

ORIGINAL

SAN MATEO COUNTY HARBOR DISTRICT

L E A S E

THIS LEASE, made and entered into this 1st day March, 1992, by and between the SAN MATEO COUNTY HARBOR DISTRICT, a Political subdivision of the State of California, and MIKE McHENRY, individually and doing business as: PILLAR POINT SEAFOOD, hereinafter respectfully called "Lessor" and "Lessee."

WITNESSETH:

ARTICLE I - LEASE DOCUMENTS:

This Lease includes the following documents, which are attached hereto and made a part hereof:

A. Lease Including:

1. Exhibit A: Drawing depicting Area 3 of Fish Buyers' Building on Johnson Pier.
2. Exhibit B: Preliminary Structural Report prepared by Creegan & D'Angelo, December 4, 1991
3. Exhibit C: Structural Assessment Report prepared by Creegan & D'Angelo, February 5, 1992

B. General Conditions dated January 9, 1992:

ARTICLE II - EFFECTIVE DATE:

The effective date of this Lease shall be March 1, 1992.

ARTICLE III - PROPERTY LEASED:

- A. District hereby leases to Lessee and Lessee hereby rents from District the property located in the Pillar Point Harbor, El Granada, County of San Mateo, State of California, described as follows: The premises described in Exhibit "A" known as Area 3 located at Johnson Pier, Pillar Point Harbor, El Granada, California, consisting of an area approximately thirty three (33) feet by nineteen (19) feet including the upper and lower levels of the building located on the westerly extension of the pier previously described. In addition thereto, Lessee shall have the right to utilize designated area adjacent to said building area for the purpose of parking vehicles and/or freezer storage area as determined by the Harbor District. Lessee shall have the right to use those portions of the wharf adjacent to said building area for the purpose of docking vessels for such periods of time as may be reasonably necessary for the conduct of Lessees' business without payment of dockage fees; provided expressly, however, that if vessels are docked for period of time in excess of the time required for loading or unloading or for taking on supplies, said vessels will be charged dockage fees by Lessee in accordance with rate and fee schedules adopted by Lessor.
- B. One parking space, not more than nine feet by thirty-five feet (9' X 35') shall be available to Lessee on Johnson Pier, subject to sole approval of the District, which has the right to eliminate this item if storage, traffic, pedestrian or space problems occur.

ARTICLE IV - TERM

The term of this Lease shall be ten (10) years with a ten (10) year option to renew, commencing March 1, 1992.

ARTICLE V - USE AND SERVICES

Lessee shall develop, operate and maintain a first-rate and complete facility for the purpose of wholesale buying, storing, processing and shipment of fish and fish related products and/or the non-exclusive right to sell fish on a retail basis as stipulated in Item "B" below.

- A. Lessee shall provide on the leased premises all equipment required for the operation of said wholesale fish dealership including a winch and hoist for the purpose of loading or unloading of fish or other merchandise to and from vessels, and scales, skiff or equipment storage.

- B. Lessee shall have the non-exclusive right to sell fish in the same condition as purchased directly from fishing boats, on a retail basis, on a month-to-month basis, subject to written approval of the Harbor Commission, of any plans, specifications and engineering and compliance with San Mateo County Local Coastal Plan and Zoning/land use regulations. District shall retain the right to eliminate this item if storage, traffic, pedestrian or space problems occur. Lessee shall not be allowed to do any advertising for the retail fish operation on or off-site at any time. Violation of this provision will automatically rescind the right by Lessee to sell fish on a retail basis.
- C. Lessee shall not buy fish or other seafood products from any vessel that exceeds eighty (80) feet in length, without permission of the Harbor Master or General Manager. Permission shall not be arbitrarily withheld and shall be subject to appeal to the Harbor Commission.
- D. There will be no fish processing on the second floor of the facility.
- E. Access: Lessee agrees to keep a fifteen (15) foot wide area on Johnson Pier free and clear for common area access by all Fish Buyer Lessees at all times, unless mutually agreed by all parties.
- F. Lessee shall have sole use of a eighteen feet wide by fifty four feet (18' X 54') area in Parking Lot "A" as designated by the District, to be used for storage of any gear, boxes or other items that are considered essential to the fish buying operation. Lessee shall be solely responsible for fencing in, at its expense, said area and securing the fenced in area with a locked, secure gate. If the area so designated is not enclosed by Lessee on or before January 1, 1993, Lessee shall forfeit said space to the District for the remaining term of its Lease. Lessor shall not be responsible for the security of equipment or material stored. Lessee shall not store hazardous material on the said premises.

