

STAFF REPORT



ITEM NO. 7
CITY OF OCEANSIDE

DATE: April 16, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department
Property Management Division

SUBJECT: **APPROVAL OF A PERCENTAGE LEASE AGREEMENT WITH PAMELA GONSALVES FOR THE OPERATION OF THE BAIT AND TACKLE SHOP ON THE OCEANSIDE MUNICIPAL PIER**

SYNOPSIS

Staff recommends that the City Council approve a five-year percentage lease agreement with Ms. Pamela Gonsalves for the operation and improvement of the bait and tackle shop on the Oceanside Municipal Pier for minimum total revenue to the City of approximately \$17,700 plus a percentage of gross sales; and authorize the City Manager to execute the agreement upon receipt of the supporting document.

BACKGROUND

In 1987 the City entered into a lease agreement with the current operator of the bait and tackle shop located on the Oceanside Municipal Pier. The current operator's lease expired in August 2007; direction was given to staff to issue a request for proposals (RFP). The RFP requested qualified parties to provide bait and tackle services on the Oceanside Municipal Pier. The RFP outlined the ability to operate and maintain a bait and tackle shop and pier related service amenities.

ANALYSIS

Four (4) RFP proposals were submitted and, upon review, it is staff's recommendation that the City enter into a percentage lease agreement with Ms. Pamela Gonsalves. Ms. Gonsalves was selected based on her experience in the management and operations of several local businesses and because she was agreeable to upgrading the premises with \$24,069 in capital improvements and new equipment. Additionally, Ms. Gonsalves intends to implement a marketing program by working with City Recreation Services and the Chamber of Commerce, as well as local resorts and business establishments, and provide promotional outreach services to the community, such as youth and adult fishing clinics and contests.

Ms. Gonsalves desires to enter into a percentage lease agreement for bait and tackle services and operations for a period of five years, commencing on May 1, 2008, and terminating on April 30, 2013. The lease premises include the bait shop on the wooden portion of the pier and the storage room (former restrooms) on the south side of the

concrete portion of the pier. The proposed lease requires that the premises be renovated within the first six (6) months of the term, but no later than the first year if possession is delayed beyond June 1, 2008.

FISCAL IMPACT

The proposed percentage lease agreement will result in minimum rent revenue, over the five-year term, of approximately \$17,700 and a percentage of gross sales of 12.5 percent during the months of April through September and 10 percent for the months of October through March.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met prior to occupancy and possession of the premises by Ms. Gonsalves.

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 City Council approve a five-year percentage lease agreement with Ms. Pamela Gonsalves for the operation and improvement of the bait and tackle shop on the Oceanside Municipal Pier for minimum total revenue to the City of approximately \$17,700 plus a percentage of gross sales; and authorize the City Manager to execute the agreement upon receipt of the supporting document.

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PERCENTAGE LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

PAMELA GONSALVES

FOR BAIT AND TACKLE SHOP ON

OCEANSIDE MUNICIPAL PIER

DATED

**CITY OF OCEANSIDE
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Exhibit "A" – Sketch of Premises

Attachment No. 1 – Plan of Operations

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PERCENTAGE LEASE AGREEMENT
WITH PAMELA GONSALVES
FOR BAIT AND TACKLE SHOP ON OCEANSIDE MUNICIPAL PIER**

THIS PERCENTAGE LEASE AGREEMENT, hereinafter called "Lease," is entered into this ___ day of _____, 2008, by and between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City," and **PAMELA GONSALVES**, as sole proprietor, hereinafter called "Lessee." The effective date of this Lease is the date this Lease is approved by the Oceanside City Council (the "Effective Date").

RECITALS

WHEREAS, City is the lawful owner of that certain public facility and structure in the City of Oceanside, County of San Diego, State of California, commonly referred to as the Oceanside Municipal Pier located at the foot of Pier View Way and projecting out over the Pacific Ocean (the "Pier");

WHEREAS, situated on the Pier are visitor serving facilities providing active and passive leisure and recreational services and conveniences to the citizens of Oceanside and the general public, including a bait and tackle concession supplying the needs of anglers utilizing the Pier and adjacent shoreline (the "Bait Shop");

WHEREAS, Lessee has the capacity and desires to operate, maintain and improve bait and tackle services from the Bait Shop under the terms, conditions, covenants and provisions set forth herein and as outlined in that certain operations plan entitled Plans for Operator/Lessee of Bait and Tackle Shop on the Oceanside Municipal Pier (the "Operation Plan"), attached hereto as "Attachment No. 1" and incorporated herein by this reference;

WHEREAS, City, for the consideration hereinafter set forth, hereby leases to Lessee and Lessee hereby hires said Bait Shop and associated storage area from City for the term and upon the conditions hereinafter set forth.

