

L E A S E

R.E. HAZARD CONTRACTING CO., a California corporation, hereinafter referred to as the "LESSOR", and ANTHONY A. GHIO, COTTARDO M. GHIO, CATHERINE B. GHIO and ROY WEBER, partners, dba "ANTHONY'S FISH GROTTO", hereinafter referred to as the "Lessees", do mutually agree as follows:

1.

The Lessor does hereby lease, and the Lessees do hereby hire upon the covenants and conditions hereinafter set forth:- All of fractional Lots 1, 2 and 3 in Block 272 of Middletown in the City of San Diego, County of San Diego, State of California, together with the frame and stucco building, known as "Skyway Restaurant", and all other leasehold improvements now on the premises. All furnishings, fixtures and equipment necessary for conducting a restaurant business are to be furnished by the Lessees and are to remain their property.

2.

The term of this lease shall commence on the 1st day of October, 1951, and shall terminate at midnight on the 30th day of September, 1956, unless sooner terminated or unless extended as hereinafter provided for in Paragraph 26.

3.

The minimum rent reserved by the Lessor and agreed to be paid by the Lessees is as follows:

Four Hundred Dollars (\$400.00) per month for each and every month except that the rent reserved for the first month of the lease, namely October, 1951, shall be only \$200.00,

or

Five percent (5%) of the total gross receipts from all sales made or services performed on the leased premises, whichever amount is the greater.

4.

The Lessor represents that he owns or controls Lots 1, 2 and 3 in Block 272 of Middletown and has a leasehold interest in certain tidelands immediately adjacent to the West side of said lots, and for the term of this lease, the Lessor does hereby extend to the Lessees the right of ingress and egress over said adjacent tidelands area for the benefit of themselves and their customers, and the right is given to park automobiles on said adjacent tidelands area, and to otherwise use the same to the extent that is necessary and/or desirable for the Lessees to fully or effectively utilize said lots and the improvements thereon, provided that neither the Lessees, or their customers, are permitted to use the adjoining tidelands area in a manner that is objectionable to the City of San Diego. It is understood that such use by the Lessees of the tidelands area adjacent to said lots is in no way to be construed as constituting a sublease of the same or any part thereof, there being no consideration paid for the use of adjoining tidelands. The right to use said adjacent tidelands is not exclusive in any way and it is not intended that anything herein contained shall give the Lessees any right whatsoever to use said adjoining tidelands or any part thereof in a manner which might in any way conflict with any provisions of any lease agreement between R.E. Hazard Contracting Co. and the City of San Diego.

5.

The minimum monthly rental of Two Hundred Dollars (\$200.00) for the first month shall be paid by the Lessees to the Lessor in advance on or before the 1st day of October, 1951, and thereafter the minimum monthly rental of \$400.00 per month shall be paid on or before the 1st day of each succeeding month. That on or before the 15th of November, 1951, and the 15th day of each succeeding

month, the Lessees shall furnish to the Lessor a written statement setting forth the gross receipts from all sales and services performed on the premises during the preceding month, and at that time, shall pay any additional rent that might be due for the preceding month. The Lessees agree to furnish a true and accurate statement of the gross business for each month, even though the statement indicates no additional rent is due. It is understood that the rental shall be computed separately for each calendar month, and that the total gross receipts for any two or more calendar months shall never be averaged for the purpose of computing rents.

The Lessees further agree to keep a full and complete set of books of accounts, wherein and whereby the total receipts derived from all sales and services performed may be readily determined at any time, and said books of accounts shall be kept on the leased premises, or at such other place as the parties hereto may in writing agree upon, and shall be open to the Lessor, its agents, accountants or attorneys at any and all times during business hours, and copies or abstracts may be taken therefrom. All statements shall be prepared by competent independent auditors and shall be certified by one or more of the Lessees to be true and correct.

6.

It is agreed that the Lessor and the Lessees are not partners, but that the foregoing is merely a method of computing the rent to be paid for the leased premises, and nothing herein contained shall be deemed to confer upon the Lessees any interest in the building of the Lessor, beyond the term of this lease, nor authorize the Lessees to create or incur any debt, obligation or liability for which the Lessor or its property shall be or become responsible.

7.

