence, South $02^{\circ}44'39''$ East, 62.00 feet to the TRUE POINT OF BEGINNING: Thence parallel to said centerline of Harbor Drive North, South $87^{\circ}15'21''$ West, 143.00 feet; Thence South $02^{\circ}44'39''$ East 65.00 feet; Thence, South $41^{\circ}43'16''$ East, 43.00 feet; Thence South $62^{\circ}56'18''$ East, 11.85 feet; Thence, North $82^{\circ}45'21''$ East, 106.00 feet; Thence, North $02^{\circ}44'39''$ West, 96.00 feet to the TRUE POINT OF BEGINNING.

Containing 13,836 square feet (0.318 acres). (Portion of Assessor Parcel No. 143-120-05.)

DRF:sk

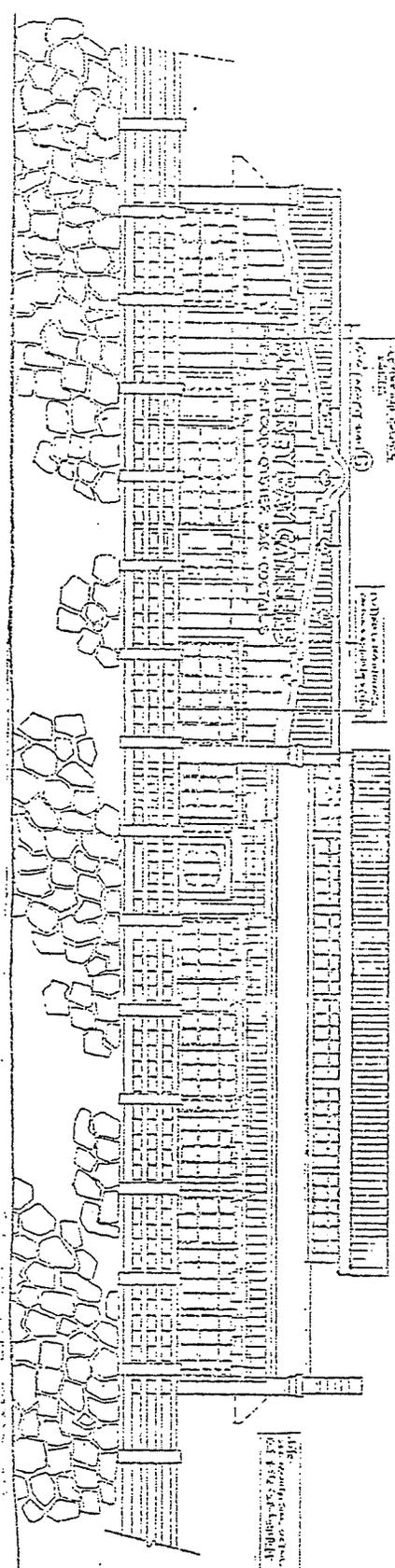


4-15-83



WEST ELEVATION scale 1/8" = 1'-0"

SOUTH ELEVATION scale 1/8" = 1'-0"



<p>DATE: 11/23/2011</p> <p>PROJECT: 1111111111</p> <p>DESCRIPTION: EXTERIOR ELEVATION</p>	<p>MADE BY: J. D. DAVIS</p> <p>CHECKED BY: J. D. DAVIS</p> <p>DATE: 11/23/2011</p>	<p>1111111111</p>	<p>Grange County Department Services</p>	<p>1111111111</p>
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Exhibit "C"
Page 2 of 4



Douglas L. Salisbury
Monterey Bay Cannery
17042 Gillette Avenue
Irvine, California 92714

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into as of this _____ of _____, 1983, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter referred to as "DISTRICT"), and MONTEREY BAY CANNERS NO. 10, a California general partnership, (hereinafter referred to as "LESSEE").

DISTRICT hereby leases to LESSEE and LESSEE hereby hires from DISTRICT, according to the terms, covenants, limitations, and restrictions contained in said Lease between the parties hereto, dated _____, 1983, covering the real property which is situated in the City of Oceanside, County of San Diego, State of California, and more particularly described on Exhibit "A" attached hereto and made a part hereof.

Pursuant to the Lease, LESSEE has an absolute right to a non-exclusive easement covering the demised premises and adjacent land which is designated for pedestrian, parking, driveways, ingress and egress, and other purposes with respect to property adjacent to the Leased Premises.

The term of the Lease commenced upon _____, 1983, and shall expire on December 31, 2036.

It is understood that the only purpose of this instrument is to give record notice of this Lease, and all rights and obligations of DISTRICT and LESSEE hereunder are governed by the terms, covenants, conditions, limitations and restrictions contained in the Lease.

OCEANSIDE SMALL CRAFT
HARBOR DISTRICT

MONTEREY BAY CANNERS NO. 10,
a California general
partnership

By: _____
President

By: Douglas L. Salisbury
Douglas L. Salisbury
General Partner

By: _____
Secretary

By: Ronald F. Higgins
Ronald F. Higgins
General Partner

"DISTRICT"

"LESSEE"

EXHIBIT "A"

LEGAL DESCRIPTION - "LEASE PARCEL 4"
(MONTEREY PAV CANNERS NO. 10)

That portion of Section 22, Township 11 South, Range 5 West, San Bernardino Meridian, in the Rancho Santa Margarita y Las Flores, City of Oceanside, County of San Diego, State of California, as shown on Sheet 5 of the Map of the Oceanside Small Craft Harbor, recorded on September 17, 1963 as Miscellaneous Map No. 448, in the Office of the County Recorder of San Diego County, described as follows:

Beginning at a point in the centerline of Harbor Drive North, 42.00 feet wide, as shown on Sheet 5 of said Miscellaneous Map No. 448, distant thereon North 87°15'21" East, 195.00 feet from the Point of Intersection (P.I.) of the tangents of an 82.00 foot radius curve in said centerline, said Point of Intersection lying Southwesterly Corner No. 13 as shown on said Map No. 443; Thence, South 02°44'39" East, 62.00 feet to the TRUE POINT OF BEGINNING: Thence parallel to said centerline of Harbor Drive North, South 87°15'21" West, 143.00 feet; Thence South 02°44'39" East 65.00 feet; Thence, South 41°43'16" East, 43.00 feet; Thence South 62°56'18" East, 11.85 feet; Thence, North 82°45'21" East, 106.00 feet; Thence, North 02°44'39" West, 96.00 feet to the TRUE POINT OF BEGINNING.

Containing 13,836 square feet (0.318 acres). (Portion of Assessor Parcel No. 143-120-05.)

DRF:sk



4-15-83