AGREEMENT

NOW THEREFORE, the parties hereto do mutually agree as follows:

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby hires and leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, the concession space situated at third offset on the north side of wooden portion of the Pier and the storage room on the south side of the concrete portion of the Pier, in the City of Oceanside, County of San Diego, State of California, as shown on a sketch thereof marked Exhibit "A" attached hereto and incorporated herein by this reference. Said concession space and storage area are collectively hereinafter called the "Premises."

1.02 Common Areas. Lessee hereby acknowledges, recognizes and agrees that the Premises are situated within areas of the Pier commonly used by the public for active and passive leisure and recreational, social, cultural, educational and entertainment activities and events, and that Lessee's use of the Premises and adjacent areas shall not unreasonably

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impede, hinder or restrict the use of the Pier, or any portion thereof, the Pier Plaza, Beach Amphitheater, adjoining parking areas and public rights-of-way or stairways, by the public. For the purpose of this Lease the Pier, Pier Plaza, Beach Amphitheater, adjoining parking areas and public rights-of-way are referred to as the "Common Areas". Notwithstanding the foregoing, nothing herein shall be construed to prevent Lessee from taking steps deemed reasonable and necessary to secure and restrict public access to the Premises for protection and security Lessee's personal property, stock and wares, against loss, damage or destruction; provided such security measures do not excessively or grossly exceed the footprint of the Premises and/or unreasonably encroach into the Common Areas.

1.03 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of operating and maintaining bait and tackle services, offered to the public on a nondiscriminatory basis, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose what so ever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the Term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment and use of the Pier.

1.04 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.05 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the Term hereof peaceably and quietly have, hold and enjoy the Premises.

If City for any reason cannot deliver possession of the Premises to Lessee at the commencement of the Term of this Lease, or if during the Term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager a proportionate reduction of the rate of rent for the period or periods during which Lessee is prevented from having the quiet possession of all or a portion of the Premises. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City Manager a **thirty (30) day**

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written notice together with its justifications for such termination. The City Manager shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

1.06 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

City will not reimburse Lessee for damages, if any, to the permanent improvements, located on the Premises resulting from the City exercising the rights reserved in this Lease. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights. City's use of the Premises is paramount to that of the Lessee's use.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of **five (5) years** commencing on **May 1, 2008** and terminating **April 30, 2013** (the "Term")

2.02 Termination Provisions. The City of Oceanside retains the right to terminate this Lease prior the expiration of the Term hereof, with or without reason, by providing Lessee with thirty (30) days prior written notice of such early termination. No other special termination options are available except those described elsewhere in this Lease.

2.03 Holdover. Any holding over by Lessee after expiration or earlier termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall pay the sum of: 1) the minimum monthly rent for the preceding annual term, and 2) a prorated amount of percentage rent for the extent of the holdover period. In addition to the minimum and percentage rent, Lessee shall, in the event of any holding over beyond **ninety (90) days**, pay an increase in the minimum rent or percentage rent equal to the product of: 1) the minimum rent or percentage rent, whichever is the higher amount, and 2) **five percent (5%)** per year for each year of the Term of Lease counting from the original commencement date of the Lease to the expiration of the Term or earlier termination date of the Lease.

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2.04 Abandonment by Lessee. Even though Lessee has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.05 Quitclaim of Lessee's Interest. On the expiration of the Term or the earlier termination of this Lease for any reason, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within **five (5) days** after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the expiration of the Term or earlier termination of this Lease and all Lessee's rights to the Premises.

2.06 Surrender of Premises. At the expiration of the Term or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a broom-swept, decent, safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear, free and clear of all Lessee owned personal property, fixtures, furniture and equipment; provided that the removal of said fixtures, furniture or equipment does not cause damage to the Premises. Lessee shall, at its sole cost and expense, repair any damage to the Premises caused by the removal of Lessee's fixture, furniture or equipment to the reasonable satisfaction of City.

