



DATE: September 8, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department

SUBJECT: **PERCENTAGE PROPERTY LEASE AGREEMENT WITH CHARLES ANDERSON AND CHARLES DODARO, DBA BUCCANEER BEACH CLUB, FOR THE PREMISES AT 1508 SOUTH PACIFIC STREET**

SYNOPSIS

Staff recommends that the City Council approve a five-year percentage property lease agreement with Charles Anderson and Charles Dodaro, dba Buccaneer Beach Club, for the premises at 1508 South Pacific Street for a five-year minimum total revenue of \$37,916.40, and authorize the City Manager to execute the agreement.

BACKGROUND

Charles Anderson and Charles Dodaro, doing business as Buccaneer Beach Club ("Buccaneer") assumed the Heck's Surf Grill lease for space at Buccaneer Park and has operated a food concession from the premises since June 2004. The current lease, dated March 17, 2004, terminated on March 31, 2010 with Buccaneer occupying the premises on a month-to-month basis. Mr. Anderson and Mr. Dodaro have requested a new lease agreement to continue to occupy and operate a food concession at the premises.

ANALYSIS

The new lease agreement is for a five-year term to commence retroactive to April 1, 2010 and terminate March 31, 2015, with provision for one (1) three-year extension option. Monthly rent will be 12.5 percent of monthly gross income or the minimum monthly rent, whichever is greater. The minimum rent at commencement is \$631.94 per month for the first two (2) years of agreement; thereafter the minimum will be adjusted annually based on the semi-annual Consumer Price index for All Urban Consumers for San Diego, California.

FISCAL IMPACT

The agreement will result in minimum total revenue over the five-year term in the amount of \$37,916.40 (1101.4351.0009). Additional revenue in the form of percentage rents will be realized, the amount of which is dependent upon the amount of gross income from the sale of food and beverages from the premises.

INSURANCE REQUIREMENTS

Buccaneer will be required to maintain the City's standard insurance requirement over the term of the lease.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

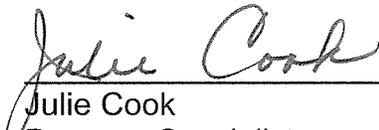
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

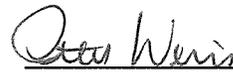
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PREPARED BY:

SUBMITTED BY:



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Program Specialist



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REVIEWED BY:

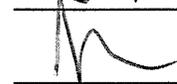
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Teri Ferro, Financial Services Director



PERCENTAGE PROPERTY LEASE AGREEMENT

BY AND BETWEEN

**THE CITY OF OCEANSIDE, A
MUNICIPAL CORPORATION**

AND

**CHARLES ANDERSON & CHARLES DODARO, DBA
BUCCANEER BEACH CLUB**

**LOCATED AT
BUCCANEER BEACH PARK**

DATED

**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

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**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

This Percentage Property Lease Agreement, herein after called ("AGREEMENT"), is executed between the City of Oceanside, hereinafter called ("CITY"), and Charles Anderson and Charles Dodaro, dba Buccaneer Beach Club, hereinafter called ("LESSEE").

RECITALS

WHEREAS, CITY is the lawful owner of that certain real property in the City of Oceanside, County of San Diego, State of California, more particularly described hereinbelow;

WHEREAS, LESSEE is assignee of that certain percentage lease agreement between the City of Oceanside and Arthur Hector Reyna dated May 5, 1999, which lease agreement terminated March 31, 2010;

WHEREAS, LESSEE as assignee has operated a food concession from the premises since April 2002 and has occupied the premises on a month-to-month basis since March 31, 2010;

WHEREAS, LESSEE is not in default or breach of any term, condition, or covenant of said lease and is desirous of entering into a new lease agreement for the premises;

WHEREAS, CITY, desires to lease the premises to LESSEE;

NOW THEREFORE, in consideration of the terms and conditions as set forth herein below the parties hereto do mutually agree as follows:

AGREEMENT

SECTION 1: USES:

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY, in accordance with the terms of this AGREEMENT, all of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **Buccaneer Beach Club, Buccaneer Beach Park, 1508 South Pacific Street, Oceanside, California**, more particularly shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT. Said real property is hereafter called the ("PREMISES").

1.02 Uses. It is expressly agreed that the PREMISES is leased to LESSEE solely and exclusively **for the purpose of operating a food concession**, and for such other related or incidental purposes as may be first approved in writing by the City Manager, and for no other purpose whatsoever.

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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 hereof, 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 the AGREEMENT. LESSEE shall not use the PREMISES in any manner which disrupts the quiet enjoyment of surrounding property owners use of their property.

1.03 Related Discretionary Actions. By the granting of this AGREEMENT, neither the 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 that may be required for the development and operation of the PREMISES.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the PREMISES.

If CITY for any reason cannot deliver possession of the PREMISES to LESSEE at the commencement of the term, or if during the 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 AGREEMENT 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 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 AGREEMENT by submitting to the CITY a **thirty (30) day** written notice together with its justifications for such termination. The CITY shall have the right to approve such termination and shall provide LESSEE with a written determination thereof. Said approval shall not be unreasonably withheld.

1.05 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.

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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 leased 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 AGREEMENT. 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 Term. The term of this AGREEMENT is for a period of five (5) years commencing, retroactive to **April 1, 2010** and terminating on **March 31, 2015**.

2.02 Extension of Term. The LESSEE may request an extension of the term of this AGREEMENT for the PREMISES for **one (1) additional three-year term** under the terms and conditions of this AGREEMENT at the CITY's calculated fair market rental rate of similar businesses, provided that the LESSEE is not in default or breach of any term, condition, or covenant of this AGREEMENT.