Once District has other storage available, the fish buyers will move their storage to the new facility at the District's request. Any expenses incurred will be at the sole expense of Lessee.

- G. No other uses are permitted except with the prior written consent of the District.

ARTICLE VI - OPERATING SCHEDULE AND CONTROLLED PRICES

- A. Operating Schedule. Beginning on the date the facilities are first offered for use by the general public, all of the uses and services specified in ARTICLE V - USES AND SERVICES, Sub-article "A" herein, shall be provided with full services on leased premises during the active fishing seasons, weather permitting, on call of District personnel or, as needed.
- B. Controlled Prices. Lessee shall, at all times, maintain a schedule of the prices charged for fish and fish products or charged for all goods or services or combinations thereof supplied to patrons on or from the leased premises, whether the same are supplied by Lessee or by its sublessee's, assignees, concessionaires, permittee's, or licensees, and shall make said schedule available to District.

All rates and charges to patrons served on or from the leased premises shall be reasonable and consistent with the quality of services and facilities offered and shall be no more than rates and charges for comparable services and facilities in Northern California.

ARTICLE VII - IMPROVEMENTS, REPAIRS AND MAINTENANCE

- A. In addition to maintenance and repairs required pursuant to General Conditions of this Lease, the Lessee shall maintain the premises in accordance with standards imposed by the State of California Regional Water Quality Board.
- B. Lessee shall be responsible for the construction of Lessee-owned improvements at its sole cost and expense.
- C. Lessee shall be responsible for repairing, at their sole expense, all extraordinary damage to ladders, piers, and fender pilings caused by any vessel using Harbor District/Lessee facilities. Video to be given to each Lessee to establish current state of conditions to be used as baseline data.
- D. Lessee shall be responsible for all interior building repairs, including exterior doors, in accordance with Article XXI - Maintenance and Repair of the lease General Conditions. Lessee hereby agrees to upgrade, maintain, repair and improve the interior facilities of their respective parcels by July 31, 1992, as specified in Exhibit "B." The General Manager shall review and approve all proposed repairs or improvements prior to work being commenced.

- E. Prior to the proposed repairs or improvements being made, plans and specifications shall be submitted to the General Manager and the General Manager shall review the plans and specifications therefor and shall, if appropriate, approve the same. No work shall be done without the approval of the General Manager. Any permits required from agencies other than the Harbor District shall be obtained by Lessee.
- F. All design and construction shall conform with the requirements as set forth in "Design Criteria for Construction by Lessees," shown as Exhibit "A" to General Terms and Conditions, adopted by District, all applicable codes and ordinances, included but not limited by District, City, County, State and Federal. (Said approval shall not be unreasonably withheld by District.)
- G. Lessee will, at its sole cost and expense, keep and maintain the said premises and every part thereof in good and sanitary order, condition and repair, and shall maintain and keep in good order and repair all structures, facilities or appurtenance upon the property, the cost of which maintenance and repair shall be the sole responsibility of Lessee in consideration for the rental of the premises herein described.
- H. Lessee shall be responsible for quarterly preventative maintenance at Lessee's sole expense, of the sewer ejector station and all repairs to the facility, including replacement. Lessee shall pay its pro-rata share of the cost with the other fish buyer Lessees.
- I. No substantial alterations to existing structures or erection of new structures or removal of any structures shall be undertaken without the prior written permission of the Lessor first had been obtained. Any construction on the demised premises by Lessee shall be in accord with plans and specifications submitted to Lessor and subject to written approval of Lessor.