2.07 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: RENT

3.01 Time and Place of Payment. The Lessee shall make all minimum rental payments monthly in advance on or before the **first (1st) day** of each new month. In the event the commencement of this Lease is after the **first (1st) day** of the month, the first month's minimum rent shall be prorated based on a **thirty 30 day** proration formula.

Percentage rent payments shall be due to City and payable by Lessee in arrears on or before the **tenth (10th) day** of the month following the month for which the percentage rent is calculated. In addition Lessee shall provide City with a percentage rent statement showing how the percentage rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide City with a copy of said statement. The requirements of this section shall survive the expiration of the Term or earlier termination of this Lease.

Checks should be made payable to the City of Oceanside and delivered to the City at the

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address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon **thirty (30) days** written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional **\$15** for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

a. General. The total monthly rent amount shall be equal to the Minimum Rent (as defined by Subsection 3.02b through 3.02d) or the Percentage Rent (as defined by Subsection 3.02e), whichever is higher.

b. Initial Minimum Rent Amount. The minimum annual rent amount for the **first (1st) year** of this Lease shall be **Three Thousand Six Hundred Dollars (\$3,600.00)** which shall be payable monthly in advance at the rate of **Three Hundred Dollars (\$300.00)** on or before the **first (1st) day** of each new month.

c. Minimum Rent Adjustment Date. The minimum rent adjustment date shall be the **first (1st) anniversary** of the date of commencement of this Lease (as defined in Section 2.01 herein) and annually thereafter. The minimum annual rent amount, and the corresponding prorated monthly payments, under this Lease shall be adjusted on each rental adjustment date as set forth below.

d. Adjustment Index. The index used will be the latest semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by Lease of City and Lessee. If the parties cannot agree within **sixty (60) days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.02d.

Regardless of the index publication dates, the minimum rent adjustment dates shall be on the dates defined by Subsection 3.02c above. Until the minimum rent adjustment can be actually calculated in accordance with this Lease, Lessee shall continue to make payments at the existing rental rate. When the adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to City within **thirty (30) days** of written notice by the City. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment dates.

e. Minimum Rent Adjustment Computation. The annual minimum rent adjustment shall be computed in accordance with the following definitions and formulas:

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Definitions:

Initial Minimum Annual Rent: The minimum annual rent at the commencement of this Lease as listed in Subsection 3.02.b above.

Existing Minimum Annual Rent: The existing minimum annual rent shall be the minimum annual rent amount in effect on the date preceding the rental adjustment date.

Percent Change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **twelve (12) month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

First Adjustment: Initial minimum annual rent + (Initial minimum annual rent x the percent change in the CPI) = New minimum annual rent.

For example: $\$300 + (\$300 \times 5\%) = \$315$

Subsequent Adjustments: Existing minimum annual rent + (Initial minimum annual rent x the percent change in the CPI) = New minimum annual rent.

For example: $\$315 + (\$300 \times 6\%) = \$333$

However, in no event shall the adjusted rent increase be less than **five percent (5%)** nor more than **ten percent (10%)** per year.

f. Percentage Rent. The monthly percentage rent shall be the total applicable percentages of the gross income, (as defined in Subsection 3.02g), less the monthly minimum rent paid by Lessee for the month during which the monthly gross income was calculated. The applicable percentages are as follows:

- i. October through March = ten percent (10%)**
- ii. April through September = twelve and one-half percent (12.5%)**

The monthly percentage rent shall be payable to City monthly in arrears not later than **ten (10) days** following the end of each calendar month of the Term of this Lease as required in Section 3.01 hereinabove. In no event shall the monthly rent be less than the minimum monthly rent in effect at the time percentage rents are due and payable.

g. Gross Income. Gross income as used herein shall mean all income received by Lessee from the sale of goods or services on or from the Premises or any other income received by Lessee as a result of occupancy of the Premises. Gross income shall include the amount of any manufacturer's or importer's excise tax included in the price of any product or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether

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the amount of such excise tax is stated as a separate charge; provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes, or other property taxes, and the Management Fee (as defined in Section 3.06 herein) shall not be deducted by Lessee in computing gross income.

Gross income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee. Gross income shall include income received by Lessee or by any sublessee, permittee or licensee, or their agents, or other party as a result of occupancy of said Premises or the business operation(s) conducted from or about the Premises. The monthly gross income shall be calculated at the end of each month of the Term of this Lease. The first monthly gross income calculation shall be made at the end of the calendar month following the Effective Date of this Lease or the date of possession of the Premises by Lessee, whichever is the latter.