The LESSEE may request not more than **one (1) three-year extension** of term by providing the CITY with its written request no later than **ninety (90) days** prior to the expiration of the term of this AGREEMENT. The CITY's designee shall notify the LESSEE not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the CITY shall provide LESSEE with CITY's calculated fair market rent value and rental amount which the CITY is willing to accept for LESSEE's use and occupation of the PREMISES during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. CITY's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to LESSEE not later than **thirty (30) days** from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this AGREEMENT. In the event the City Council is unable to consider the

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extension request in sufficient time as to provide LESSEE with **thirty (30) days** notice of termination in the case of denial, the AGREEMENT shall be extended for a period not to exceed **thirty (30) days**, to allow for such thirty-day notice of termination.

In no event shall the term of this AGREEMENT be extended in excess of **three (3) years** beyond the expiration of the term of this AGREEMENT without the mutual agreement of the parties and prior approval of the City Council.

2.03 Termination Provisions. There are no special termination options available except those described elsewhere in this AGREEMENT.

2.04 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this AGREEMENT. The occupancy of the PREMISES by LESSEE or by LESSEE's property after the expiration or termination of this AGREEMENT constitutes a month-to-month tenancy, and all other terms and conditions of this AGREEMENT, including rental adjustments, shall continue in full force and effect. In the event of any holding over, LESSEE shall pay the sum of:

a. The minimum monthly rent for the preceding annual term, and a prorated amount of percentage rent for the extent of the holdover period.

b. 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 sum 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 AGREEMENT counting from the original commencement date of the AGREEMENT to the expiration or termination date of the AGREEMENT.

2.05 Abandonment by LESSEE. Even though LESSEE has breached the AGREEMENT and abandoned the PREMISES, this AGREEMENT shall continue in effect for so long as CITY does not terminate this AGREEMENT, 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.

2.06 Quitclaim of LESSEE'S Interest. On termination of this AGREEMENT 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 AGREEMENT. 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 provision and the notice will be conclusive evidence of the termination of this AGREEMENT and all LESSEE's rights to the PREMISES.

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2.07 Surrender of Premises. At the expiration or earlier termination of this AGREEMENT, 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 AGREEMENT by CITY. The PREMISES, when surrendered by LESSEE, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this AGREEMENT, absent normal wear and tear.

2.08 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this AGREEMENT.

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. 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 annual State Board of Equalization tax statement, provide CITY with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this AGREEMENT.

Checks should be made payable to the City of Oceanside and delivered to the address set forth in Section 6 of this AGREEMENT. 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 **Fifteen and No/100 dollars (\$15.00)** 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 subsections 3.02b–3.02e) or the Percentage Rent (as defined by subsection 3.02f) **whichever is higher.**

b. Initial Minimum Rent Amount. The minimum annual rent amount shall be **Seven Thousand Five Hundred Eighty-three Dollars and Twenty-eight cents (\$7,583.28)** which shall be payable monthly in advance at the rate of **Six Hundred Thirty-one Dollars and Ninety-four cents (\$631.94)** on or before the **tenth day** of each new month for the first two years of agreement.

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c. Minimum Rent Adjustment Date. The minimum rent adjustment date shall be the **first (1st) day of September of each year** following the **third-year** anniversary of the date of commencement (as defined in Section 2.01) of this AGREEMENT. The minimum annual rent amount and the corresponding prorated monthly payments shall be adjusted on each rental adjustment date as set forth below.

d. Adjustment Index. The index used will be the 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 AGREEMENT, 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 date.

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

Definitions:

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

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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: $\$100 + (\$100 \times 5\%) = \$105$

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

For example: $\$105 + (\$105 \times 6\%) = \$111.30$

However, in no event shall the adjusted rent increase be less than **four percent (4%)** or more than **eight percent (8%)** per year.

f. **Percentage Rent.** The monthly percentage rent shall be **twelve and one half percent (12.5%)** of the total gross income, (as defined in Subsection 3.02f), less the monthly minimum rent paid by LESSEE for the month during which the monthly gross income was calculated.

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 AGREEMENT as required in Section 3.01 hereinabove.

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 property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether 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. LESSEE shall not deduct possessory interest taxes or other property taxes 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, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said PREMISES or the operation. The monthly gross income shall be calculated at the end of each month of the term of this AGREEMENT. The first monthly gross income calculation shall be made one month after the commencement date of this

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AGREEMENT.

3.03 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine LESSEE'S compliance with this AGREEMENT. These records and accounts will be made available by LESSEE at the PREMISES and will be complete and accurate showing all income and receipts from 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 AGREEMENT. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

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 AGREEMENT.

3.05 Rent for Extended Term. The CITY shall calculate the fair market rental value of the PREMISES based on similar businesses within the CITY, and transmit it to the LESSEE as required in Section 2.02 of this AGREEMENT.

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 AGREEMENT, except only for those claims arising from the sole 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

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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, throughout the duration of this AGREEMENT maintain comprehensive general liability or commercial general liability insurance and property damage insurance covering all operations and activities of LESSEE, its agents and employees, performed in connection with this AGREEMENT including but not limited to PREMISES and automobile.

- a. LESSEE shall maintain the following minimum limits:

Commercial General Liability Insurance

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

Fire, extended coverage, and vandalism insurance policy(s) on all insurable property on the PREMISES, including the PREMISES.