ARTICLE VIII - INSURANCE:

- A. Lessee shall comply with all of the insurance requirements set forth in the General Conditions of this Lease.

All such insurance requirements shall be in effect during the entire term of this Lease.

- B. Lessee shall take out, and maintain during the entire term of this Lease, Bodily Injury Liability and Property Damage Liability Insurance covering all claims for damages for bodily injury, death and property damages arising from Lessee's operation of the limit bodily injury and property damage for each occurrence and shall be at least the amount specified below:
- (1) Comprehensive General Liability with Broadform Endorsement
\$1,000,000 per occurrence and \$2,000,000 aggregate.
- C. All of the insurance policies obtained by Lessee pursuant to the requirements of this Lease shall name Lessor as an additional insured party and provide that such policies shall be primary specify that thirty (30) days' written notice must be given to Lessor (San Mateo County Harbor District) of any cancellations or changes in the policies. The notice shall be sent by certified or registered mail and shall be deemed effective the date delivered to the General Manager of Lessor as evidence by a properly validated return receipt.
- D. Lessee shall provide Lessor with Certificates of Insurance showing the required coverage and containing a specific contractual liability endorsement extending Lessee's coverage to include its Lease with Lessor.
- E. Lessor shall retain the right at any time to review the coverage, form and the amount of the insurance required hereby. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and for members of the public using the demised premises, Lessor may require Lessee provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risks which assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.
- F. Lessor shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit the Certificates of Insurance with Lessor incorporating such changes within sixty (60) days of receipt of such notices, this Lease, shall be deemed in default without further notice to Lessee and Lessor shall be entitled to all legal remedies.
- G. The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the demised premises.

ARTICLE IX - LEASE RENTS AND GROSS RECEIPTS:

The Board of Harbor Commissioners reserves the right to fix and determine the rates to be charged by the Lessee for the use by the public of said facilities, in accordance with Section 72 of the State of California Harbors and Navigation Code.

- A. **MINIMUM ANNUAL RENT** - Minimum rent for the term of this Lease shall be fifteen thousand and no/100 dollars (\$15,000.00) per year. Effective January 1, 1993 and every January 1 thereafter, the minimum annual rent shall automatically increase or decrease based upon the San Francisco-Oakland-San Jose Cost of Living Indexes: All Items Index (All Urban Consumers Index.)
- B. **GROSS RECEIPTS:**
 - 1. In addition to the minimum annual rent, lessee shall pay the amount by which the total of the following percentages of gross receipts exceeds the minimum annual rent set forth herein:
 - a. **Wholesale Fish Purchase** = 1% of gross receipts.
 - b. **Fish Off-Loading:** will not be charged 1% of gross value unless District determines, after annual evaluation, that any problems exist. District will reserve the right to charge lessees 1% of the value of fish off-loaded if they make said determination, in its sole discretion.
 - c. **Retail Fish Sales:** Lessee will pay District 6% of its gross receipts for all fish sold to the general public.
 - 2. Lessee shall provide the District with a copy of his Department of Fish and Game tag receipts or other data satisfactory to the General Manager, on a quarterly basis, with the submission of his Quarterly Reports.
 - 3. Gross Receipts - Gross receipts are derived, received, or charged by any sublessee, subtenant, concessionaire, licensee, or any other person, firm or corporation (herein called "subtenant") or by Lessee, for fish unloaded at facility, fish purchased, or for sales, charges for service, for the use of space made in or on the leased premises, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the leased premises, whether from subtenants, customers, or otherwise, both for cash and on credit, and in cases of sales or charges on credit, whether or not payment is actually made.

4. Gross receipts shall include, without limitation, all:
 - a. Deposits not refunded;
 - b. Orders taken on or from the leased premises to be filled or paid for elsewhere;
 - c. Sales or charges for all services performed, whether such sales are made or such services are rendered at or arranged through the occupied space at the leased premises by long distance communication and whether initiated, performed, or completed at another location.
 - d. Considerations received by Lessee for value directly from customers, and from subtenants, including subrents.