3.03 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers provided such system is approved in writing by the City Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges, whatsoever, Lessee shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices, at City's sole discretion, and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City shall be deemed a default of this Lease. These records shall include, but are not limited to, Federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records. City shall have the discretion to require the installation of any additional accounting methods or controls it deems necessary.

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Lessee shall maintain all such books, records and accounts for the Term of this Lease, and a minimum period of **five (5) years** thereafter. This provision shall survive the expiration or sooner termination of this Lease.

3.04 Delinquent Rent. If Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, **five percent (5%)** of the delinquent rent. If the rent is still unpaid at the end of **fifteen (15) days**, Lessee shall pay an additional **five percent (5%)** [being a total of **ten percent (10%)**] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the City audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of **five percent (5%)** of the total required rent, then Lessee shall pay City the cost of the audit plus **ten percent (10%)** per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due City as compensation to City for administrative costs and loss of interest as previously described herein. Lessee agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that City will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

3.05 Security Deposit. Lessee shall not be initially required to pay a security deposit under this Lease. In the event the City determines in its discretion, that a reasonable security deposit is required in order to protect City's interest in this Lease, Lessee shall pay the amount determined by City, immediately upon demand. The City agrees that a reasonable security deposit shall not be more than the equivalent of **two (2) month's** minimum rent due under this Lease. Thereafter, City may use a portion of said security deposit to remedy any defaults in the payment of any amounts owed to City under this Lease, to repair damages caused by Lessee, and/or to clean the Premises if necessary upon expiration or termination of tenancy. If used toward amounts owed under this Lease or damages during the term of this Lease, Lessee agrees to reinstate said total security deposit upon **five (5) days** written notice delivered to Lessee. The security deposit or balance thereof, if any, together with an itemized accounting, shall be mailed to Lessee at last known address within **fourteen (14) days** of surrender of the Premises.

3.06 Management Fee. Lessee shall, in addition to payment of the monthly rent, pay to City, at the same time and place as monthly rents are due, a management fee of **Twenty-five Dollars (\$25.00)** per month to compensate City for the monitoring operations conducted under this Lease and servicing of the account associated therewith (the "Management Fee"). The Management Fee shall not be considered as rent in the calculation of the percentage rents due to City by Lessee under this Lease. Notwithstanding the foregoing, in the event of a breach or default under this Lease by Lessee, the Management Fee shall be considered rent in the recovery of losses or damages due and recoverable by the City under equity or law.

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3.07 Rent During Construction. The minimum rent and percentage rent shall be abated for the **first (1st) month** of the Term of this Lease to offset potential loss of income during the construction of the improvements identified in said Attachment No. 1 and provided for under Section 5.04, herein. In the event said improvements are not completed in the timeframes set forth in Section 5.04, Lessee shall remit payment of the minimum rent and percentage rent due for the **first (1st) month** of the Term of this Lease no later than June 1, 2009.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole and active negligence or sole willful conduct of the City, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the Term of this Lease the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence \$1,000,000

General Aggregate \$2,000,000

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease. Insurance coverage provided to City as additional insured shall be primary insurance to City, its directors, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to City, its directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by City, its directors, officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this section.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

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d. All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Lessee on the **first (1st) day** of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. City, at its discretion, may require the revision of amounts and coverage at any time during the Term of this Lease by giving Lessee **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within **seventy-two (72) hours** after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of occurrence, the names and addresses of any witnesses and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations

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necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises.

5.02 Waste, Damage, or Destruction. Lessee shall give notice to City of any fire or other damage that occurs on the Premises within **seventy-two (72) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, rubbish, and other waste in a lawful manner and satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility and cost for the operation, maintenance, including painting, and repair of the Premises, throughout the Term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within **ten (10) days** after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than **ten (10) days** after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. As a material consideration in entering into this Lease, Lessee agrees to make certain improvements to the Premises as outlined in the

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Improvement Plan contained in Attachment No. 1. Work on said improvements shall be completed within the initial **sixty (60) days** of the Term of this Lease; provided, however, in the event that City for any reason cannot deliver possession of the Premises to Lessee on the Commencement Date of this Lease and such possession is delayed beyond June 1, 2008, said improvements shall be completed within the **first (1st) year**, of the Term of this Lease. To the extent possible, Lessee shall keep the operations permitted under this Lease running and be open for business during normal business hours while constructing the improvements. Lessee shall, at its sole cost and expense, obtain all permits and approvals from any and all governmental authorities having jurisdiction over all, or any portion, of the work to be performed on the Premises. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Utilities. Lessee agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Premises.