- 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 AGREEMENT. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the City, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this AGREEMENT.

- c. All insurance companies affording coverage to the LESSEE shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

- d. All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY should the policy be canceled 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 AGREEMENT.

- f. LESSEE shall provide a substitute certificate of insurance no later than

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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 AGREEMENT.

g. Maintenance of insurance by the LESSEE as specified in this AGREEMENT 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 AGREEMENT, or failure to provide the proof of insurance, shall be deemed a default under this AGREEMENT.

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, 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 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 AGREEMENT. LESSEE further acknowledges that the PREMISES are in the condition called for by this AGREEMENT 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 ten (10) days of such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the PREMISES shall be damaged by any cause which puts the PREMISES

**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

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. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the PREMISES throughout the term of this AGREEMENT. LESSEE will make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, 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 thirty (30) days after written demand from the CITY. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this AGREEMENT imposed on CITY.

5.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the PREMISES, and the PREMISES may not be altered by LESSEE without prior written approval by the CITY. 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 and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this AGREEMENT 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 AGREEMENT 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 leased 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

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respect to all or any portion of the PREMISES without the prior written consent of the CITY. 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.

5.07 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 AGREEMENT 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.

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

5.09 Ownership of Improvements.

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 AGREEMENT 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 AGREEMENT.

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 termination or one-hundred-eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before AGREEMENT 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

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fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this AGREEMENT. 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.

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

a. **Total Taking.** In the event the entire PREMISES are taken, this AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 AGREEMENT.

e. **No Inverse Condemnation.** The exercise of any CITY right under this AGREEMENT shall not be interpreted as an exercise of the power of eminent domain

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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 AGREEMENT 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:

To CITY:

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

To LESSEE:

With copy to:

Charlie Anderson
2530 Dunstan Street
Oceanside, CA 92054

Charles Dodaro
1508 S. Pacific Street
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 at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 CITY Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all terms and conditions related to this AGREEMENT. The City Manager may delegate authority in connection with this AGREEMENT to the CITY's designee(s).

6.03 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, physical disability, mental disability, medical condition or sexual orientation in LESSEE'S use of the PREMISES.

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WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

6.04 Equal Opportunity. LESSEE agrees to abide by CITY's Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this AGREEMENT. A copy of the program effective as of the date of this AGREEMENT is on file with the City Clerk's Office.

6.05 Entire Agreement. This AGREEMENT comprises the entire integrated understanding between CITY and LESSEE concerning the use and occupation of the PREMISES and supersedes 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 AGREEMENT itself.

6.06 Interpretation of the Agreement. The interpretation, validity and enforcement of the AGREEMENT shall be governed by and construed under the laws of the State of California. The AGREEMENT 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 AGREEMENT 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 AGREEMENT are severable.

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

6.07 Agreement Modification. This AGREEMENT 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 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

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City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

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.

6.10 Assignment and Subletting - No Encumbrance. This AGREEMENT 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 AGREEMENT 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 agreement, 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 AGREEMENT; 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 AGREEMENT; 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 AGREEMENT; 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 AGREEMENT or which in the ordinary course of things would be likely to result therefrom.

In the event of the termination of this AGREEMENT pursuant to the provisions of this section, CITY shall have any rights to which it would be entitled in the event of the

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expiration or sooner termination of this AGREEMENT under the provisions of Section 5.10 of this AGREEMENT.

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 AGREEMENT, CITY shall have the right to declare this AGREEMENT in default.

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 AGREEMENT 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. Food operations shall be operated in such a manner as to maintain a Health Inspection rating of "A".

7.02 Sale of Alcoholic Beverages. LESSEE shall not sell alcoholic beverages upon or from the PREMISES.

7.03 Hours of Operation. The LESSEE agrees that it shall conduct business on the PREMISES to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the CITY.

**PERCENTAGE PROPERTY LEASE AGREEMENT
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7.04 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 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.

7.05 Merchandise and Equipment. CITY retains the right to require the LESSEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Continued Occupancy. LESSEE covenants and agrees to, and it is the intent of this AGREEMENT that the LESSEE shall, continuously and uninterruptedly during the term of the AGREEMENT, occupy and use the PREMISES for the purposes hereinabove specified, except while PREMISES are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by LESSEE.

7.07 Controlled Prices. LESSEE shall at all times maintain a complete list or schedule of the prices 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).

7.08 Exclusivity. Except for the rights granted to LESSEE pursuant to this Lease, LESSEE shall not have the exclusive right to provide food and beverage services at or near Buccaneer Park. 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 food and beverage items. CITY reserves the right to permit any and all services it deems to be in the best interest of the public.

LESSEE is also aware that CITY arranges or permits special events and concerts in Buccaneer Park and many of those event organizers provide their own food and beverage concessions. LESSEE agrees that such activities are not a violation of the rights granted to LESSEE by this Lease. CITY may, but is not obligated to, encourage the promoters and organizers of special events to use LESSEE for any concession needs.

**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

7.09 New Construction. CITY may, at some point in the term of this AGREEMENT, decide to renovate, remodel or demolish and rebuild PREMISES. Nothing in this AGREEMENT should be construed to commit the CITY to do any renovating, remodeling or demolition and rebuilding of PREMISES. CITY shall not be obligated in any manner for losses which may result from a renovate, remodel or demolish and rebuild project at PREMISES. CITY shall give LESSEE sixty (60) days written notice prior to the start of any renovating, remodeling or demolition and rebuilding project at PREMISES. CITY shall also provide LESSEE a written notice sixty (60) days prior to project completion.