Each sale or charge for service or use of space on credit or in installments shall be treated as a sale or charge for the total price in the calendar year for which the sale or charge is made whether or not any payments are made within that year.

5. The following matters only may be excluded or deducted from Gross Receipts at the time they are ascertained, and where not ascertainable during the period covered by a statement of Gross Receipts, then from the time of a subsequent statement when they are known:
 - a. Gratuities such as "tips" retained by employees of Lessee or subtenant for their personal benefit;
 - b. All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total purchase price, whether now or hereinafter in force, to be collected from customers and paid by Lessee or subtenant;
 - c. Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee or any subtenant if such transfers or exchanges are made solely for the convenient operation of Lessee's or subtenant's business and not for the purpose of consummating a sale previously made at, on or from the leased premises or for the purposes of depriving District from the percentage of Gross receipts of a sale that otherwise would be made at, on or from the leased premises;

- d. Merchandise returned to shippers or manufacturers;
 - e. All refunds made on any sale or charge for service or use of space previously included as Gross Receipts;
 - f. All cash or credit received in settlement of any claims for loss or damage;
 - g. Gift certificates or like vouchers, if not issued for value, until the time they have been converted to a sale by redemption;
 - h. Any income or receipts, under generally accepted accounting principles, which are derived from the sale or disposal of any capital assets (excluding any assets normally sold in the course of business conducted on the leased premises) or from the retirement of any indebtedness, or from Lessee's or subtenant's investments of any funds not invested in the leased premises or the operation of the Lessee's or subtenant's business on the leased premises.
 - i. Percentage rents collected by Lessee from subtenants for District's benefit.
6. None of the above exclusions or deductions from Gross Receipts shall be excluded or deducted if in substance it is a typical sale, charge for service or other source of gross income which is ordinarily the subject of percentage rent, but arranged only to avoid such rent, or of actually contracted for elsewhere on other premises such as typical sale, charge for service, or other source of gross income which is ordinarily the subject of percentage rent, but such sale, charge for service, or other gross income is for the Lessee's or subtenant's business benefit.

D. Payment of Rent:

- 1. Minimum Rent. Minimum annual rent (adjusted or unadjusted shall be due and payable in advance in equal monthly installments on or before the first day of each month of the term of this Lease.
- 2. Percentage Rents (Gross Receipts). At the end of each quarter of the year (i.e., March 31st, June 30th, September 30th, and December 31st), percentage rentals at the rate set forth in Article IX B shall be computed for the prior quarter and the difference between the minimum annual rent for said quarter and the percentage rent for said

quarter shall be due and payable on the 15th day following the end of said quarter.

The percentage rent based upon gross receipts shall be recomputed at the end of each year using the applicable percentages and the balance of rents as computed for each year shall be due and payable on or before March 30th of the following year. Any overpayment of rent shall be credited toward future rents.

- E. Lessee shall provide District with first and last month's rent upon execution of the lease.

ARTICLE X - SECURITY DEPOSIT:

On the execution of this Lease, Lessee shall deposit with Lessor the sum of six thousand dollars and no/100 (\$6,000.00) in receipt of which is hereby acknowledged by Lessor as security for the full and faithful performance by Lessee of the terms, conditions and covenants of this Lease to be performed by Lessee. If at any time during the term hereof, Lessee shall be in default in the payment of rent herein reserved or any portion thereof, or any other sums expressly constituting rent hereunder, Lessor may appropriate and apply any portion of the security deposit reasonably necessary to remedy any such default in rent, or any steps required to effect such remedy. If at any time during the term hereof, Lessee should fail to repair any damage to the premises leased to him, occasioned by the Lessee or his agents, servants or employees through want of ordinary care, or a greater degree of culpability, for a period of greater than thirty (30) days after written demand to make such repairs served on Lessee by Lessor, then the Lessor may appropriate and apply any portion of the security deposit as may be reasonably necessary to fund the repair. If upon termination of this tenancy for any reason, Lessee does not leave the leased unit in reasonably clean condition, then Lessor may appropriate and apply any portion of the security deposit after any lawful deductions as above, shall be returned to the Lessee within two (2) weeks after termination of his tenancy directed to the address left by Lessee specifically for such purpose or otherwise directed to his last known address. Lessee will be entitled to no interest on any portion of said deposit. Should Lessor actually resort to any monies contained within the security deposit under any of the above applicable provisions, Lessee agrees to pay to Lessor the amount for which resort to the security was had, and necessary to restore the security deposit to the original sum required hereunder within thirty (30) days after written demand for such by Lessor.