5.06 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.07 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises, or on any permanent improvements thereon, shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or

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otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.08 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.09 Signs. Lessee shall not erect or display any or advertising without the prior written consent of the City. All such banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices shall conform to all applicable City ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within **twenty (24) hours** of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.10 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee, excepting such fixtures which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing **thirty (30) days** prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

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

a. Total Taking. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. Partial Taking. In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. Award. All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

e. No Inverse Condemnation. The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

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To City:

To Lessee:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

Pamela Gonsalves
Oceanside Pier Bait Store
214 South The Strand, Suite D
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt by the party to whom the communication is to be sent, as designated above, if personally served or delivered by a reputable overnight courier service which provides written receipt of delivery; or (ii) **three (3) working days** following the deposit in the United States Mail of certified mail, postage prepaid, return receipt requested, addressed the party to whom the communication is to be sent, as designated above. Notwithstanding the foregoing, a refusal by either party to accept delivery of any notice required under this Lease from the other party shall be conclusively deemed that such notice has been duly delivered.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all terms, conditions, covenants and provisions of this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the City's Real Property Manager.

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of on the basis of sex, marital or familial status, race, color, creed, religion, ancestry, national origin, age, or disability of any person in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex or national origin. Lessee shall certify in writing to City that Lessee is in compliance and throughout the Term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes

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all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation of the Agreement. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager, City staff or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of rent due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

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6.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **ten (10) days** after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **thirty (30) days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with Section 5.07 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within **five (5) days**, if the default is for the failure to submit rent as required, or within **fifteen (15) days** following the expiration of the period within which Lessee may cure such default, provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Section 5.10 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

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The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner. Lessee's operations and the display of items for sale or rent shall be limited to the footprint of the Premises, or at such locations first approved in writing by the City Manager.

7.02 Hours of Operation. The Lessee agrees that it shall conduct business on the Premises to conform with the published hours and days of operation as established and in the best interest of the public; to this regard, the minimum hours of operation during the months of April through September shall be from 7am to 8pm, daily (i.e. seven days a week), and during the months of October through March shall be from 8am to 5pm, daily (weather permitting), unless otherwise approved in writing by the City. Nothing herein contained shall be construed to prevent Lessee from opening earlier or staying open long than said minimum hours of operation.

7.03 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they are familiar with and shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.04 Merchandise and Equipment. Goods offered for sale and equipment made available for rent by Lessee shall of good quality and in good condition and proper working

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order. Worn and damaged equipment shall be promptly repaired or replaced as needed to insure proper working order. City retains the right and full discretion to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City.

7.05 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterrupted during the Term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, tides, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.06 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices, rental fees, and charges for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by Lessee or by Lessee's sublessee(s), assignee(s), concessionaire(s), permittee(s) or licensee(s).

7.07 Exclusivity. Except for the rights granted to Lessee pursuant to this Lease, Lessee shall not have the exclusive right to provide fishing supplies and related wares on or near the Pier. Lessee is aware that other concessions currently exist, and/or in the future may exist, and operate in close proximity to the Premises, which sell or may sell such items in competition with Lessee. City reserves the right to permit any and all services it deems to be in the best interest of the public. Lessee agrees that such activities are not a violation of the rights granted to Lessee by this Lease.

7.08 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, storage of gasoline or other fuels is expressly prohibited without prior written consent of the City.

7.09 Discharge into Ocean. Lessee, for itself, its employees, concessionaires, licensees, sublessees, permittees, successors, and assigns, expressly acknowledge that the waters of the Pacific Ocean is habitat to sensitive marine life and species and hereby agrees to refrain from discharging hazardous materials, substances and waste; trash, rubbish, and other foreign matter in to the ocean in violation of the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code, Division 7), or

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any other applicable federal, state or local law, statute, ordinance or regulation.

7.10 Prohibition Against Smoking. Lessee, for itself, its employees, concessionaires, licensees, sublessees, permittees, successors, and assigns, expressly acknowledge that there is a prohibition against smoking on the Pier and Beaches within the City of Oceanside, including within or about the Premises, and that Lessee, its employees, concessionaires, licensees, sublessees, permittees, successors and assigns, shall abide by said prohibition at all times.