7.10 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, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH CHARLES ANDERSON & CHARLES DODARO, DBA BUCCANEER BEACH CLUB**

SECTION 8: SIGNATURES

8.01 Signature Page.

The individuals executing this AGREEMENT represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this AGREEMENT 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 Percentage Property Lease Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

The City of Oceanside, a Municipal Corporation

Date _____

By _____
City Manager

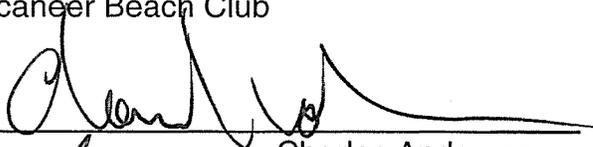
APPROVED AS TO FORM:

By 
City Attorney

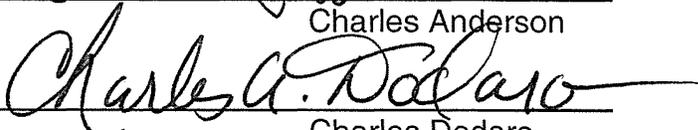
LESSEE

Charles Anderson & Charles Dodaro, dba Buccaneer Beach Club

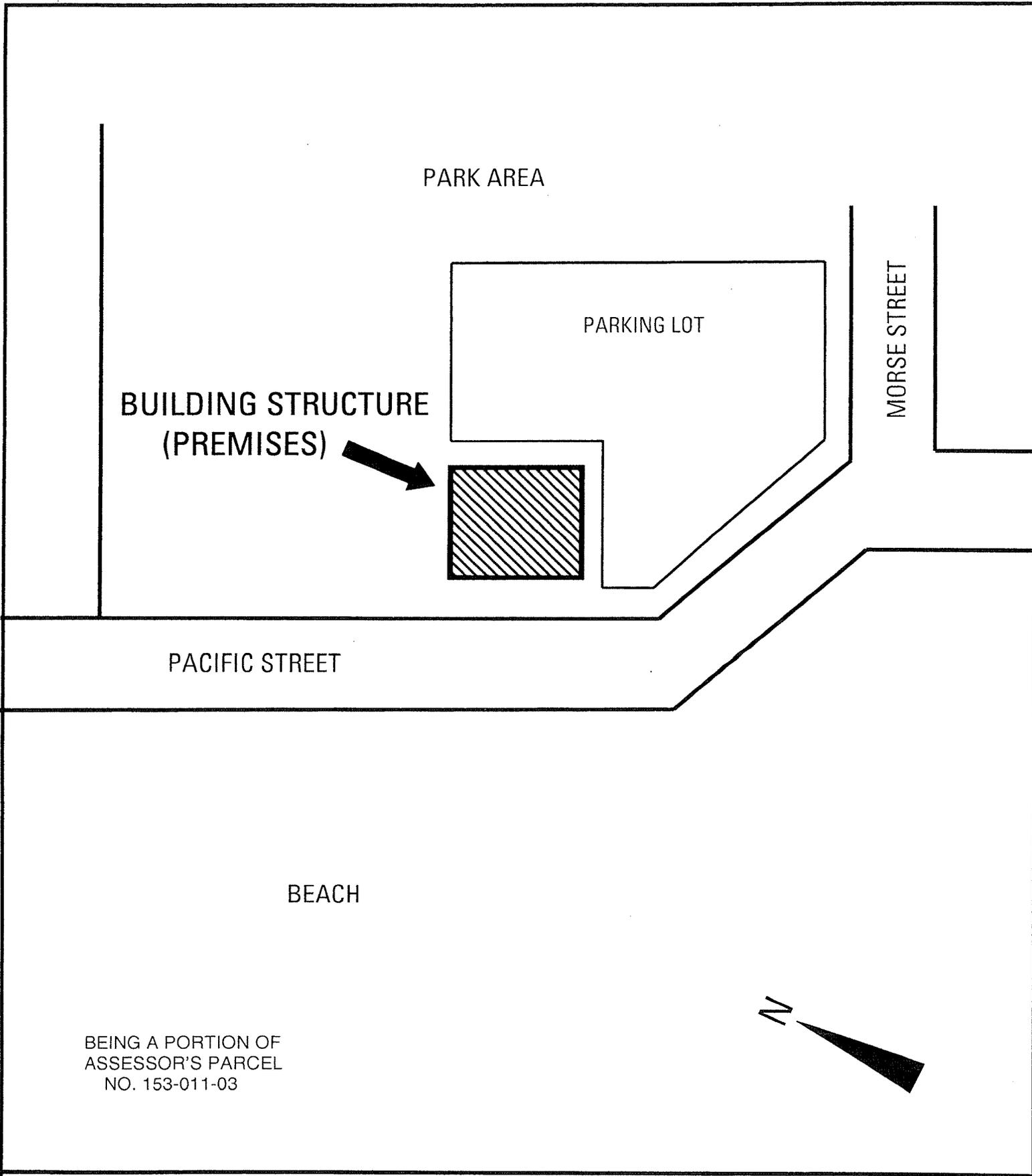
Date 8/30/10

By 
Charles Anderson

Date 8-30-10

By 
Charles Dodaro

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED



BEING A PORTION OF
ASSESSOR'S PARCEL
NO. 153-011-03

CITY OF OCEANSIDE
SKETCH OF LEASED PREMISES
FOR FOOD CONCESSION AT
1508 SOUTH PACIFIC STREET

EXHIBIT "A"