The Lessees agree to pay when due, in addition to the above rental, all charges for water, light, heat, power, telephone service,

and like and additional commodities and conveniences used in or about the leased premises, or any part thereof, during the term of this lease.

8.

The Lessees are restricted in their use of the premises to that of conducting a restaurant and transacting such incidental business as is customarily handled in conjunction with the restaurant business, except that no cocktail bar is to be operated on the leased premises, and the sale and/or consumption of alcoholic beverages is strictly limited to the sale and/or consumption of beer and wines served with meals.

9.

The Lessees agree that the leased premises are now in good and safe order, condition and repair, and that the Lessees will at all times, at their own expense, keep and maintain the same in as good condition as they are now or may be put into, and that they will leave the same in like condition upon surrender of possession, ordinary wear and tear and damage by fire and the elements alone excepted; and said Lessees agree that the Lessor shall be put to no expense in connection with the condition, use, occupation, sanitation or safety of the leased premises, or any part thereof, during the entire term of this lease.

10.

It is agreed that the Lessor shall not be called upon to make any repairs to this property except for repairs to roofing, when needed. The Lessees agree that all alterations, additions and/or improvements of whatsoever character, shall be made at their own expense, after written consent thereto has been first obtained from the Lessor; and that all repairs, alterations, additions and/or improvements, except such as are strictly trade fixtures and may be removed without injury to the remainder of the premises, shall be and become a part of the leased premises, and shall belong to the Lessor at the

expiration or sooner termination of this lease, without any additional expense to the Lessor therefor; except, should the Lessor require the leased premises to be restored to the condition they were in prior to the making of such alterations, additions and/or improvements, then the Lessees agree at their own expense to promptly so restore the same.

11.

The Lessees agree not to assign this lease, or to sublet or encumber their leasehold estate, or any part thereof, or any interest therein, or to permit or suffer the same or any part thereof to be occupied by another, either voluntarily or by operation of law, without first obtaining the written consent of the Lessor; and agree that the giving of written consent, upon any one or more occasions, shall not thereafter operate as a waiver or written consent of any one or more subsequent occasions, but that written consent must first be obtained before any assignment, sublease or encumbrance may ever be made, or the leased premises or any part thereof may ever be occupied by another.

12.

The Lessor reserves the right to terminate this lease, and to re-enter and repossess the whole of the leased premises, without further notice or demand, upon any general assignment for the benefit of the creditors of the Lessees, or upon the adjudication that the Lessees are bankrupt or insolvent, or upon the sale under execution of the leasehold estate, or any part thereof, or should a receiver or other officer be appointed to take charge of the leasehold affairs, or any part thereof, or attempt so to do, or should the leasehold estate, or any part thereof, or any interest therein, devolve upon or pass to any other person, firm, association or corporation by operation of law, or otherwise, then with the

written consent of the Lessor first obtained.

13.

The Lessor makes no representation as to the present or future condition of the leased premises, or any part thereof, or the buildings in which the same are located, or as to the fitness or desirability thereof for any particular purpose, and the Lessor shall not be liable to the Lessees for any changes therein or additions thereto required by public authority, or for any property loss or any other tenant; and the Lessor shall not be liable for any loss or damage due to improper or defective plumbing or wiring, or for the bursting or clogging of any pipes, toilets, tanks or other plumbing, or from fire or the elements, or from water flowing or leaking into the leased premises, or from any other cause connected with the present or future condition thereof.

14.

It is agreed should the leased premises, or the buildings in which the same are located, be destroyed by fire, earthquake or other cause, or be so damaged thereby that in the opinion of the Lessor it is impracticable or inadvisable to repair or restore the same, then this lease shall terminate, and both parties shall be released from the obligations thereof, dating from time of such damage. If, however, the Lessor shall deem it advisable to repair the leased premises, or the buildings in which the same are located, then it is agreed that the Lessor shall have a reasonable length of time to do so, that the rent shall be rebated or prorated during the progress of the work, depending upon whether the leased premises are vacant or partially occupied.

15.