7.11 Parking on Pier. Private motorized vehicles on the Pier is restricted and allowed only for those vehicles displaying a valid permit issued by the City's Department of Harbor and Beaches. The parties acknowledge that for safety reasons and convenience of stocking and restocking the Premises and other business purposes, Lessee will occasionally need to drive a motorized vehicle onto the Pier. Lessee agrees that access to the Premises by motor vehicle, is a privilege not a right by reason of this Lease, and shall be in accordance with the applicable rules and regulations as are in effect as of the Effective Date of this Lease, or as may be amended or modified from time to time. Lessee shall not park any motor vehicle on the Pier at any time, except for reasonable periods of time for loading and unloading supplies. Lessee's failure to abide by said rules and regulations shall be deemed a breach of this Lease and cause the forfeiture of motor vehicle access privileges on the Pier. City reserves the right at all times to regulate, prohibit, or ban motor vehicle access on the Pier at any time, for any reason.

7.12 Special Events. Lessee shall work with City's Parks and Recreation staff and other civic organizations (such the Chamber of Commerce/California Welcome Center Oceanside and Main Street Oceanside) to promote and conduct fishing clinics and contests.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]**

**CITY OF OCEANSIDE
PERCENTAGE LEASE AGREEMENT
WITH PAMELA GONSALVES
FOR BAIT AND TACKLE SHOP ON OCEANSIDE MUNICIPAL PIER**

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

CITY
City of Oceanside, a municipal corporation

Dated: _____

By: _____
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: *Bruce Hamilton, ASST.*
City Attorney

LESSEE
Pamela Gonsalves, sole proprietor

Dated: 3.18.08

By: *Pamela Gonsalves*
Pamela Gonsalves

NOTARY ACKNOWLEDGMENT OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)^{SS.}

On March 18, 2008 before me, Curtis Jackson, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Pamela Gonsalves,
Name(s) of Signer(s)

[] personally known to me
[X] 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.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: Property Lease Agreement