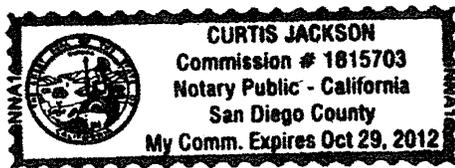
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 8/30/10 before me, Curtis Jackson, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Charles Dorado and Charles Anderson, II
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 [Signature] 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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

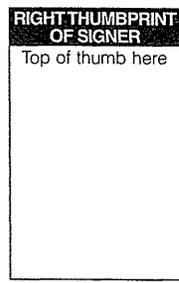
Capacity(ies) Claimed by Signer(s)

- 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: _____

PERCENTAGE PROPERTY LEASE AGREEMENT

BY AND BETWEEN

**THE CITY OF OCEANSIDE, A
MUNICIPAL CORPORATION**

AND

**ARTHUR HECTOR REYNA, DBA
HECK'S SURF GRILL**

**ON CITY OWNED REAL PROPERTY, COMMONLY
KNOWN AS BUCCANEER GALLEY**

**LOCATED AT
BUCCANEER BEACH PARK**

DATED

March 17, 2004

**PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL**

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WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL**

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PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

This Percentage Property Lease Agreement, herein after called ("AGREEMENT"), is executed between the City of Oceanside, hereinafter called ("CITY"), and Arthur Hector Reyna, dba Heck's Surf Grill, hereinafter called ("LESSEE").

RECITALS

WHEREAS, CITY is the lawful owner of that certain real property in the City of Oceanside, County of San Diego, State of California, more particularly described hereinbelow;

WHEREAS, LESSEE is assignee of that certain percentage lease agreement between the City of Oceanside and Steve and Vickie Cole dated May 5, 1999, and said lease agreement terminates March 31, 2004;

WHEREAS, LESSEE has leased the property and operated a food concession from the premises since April 2002, and LESSEE is not in default or breach of any term, condition, or covenant of said lease;

WHEREAS, CITY, for the consideration hereinafter set forth, hereby leases to LESSEE and LESSEE hereby hires from CITY said real property 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 leases from CITY, in accordance with the terms of this AGREEMENT, all of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **Buccaneer Galley, Buccaneer Beach Park, 1508 South Pacific Street, Oceanside, California**, more particularly shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT. Said real property is hereafter called the ("PREMISES").

1.02 Uses. It is expressly agreed that the PREMISES is leased to LESSEE solely and exclusively **for the purpose of operating a food concession**, and for such other related or incidental purposes as may be first approved in writing by the City Manager, and for no other purpose whatsoever.

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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 hereof, 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 the AGREEMENT. LESSEE shall not use the PREMISES in any manner which disrupts the quiet enjoyment of surrounding property owners use of their property.

1.03 Related Discretionary Actions. By the granting of this AGREEMENT, neither the 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 that may be required for the development and operation of the PREMISES.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the PREMISES.

If CITY for any reason cannot deliver possession of the PREMISES to LESSEE at the commencement of the term, or if during the 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 AGREEMENT 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 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 AGREEMENT by submitting to the CITY a **thirty (30) day** written notice together with its justifications for such termination. The CITY shall have the right to approve such termination and shall provide LESSEE with a written determination thereof. Said approval shall not be unreasonably withheld.

1.05 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

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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 leased 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 AGREEMENT. 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 Initial Term. The term of this AGREEMENT is for a period of three years commencing on **April 1, 2004** and terminating on **March 31, 2007**.

2.02 Extension of Term. The LESSEE may request an extension of the term of this AGREEMENT for the PREMISES for **one (1) additional three-year term** under the terms and conditions of this AGREEMENT at the CITY's calculated fair market rental rate of similar businesses, provided that the LESSEE is not in default or breach of any term, condition, or covenant of this AGREEMENT.

The LESSEE may request not more than **one (1) three-year extension** of term by providing the CITY with its written request no later than **ninety (90) days** prior to the expiration of the term of this AGREEMENT. The CITY's designee shall notify the LESSEE not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the CITY shall provide LESSEE with CITY's calculated fair market rent value and rental amount which the CITY is willing to accept for LESSEE's use and occupation of the PREMISES during the extension term. In no event shall the rental rate be less than that required during the proceeding annual term. CITY's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to LESSEE not later than **thirty (30) days** from receipt of the request for extension.

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The City Council, at its sole discretion, may approve or deny the extension of the term of this AGREEMENT. In the event the City Council is unable to consider the extension request in sufficient time as to provide LESSEE with **thirty (30) days** notice of termination in the case of denial, the AGREEMENT shall be extended for a period not to exceed **thirty (30) days**, to allow for such thirty-day notice of termination.

In no event shall the term of this AGREEMENT be extended in excess of **three (3) years** beyond the expiration of the term of this AGREEMENT without the mutual agreement of the parties and prior approval of the City Council.

2.03 Termination Provisions. There are no special termination options available except those described elsewhere in this AGREEMENT.

2.04 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this AGREEMENT. The occupancy of the PREMISES by LESSEE or by LESSEE's property after the expiration or termination of this AGREEMENT constitutes a month-to-month tenancy, and all other terms and conditions of this AGREEMENT, including rental adjustments, shall continue in full force and effect. In the event of any holding over, LESSEE shall pay the sum of:

a. The minimum monthly rent for the preceding annual term, and a prorated amount of percentage rent for the extent of the holdover period.

b. 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 AGREEMENT counting from the original commencement date of the AGREEMENT to the expiration or termination date of the AGREEMENT.