ARTICLE XI - NOTICES AND PAYMENTS

All notices and communications required under this Lease shall be in writing, and all notices and payments shall be made as follows:

- A. All payments and notices to District shall be given or mailed to:

General Manager
San Mateo County Harbor District
One Johnson Pier
Half Moon Bay, CA 94019

- B. All payments and notices to Lessee shall be given or mailed to:

Mr. Mike McHenry
Pillar Point Seafood
223 San Clemente
Half Moon Bay, CA 94019

- C. To Encumbrance Holder at such address and to such person as it shall designate to District in writing.
- D. Any party may designate a different address by giving notice as set forth in this Article.
- E. All notices and communications referred to herein shall be deemed given on the fifth day following mailing if given in accordance with this Article.
- F. If Lessee is not a resident of the County of San Mateo or is an association or partnership without a member or partner resident of said County, or is a foreign corporation, Lessee shall file with District a designation of natural person residing in the County of San Mateo, State of California, giving his name, residence and business address as the agent of Lessee for the service of process in any court action between Lessee or Encumbrance Holder and District, arising out of or based on this Lease, and delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

ARTICLE XII - OPTION TO RENEW

District grants Lessee a ten (10) year option to renew this Lease upon expiration of the original terms on March 1, 2002. **SAID OPTION TO RENEW THIS LEASE SHALL BE EXERCISED IN WRITING NOT LESS THAN SIX (6) MONTHS PRIOR TO THE EXPIRATION OF THE TERM**, and shall be effective when the notice of exercise of said option is received by Lessor.

ARTICLE XIII - ENTIRE AGREEMENT

This Lease is the entire agreement between Lessor and Lessee. No understandings or promises between the parties are valid or enforceable unless contained herein. This Lease may not be modified unless the same is in writing, signed by Lessor and Lessee.

ARTICLE XIV - PREVAILING DOCUMENT

In the event of a discrepancy between this document and the General Conditions, this document shall prevail.

ARTICLE XV - APPROVED BY CALIFORNIA DEPARTMENT OF BOATING & WATERWAYS

This agreement requires the approval of the California Department of Boating and Waterways of the State of California and shall not take effect until such approval is obtained.