Document Date: 3.18.08 Number of Pages: 31

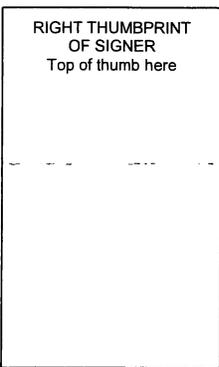
Signer(s) Other Than Named Above: NA

Capacity(ies) Claimed by Signer

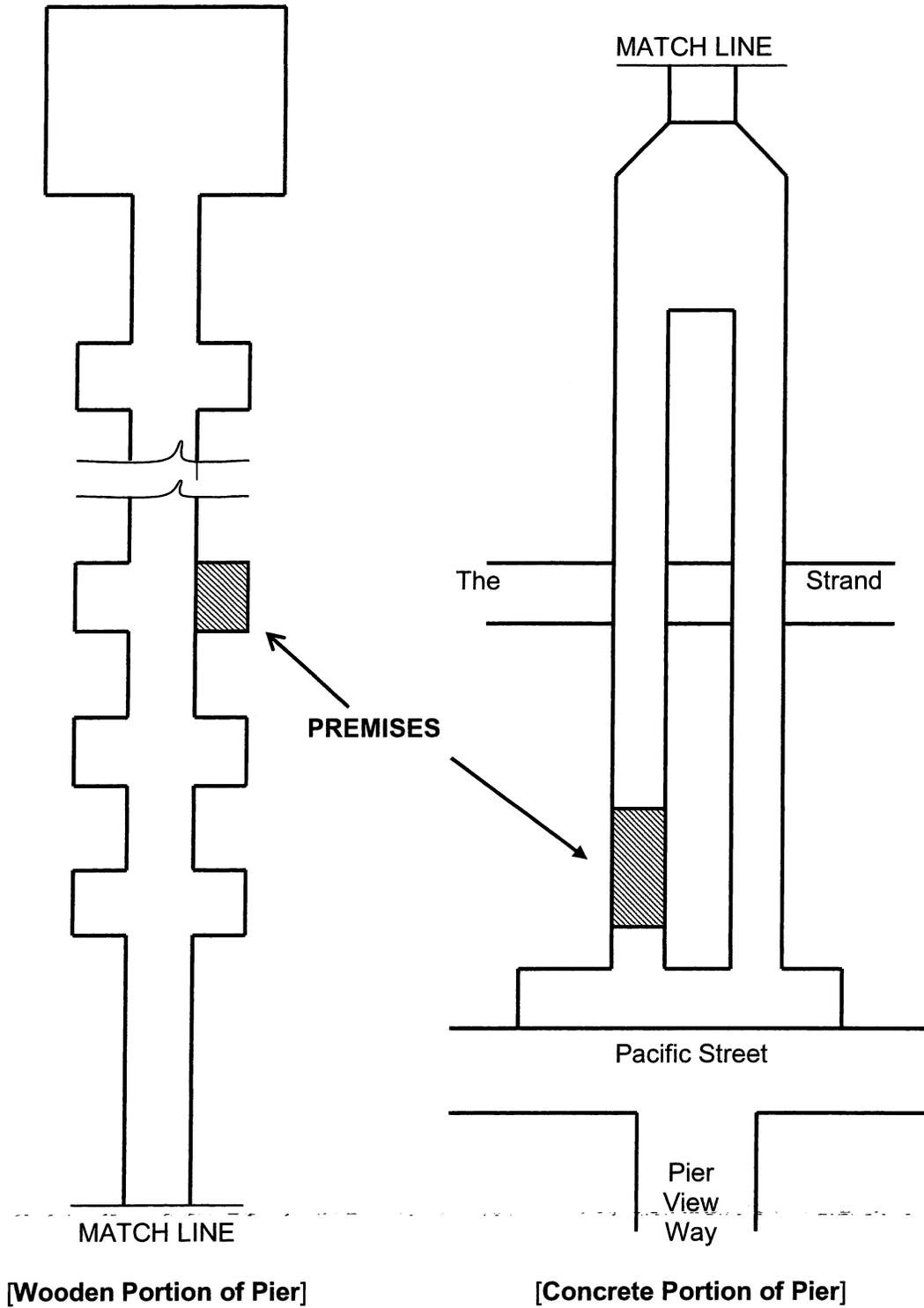
Signer's Name: Pamela Gonsalves

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

Signer Is Representing: _____



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[Wooden Portion of Pier]

[Concrete Portion of Pier]

NOT TO SCALE

EXHIBIT "A"
Sketch of Premises

CITY OF OCEANSIDE
PERCENTAGE LEASE AGREEMENT
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Pamela Gonsalves
214 So. The Strand #D
Oceanside, Ca 92054
760-433-9101
Cell 760-470-3151
Osidedbait@aol.com



Plans for Operator/ Lessee of
Bait and Tackle Shop
On the
Oceanside Municipal Pier

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OCEANSIDE PIER BAIT STORE
OPERATIONS PLAN

Oceanside Pier Bait Store will be operating and maintaining the bait and tackle store on the pier selling bait, tackle, snacks, Oceanside logo items and ocean related items. We will also maintain fishing pole rentals.

• **Hours of operation**

- Spring/Summer April thru September hours will be 6am to 8pm – Seven days a week
- Fall /Winter Hours October thru March hours will be 7am to 5pm – Seven days a week (Weather permitting)
- Special extended hours on holiday's
- Hours will be extended with increase flow of foot traffic

• **Staffing**

- Two employees (One bilingual) on payroll
- Owner will be working the store

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OCEANSIDE PIER BAIT STORE
MARKETING PLAN

● **Advertising**

- We are going to link the Bait Store web cam to Oceanside Chamber of Commerce web site which will provide views of current catches from the local fishermen and as well as views from the pier.
- Official Visitors Guide through the Oceanside Chamber of Commerce
- Joining the Main Street Association so I will be added to their signs downtown and other advertising opportunities
- Distribution of flyers concerning all our fishing contest to all local hotels & local establishment

● **Instore**

- Special promotions, (daily, weekly or monthly fishing contest and also special holiday contest)
- Fishing clinics for youth's and adults
- New Professional Signs
- Installing Visa and Master Card debt machine for customer convenience

OCEANSIDE PIER BAIT STORE **IMPROVEMENT PLAN**

When I have possession of the store I will be able to properly measure the property. I will completely remodel the interior of the store. I also plan on maintaining store hours during the remodeling phase with improvements expected to be completed within thirty days.