2.05 Abandonment by LESSEE. Even though LESSEE has breached the AGREEMENT and abandoned the PREMISES, this AGREEMENT shall continue in effect for so long as CITY does not terminate this AGREEMENT, 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.

2.06 Quitclaim of LESSEE'S Interest. On termination of this AGREEMENT 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

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or earlier termination of this AGREEMENT. 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 provision and the notice will be conclusive evidence of the termination of this AGREEMENT and all LESSEE's rights to the PREMISES.

2.07 Surrender of Premises. At the expiration or earlier termination of this AGREEMENT, 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 AGREEMENT by CITY. The PREMISES, when surrendered by LESSEE, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this AGREEMENT, absent normal wear and tear.

2.08 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this AGREEMENT.

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. 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 annual State Board of Equalization tax statement, provide CITY with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this AGREEMENT.

Checks should be made payable to the City of Oceanside and delivered to the address set forth in Section 6 of this AGREEMENT. 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 subsections 3.02b–3.02e) or the Percentage Rent (as defined by subsection 3.02f) **whichever is higher.**

b. **Initial Minimum Rent Amount.** The minimum annual rent amount shall

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be **Six Thousand Two Hundred Eighty-three Dollars (\$6,283.00)** which shall be payable monthly in advance at the rate of **Five Hundred Twenty-four Dollars (\$524.00)** on or before the **tenth day** of each new month.

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

d. **Adjustment Index.** The index used will be the 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 **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 **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 date.

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

Definitions:

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

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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 **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: $\$100 + (\$100 \times 5\%) = \$105$

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

For example: $\$105 + (\$100 \times 6\%) = \$111$

However, in no event shall the adjusted rent increase be neither less than **four percent (4%)** nor more than **eight percent (8%)** per year.

f. **Percentage Rent.** The monthly percentage rent shall be **Twelve and One Half Percent (12 ½%)** of the total gross income, (as defined in Subsection 3.02f), less the monthly minimum rent paid by LESSEE for the month during which the monthly gross income was calculated.

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 AGREEMENT as required in Section 3.01 hereinabove.

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 property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether 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. LESSEE shall not deduct possessory interest taxes or other property taxes 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

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LESSEE. Gross income shall include income received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said PREMISES or the operation. The monthly gross income shall be calculated at the end of each month of the term of this AGREEMENT. The first monthly gross income calculation shall be made one month after the commencement date of this AGREEMENT.

3.03 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine LESSEE'S compliance with this AGREEMENT. These records and accounts will be made available by LESSEE at the PREMISES and will be complete and accurate showing all income and receipts from 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 AGREEMENT. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

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 AGREEMENT.

3.05 Rent for Extended Term. The CITY shall calculate the fair market rental value of the PREMISES based on similar businesses within the CITY, and transmit it to the LESSEE as required in Section 2.02 of this AGREEMENT.

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 AGREEMENT, except only for those claims arising from the sole 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, throughout the duration of this AGREEMENT maintain comprehensive general liability or commercial general liability insurance and property damage insurance covering all operations and activities of LESSEE, its agents and employees, performed in connection with this AGREEMENT including but not limited to PREMISES and automobile.

- a. LESSEE shall maintain the following minimum limits:

Commercial General Liability Insurance

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

Fire, extended coverage, and vandalism insurance policy(s) on all insurable property on the PREMISES, including the PREMISES.

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 AGREEMENT. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the City, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this AGREEMENT.

c. All insurance companies affording coverage to the LESSEE shall be insurance organizations 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) day written notice to the CITY should the policy be canceled 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 AGREEMENT.

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 AGREEMENT.

g. Maintenance of insurance by the LESSEE as specified in this AGREEMENT 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 AGREEMENT, or failure to provide the proof of insurance, shall be deemed a default under this AGREEMENT.

4.03 Accident Reports. LESSEE shall, within **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, 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 necessary to satisfy itself of the condition of the PREMISES. LESSEE

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acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this AGREEMENT. LESSEE further acknowledges that the PREMISES are in the condition called for by this AGREEMENT 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 ten (10) days of such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the 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. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the PREMISES throughout the term of this AGREEMENT. LESSEE will make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, 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 thirty (30) days after written demand from the CITY. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this AGREEMENT imposed on CITY.

5.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the PREMISES, and the PREMISES may not be altered by LESSEE without prior written approval by the CITY. 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 and that such approval shall not be unreasonably withheld. This

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provision shall not relieve LESSEE of any obligation under this AGREEMENT 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 AGREEMENT 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 leased 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. 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.

5.07 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 AGREEMENT 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.

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

5.09 Ownership of Improvements.

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 AGREEMENT expiration or termination be deemed to be part

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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 AGREEMENT.

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 termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before AGREEMENT 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 AGREEMENT. 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.

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

a. **Total Taking.** In the event the entire PREMISES are taken, this AGREEMENT 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 AGREEMENT 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 AGREEMENT 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

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WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL**

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 AGREEMENT.

e. No Inverse Condemnation. The exercise of any CITY right under this AGREEMENT 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 AGREEMENT 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:

To CITY:

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

To LESSEE:

Arthur Hector Reyna
Heck's Surf Grill
1508 South Pacific Street
Oceanside, CA 92054

With copy to:

Arthur Hector Reyna
1014 Morse Street
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 at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the

PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 CITY Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all terms and conditions related to this AGREEMENT. The City Manager may delegate authority in connection with this AGREEMENT to the CITY's designee(s).

6.03 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical disability in LESSEE'S use of the PREMISES.