The Lessees agree not to use the leased premises, or any part thereof, or suffer the same to be used, contrary to the laws of the United States, the State of California, or the City of San Diego, or for any disorderly, improper, immoral, offensive or unlawful purpose, not to keep or suffer to be kept on the leased premises, or any part thereof, any articles which may or will increase, suspend, jeopardize or invalidate the fire or other insurance; not commit, or suffer to be committed any waste, damage, or overloading of the leased premises, or any part thereof; and not commit or suffer to be committed any public or private nuisance thereon.

16.

The Lessor reserves the right to enter upon the leased premises, or any part thereof, by agent or other representative, at any and all reasonable times, for the purpose of viewing the same, and to see that the Lessees are faithfully performing and observing the covenants and conditions of this lease on their part, and to make any repairs, additions and/or improvements which the Lessor shall deem necessary, and for the purpose of posting and keeping posted in such conspicuous place or places as the Lessor may select, notices of such character and size as the Lessor shall determine, to the effect that the Lessor will not be responsible, and that its interest in the leased premises, or any part thereof, will and cannot be held liable or responsible, for any repairs, alterations, additions or improvements made by the Lessees, and for the purpose of taking possession in the event of default.

17.

The Lessees agree to hold the Lessor harmless from any and all demands, loss or liability resulting at any time or

times from injury to or the death of any person or persons, and/or from damage to any and all property, occurring from the negligence or other fault or omission of the Lessees, their agents, employees and/or patrons, in or about the leased premises, or in connection with the use of the street or sidewalk adjoining, or resulting from non-compliance or miscompliance with any law, ordinance or regulation respecting the condition, use, occupation, sanitation or safety of the leased premises, or any part thereof; and the Lessees agree to hold the Lessor harmless, and the property of the Lessor entirely free, from any claims or liens made or filed by reason of any repairs, alterations, additions or improvements made by the Lessees.

18.

The Lessees agree that should they hold over the leased premises, or any part thereof, after the expiration of the term, unless otherwise agreed in writing, that such holding over shall constitute a tenancy from month to month only, and that the Lessees will pay the then reasonable value of the use and occupation of the leased premises, which shall not be less than the rent herein reserved to be paid at the expiration of the term of this lease.

19.

The Lessees agree that should the Lessor be made a party without its fault, to any litigation brought by or against the Lessees, or because of the violation of, or the refusal by the Lessees to perform or observe any one or more of the covenants or conditions of this lease on their part, or should the Lessor be compelled to employ an attorney or agent to enforce the payment of rent, or to enforce the performance or observance of any of the covenants or conditions of this lease on the part

of the Lessees, or to recover the possession of the leased premises, or any part thereof, that then in each and every such instance, the Lessees will pay the amounts reasonably incurred or expended by the Lessor, including a reasonable fee to such agent and/or attorney, and the expense of preparing and serving any notice or demand required or permitted by law; and that the same will be paid upon demand, or may be included as a part of the judgment in any action or proceeding then brought or pending, or in any separate action brought for the purpose.

20.

It is agreed that each and all of the covenants of this lease on the part of the Lessees are conditions precedent, to be faithfully performed and observed by the Lessees to entitle them to continue longer in possession of the leased premises, and that if default be made in the performance or observance of any one or more thereof, strictly as and within the time in this lease provided, that then the Lessor may at its option declare this lease terminated, and may immediately, or at any time during such default, enter upon and take possession of the leased premises, and the whole thereof, without previous notice or demand, using all necessary force so to do, and that the Lessor may expel the Lessees and all those claiming by, through or under them, and may remove their effects, forcibly if necessary, without being responsible for the care or safety thereof, or liable for damages; in which event the Lessees agree to be responsible to the Lessor for the delivery of possession in the condition hereinbefore stipulated.

21.

The Lessees agree that any waiver by the Lessor of the performance or observance of any one or more of the covenants

or conditions of this lease on the part of the Lessees, or any leniency shown in respect thereto, shall not be deemed to constitute a waiver of the right of the Lessor to proceed strictly against the Lessees upon the subsequent breach of the same, or any other covenant or condition of this lease on the part of the Lessees.

22.

The Lessees agree to be responsible for all damage, loss or liability caused to the Lessor by the acts or omission of the agents, servants, licensees, and/or patrons of the Lessees, during the entire term of this lease.

23.