- **Utilities**

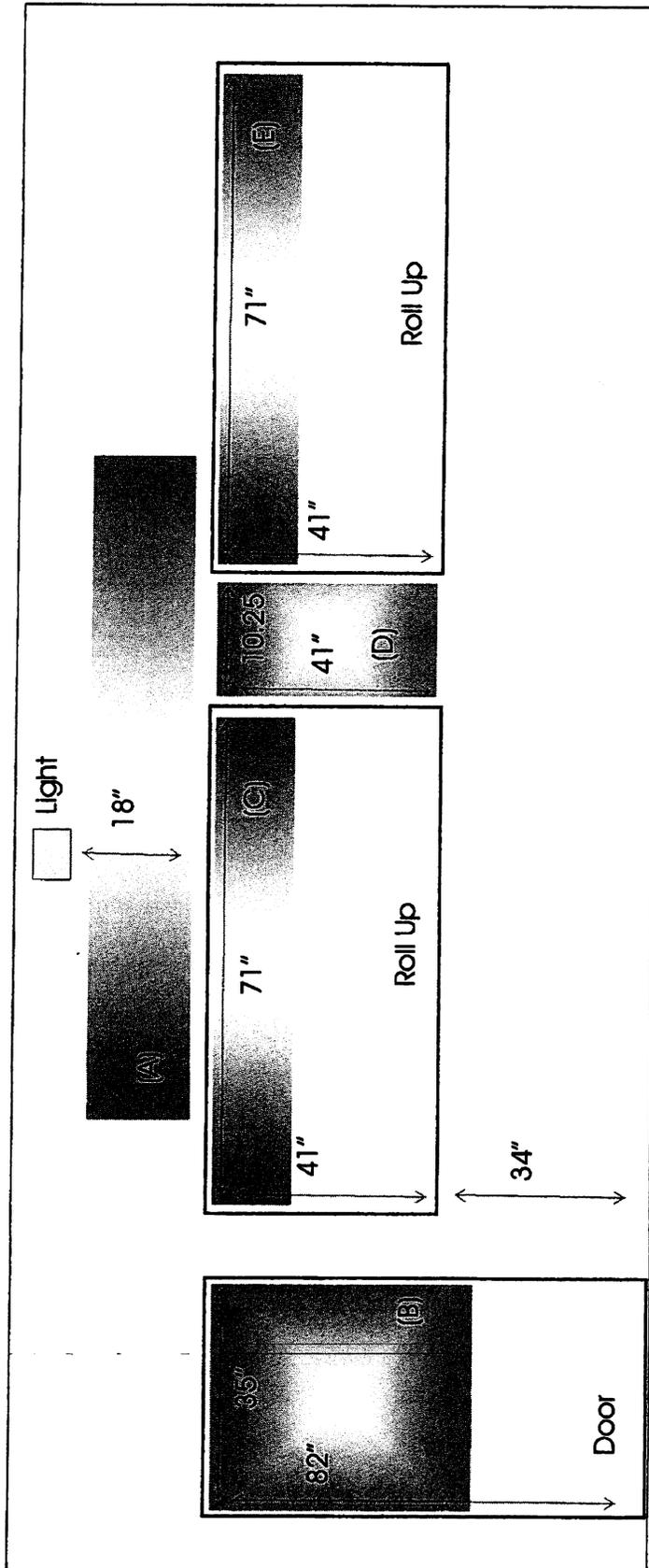
- Install all new Energy Star efficient freezers 5,899.00
- Install Energy Star fluorescent light bulbs 300.00
- Install Energy Star new appliances 659.00

- **Interior Remodel**

- White paint 100.00
- White slat walls 591.00
- White shelving 240.00
- White Duron Bullnose shelving 489.00
- White counters 437.00
- White sink 140.00
- White moulding 88.00
- 6" Flip Scan Peg Hooks – 100 660.00
- Bins and holders 186.00
- New signs on the inside of the store 400.00
- New signs over front of store 1,000.00
- New pull down ladder for shelf storage 480.00
- New paint of front display case 100.00
- Complete remerchandising of stock 10,000.00
- Install exterior fish scale for fishermen 200.00
- American and Oceanside flags 100.00
- Labor 2,000.00

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Approx. Sign Area Chart



- A) 16" x 72" Sandblasted Sign : \$550.00
- B) 34" x 54" Menu Board : \$135.00
- C) 70" x 12" Menu Board : \$120.00
- D) 10" x 40" Menu Board : \$85.00
- E) 70" x 12" Menu Board : \$120.00

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