6.04 Equal Opportunity. LESSEE agrees to abide by CITY's Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this AGREEMENT. A copy of the program effective as of the date of this AGREEMENT is on file with the City Clerk's Office.

6.05 Entire Agreement. This AGREEMENT comprises the entire integrated understanding between CITY and LESSEE concerning the use and occupation of the PREMISES and supersedes 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 Agreement itself.

6.06 Interpretation of the Agreement. The interpretation, validity and enforcement of the AGREEMENT shall be governed by and construed under the laws of the State of California. The AGREEMENT 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 AGREEMENT 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 AGREEMENT are severable.

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

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

PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

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 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 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.

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 agreement, 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 **30 days** after written notice thereof if default

PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

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 of the termination of this Agreement 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 AGREEMENT 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.

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. Food operations shall be operated in such a manner as to maintain a Health Inspection rating of "A".

7.02 Sale of Alcoholic Beverages. LESSEE shall not sell alcoholic beverages upon or from the PREMISES.

7.03 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, unless otherwise approved in writing by the CITY.

7.04 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 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.

7.05 Merchandise and Equipment. CITY retains the right to require the LESSEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Continued Occupancy. LESSEE covenants and agrees to, and it is the intent of this Lease that the LESSEE shall, continuously and uninterruptedly 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, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by LESSEE.

7.07 Controlled Prices. LESSEE shall at all times maintain a complete list or schedule of the prices 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).

PERCENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

7.08 Exclusivity. Except for the rights granted to LESSEE pursuant to this Lease, LESSEE shall not have the exclusive right to provide food and beverage services at or near Buccaneer Park. 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 food and beverage items. CITY reserves the right to permit any and all services it deems to be in the best interest of the public.

LESSEE is also aware that CITY arranges or permits special events and concerts in Buccaneer Park and many of those event organizers provide their own food and beverage concessions. LESSEE agrees that such activities are not a violation of the rights granted to LESSEE by this Lease. CITY may, but is not obligated to, encourage the promoters and organizers of special events to use LESSEE for any concession needs.

7.09 New Construction. CITY may, at some point in the term of this LEASE, decide to renovate, remodel or demolish and rebuild PREMISES. Nothing in this LEASE should be construed to commit the CITY to do any renovating, remodeling or demolition and rebuilding of PREMISES. CITY shall not be obligated in any manner for losses which may result from a renovate, remodel or demolish and rebuild project at PREMISES. CITY shall give LESSEE sixty (60) days written notice prior to the start of any renovating, remodeling or demolition and rebuilding project at PREMISES. CITY shall also provide LESSEE a written notice sixty (60) days prior to project completion.

7.10 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, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

1 .CENTAGE PROPERTY LEASE AGREEMENT
WITH ARTHUR HECTOR REYNA, DBA HECK'S SURF GRILL

SECTION 8: SIGNATURES

8.01 Signature Page.

The individuals executing this AGREEMENT represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this AGREEMENT 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 Percentage Property Lease to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

CITY

The City of Oceanside, a Municipal Corporation

Date 3-19-04

By Mike Blessing for
City Manager

APPROVED AS TO FORM:

By [Signature]
City Attorney

LESSEE

Arthur Hector Reyna, dba Heck's Surf Grill

Date 2-19-04

By [Signature]
Arthur Hector Reyna

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.

On 2-19-04 before me, Barbara J. Daniels, notary public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Arthur Hector Reyna
Name(s) of Signer(s)

- personally known to me
- 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.
Barbara J. Daniels
Signature of Notary Public

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: Lease
Document Date: 2-19-04 Number of Pages: 20

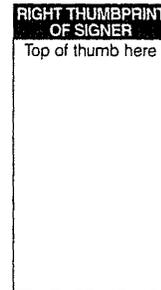
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