EXECUTED IN TRIPLICATE

A - San Mateo County Harbor District

B - Mr. Mike McHenry; DBA: Pillar Point Seafood

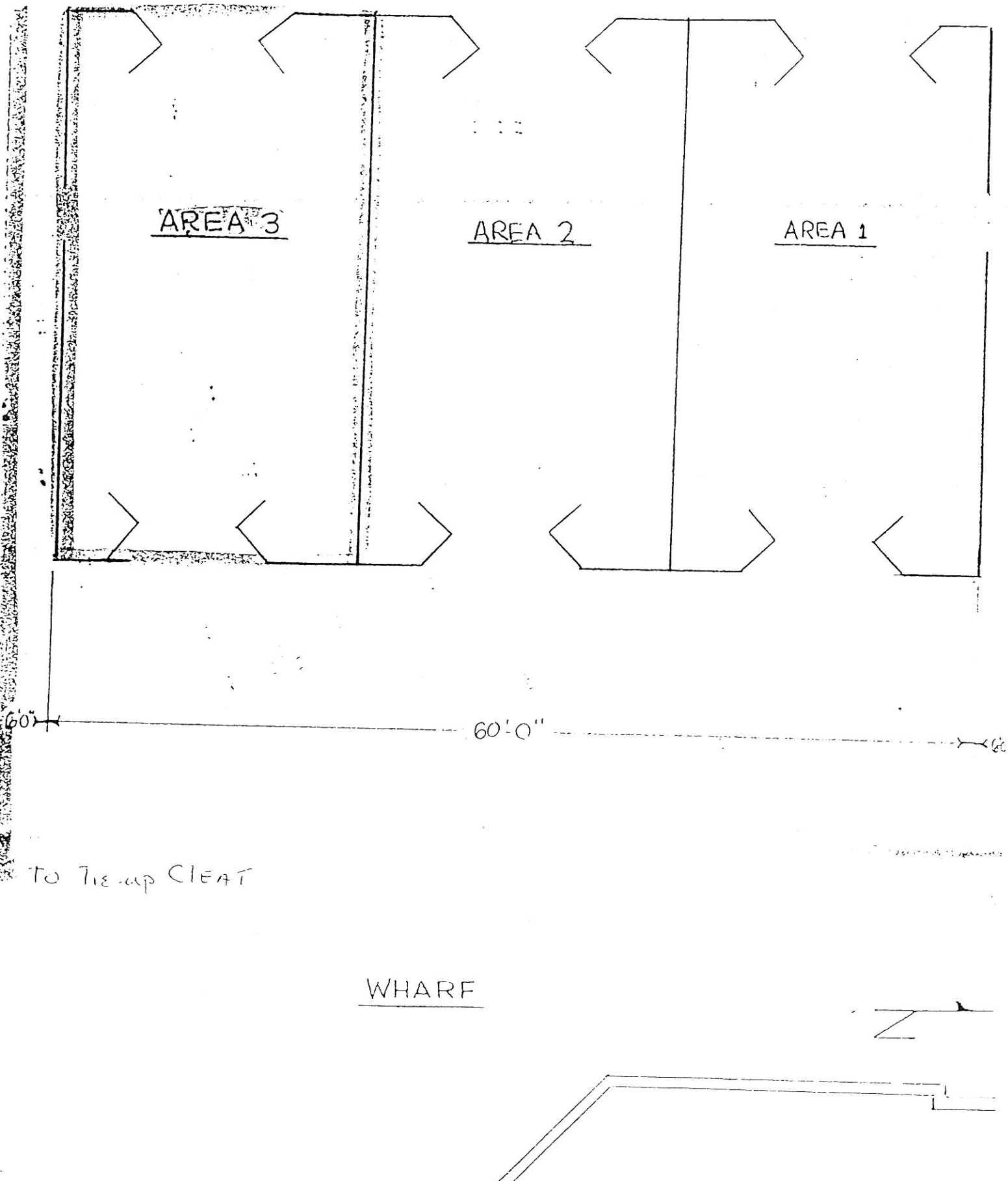
C - Department of Boating and Waterways

SAN MATEO COUNTY HARBOR DISTRICT

3-31-92
Date

By Donald F. Guluzzy
Donald F. Guluzzy, General Manager

EXHIBIT "A"



AREA 3

AREA 2

AREA 1

60'-0"

60'-0"

To Tie-up Cleat

WHARF

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN MATEO)

On MARCH 31, 1992, before me Martha M. Brown-Bunes, personally appeared Donald F. Guluzzy, General Manager of the San Mateo County Harbor District, a political subdivision of the State of California, and known to me to be the person whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Description: Fish Buyer's Lease between San Mateo County Harbor District
and CALIFORNIA STATE DEPARTMENT OF BOATING AND WATERWAYS
Number of Pages contained within this document 23

WITNESS my hand and official seal.

Signature Martha M. Brown-Bunes
Martha M. Brown-Bunes
Notary Public in and for said State

3/31/92
Date

MIKE McHENRY
DBA: Pillar Point Seafood

By Michael D. McHenry



DEPARTMENT OF BOATING AND WATERWAYS