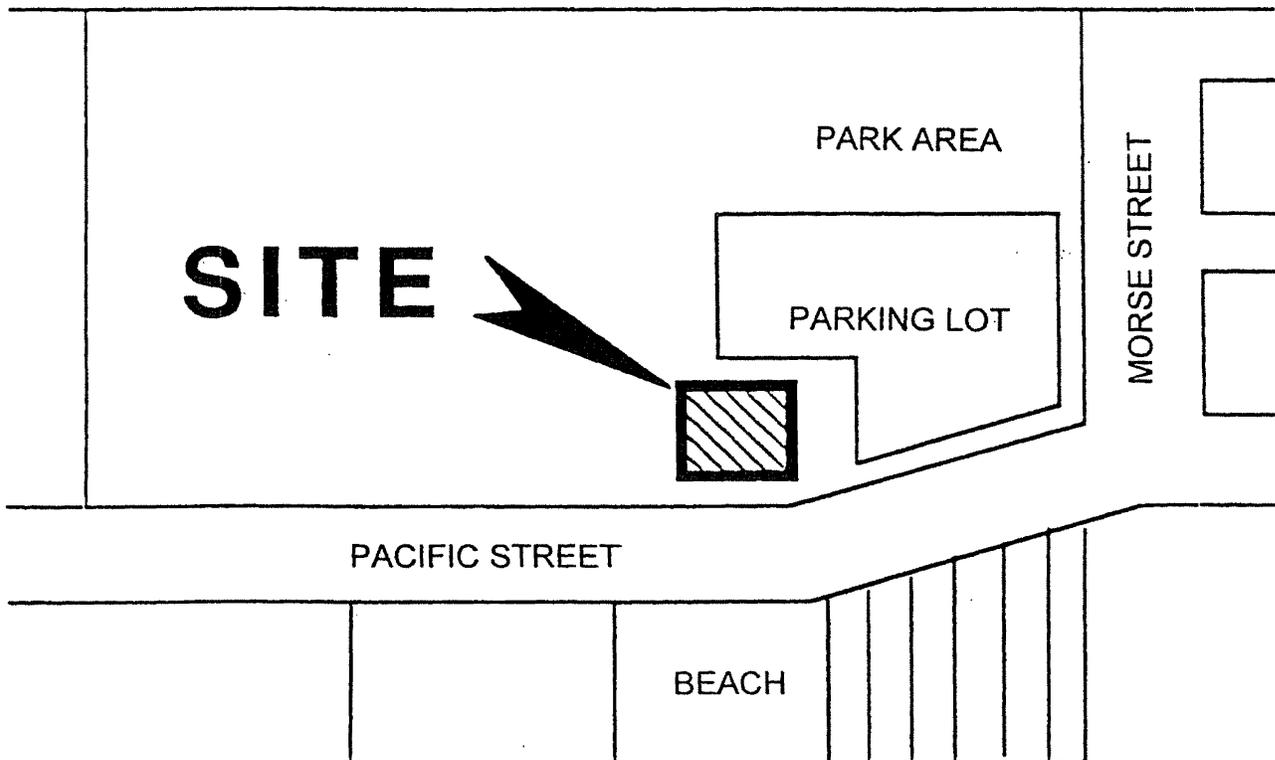
Signer's Name: _____

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

Signer Is Representing: _____



A.T. & S.F. R.R. RW



BEING A PORTION OF
ASSESSOR'S PARCEL
NO. 153-011-03



	CITY OF OCEANSIDE	EXHIBIT "A"																
<table border="1"> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> </table>																	SKETCH OF LEASED PREMISES FOR FOOD CONCESSION AT 1508 SOUTH PACIFIC STREET	

ASSIGNMENT OF LEASE

The undersigned, **Ronald A. Hass and Charles Dodaro**, are the current holders, pursuant to that certain Assignment of Lease dated May 18, 2004 of the leasehold interest under that certain lease dated March 17, 2004, by and between the City of Oceanside and Arthur Hector Reyna, dba Heck's Surf Grill, for certain real property commonly known as Buccaneer Galley, located at Buccaneer Beach Park. Ron A. Hass, Assignor does hereby assign, transfer, convey and set over unto **Charles M. Anderson II**, Assignee, all rights, title and interest in and to the leasehold estate held by Assignor in said lease covering that certain real property, together with all appurtenant improvements and equipment, located at Buccaneer Galley, Buccaneer Beach Park, Oceanside, California, together with all right, title and interest in and to prepaid rent and/or security type deposit on said lease, if any. This Assignment does not affect the interests of Charles Dodaro in said lease; he retains all his right, title and interest in and to said Leasehold estate.

Date: 12-1-08

By: Ronald A. Hass
Ronald A. Hass

Date: 12-1-08

By: Charles G. Dodaro
Charles Dodaro

ACCEPTANCE OF ASSIGNMENT OF LEASE

The undersigned, **Charles M. Anderson II**, Assignee, does hereby agree to and accept the above assignment and, in addition expressly assume and agree to be bound by and keep, perform, and fulfill all of the terms, covenants, obligations and conditions required to be kept, performed, and fulfilled by Assignor under, or with respect to, said lease.

Date: 12-1-08

By: Charles M. Anderson II
Charles M. Anderson II

CONSENT TO ASSIGNMENT OF LEASE

The undersigned, the City of Oceanside, Lessor under said lease, does hereby consent to the assignment of the lease on the understanding that all the terms, conditions, provisions and covenants of said lease shall remain and continue in full force and effect.

City of Oceanside

Date: 12/4/08

By: Douglas E. Eddow
Douglas E. Eddow, Real Property Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

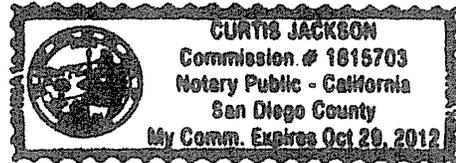
State of California)
County of San Diego)^{SS.}

On December 1, 2008 before me, Curtis Jackson, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Ronald A. Hass and Charles Dodaro,
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]
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: Assignment of Lease

Document Date: 12/1/08 Number of Pages: 1

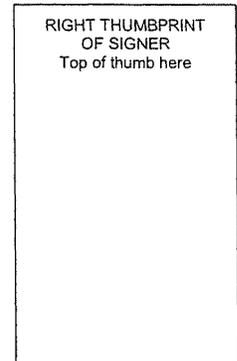
Signer(s) Other Than Named Above: Charles M. Anderson II

Capacity(ies) Claimed by Signer

Signer's Name: Ronald A. Hass & Charles Dodaro

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

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)ss.

On December 1, 2008 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

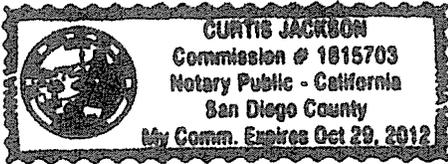
personally appeared Charles M. Anderson II
Name(s) of Signer(s)

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]
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: Acceptance of Assignment of Lease

Document Date: 12/1/08 Number of Pages: 1

Signer(s) Other Than Named Above: Ronald A. Hass & Charles Delgado

Capacity(ies) Claimed by Signer

Signer's Name: Charles M. Anderson II

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

Signer Is Representing: _____