It is further agreed that this lease contains a complete expression of the whole agreement between the parties, and that there are no promises, representations, agreements, warranties or inducements, either as expressed by the parties or to be implied by law, except such as are herein fully set forth, and that this lease is to be interpreted as favorably to the Lessor as to the Lessees, and that the same cannot be enlarged, modified or changed in any respect, except by a writing executed by the parties.

24.

Time, and punctual and strict performance, are each hereby declared to be of the essence of this lease, and of each and all of its covenants and conditions.

25.

It is further agreed that the rights and remedies given to the Lessor by this lease are cumulative, and are not intended and shall not operate to deprive the Lessor of any other rights or remedies available to it, whether in law or equity, or pursuant to special proceedings.

26.

The Lessor agrees to renew this lease for a further

period of Five (5) years upon the same terms and conditions, except the minimum rental shall not be less than Five Hundred Dollars (\$500.00) per month. The exact percentage of gross sales and the exact amount of the minimum rental applicable to the second five-year term shall be determined by mutual agreement of the parties, or if they cannot agree, by arbitration, the Lessor and the Lessees to each select one arbitrator, and then the two arbitrators so selected to designate a third arbitrator in case the two are unable to agree.

As a condition precedent to exercise this renewal option, the Lessees shall give written notice of their election to renew, not later than Four (4) months before the termination date of this lease.

This Agreement in all its terms and conditions shall be binding upon and shall inure to the benefit of the heirs, executors and assigns of all of the parties hereto.

IN WITNESS WHEREOF, the Lessor has caused its corporate name to be subscribed and its corporate seal to be affixed by its duly authorized officers, and the Lessees have set their hands to duplicate copies hereof this 27 day of September, 1951.

R.E. HAZARD CONTRACTING CO.

BY _____
President

By _____
Secretary

Lessor

Lessee

Lessee

Lessee

Lessee

AMENDMENT TO LEASE

The SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a corporation, hereinafter referred to as the "LESSOR" and ANTHONY A. GHIO, COTTARDO M. GHIO, CATHERINE B. GHIO and ROY WEBER, partners, dba "ANTHONY'S FISH GROTTO", hereinafter referred to as LESSEES" do hereby agree as follows:

WHEREAS, under date of September 27, 1951, the R. E. HAZARD CONTRACTING COMPANY, a California corporation, leased to the Lessees herein all of Fractional Lots 1, 2 and 3, in Block 272 of Middletown in the City of San Diego, County of San Diego, State of California, together with the improvements thereon now known as "ANTHONY'S FISH GROTTO" for a term of five years commencing October 1, 1951, and terminating September 30, 1956; and

WHEREAS, fee title to the aforesaid real property and the improvements thereon and the lessor's interest in said lease have been transferred, assigned and conveyed by the R.E. Hazard Contracting Company to the SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a corporation, IN TRUST, for the benefit of the daughters of R.E. Hazard pursuant to the terms and conditions of that certain Trust Agreement described as TRUST NO. P.T. 274; and

WHEREAS, said lease under which the Lessees presently occupy said premises does now provide, among other things, in Paragraph "8" thereof as follows:

"The Lessees are restricted in their use of the premises to that of conducting a restaurant and transacting such incidental business as is customarily handled in conjunction with the restaurant business, except that no cocktail bar is to be operated on the leased premises, and the sale and/or consumption of alcoholic beverages is strictly limited to the sale and/or consumption of beer and wines served with meals."

WHEREAS, the Lessees have acquired an on sale liquor license and are desirous of operating a cocktail bar or lounge in connection with and as an adjunct to their restaurant business and the SECURITY TRUST & SAVINGS BANK, as Trustee, is willing to waive the restriction now contained in said lease limiting the sale of alcoholic beverages and is further willing to construct an additional building on the premises which might be used as a cocktail bar or lounge.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and for other valuable consideration, the original lease of September 27, 1951, is modified and amended as follows, effective December 1, 1952:

I.

The Lessees are hereby permitted to operate a cocktail lounge or bar on the leased premises in conjunction with the restaurant business and to sell alcoholic beverages provided the bar or cocktail lounge is operated by the Lessees and its operation is not sublet or assigned to others and further provided the same is operated only during such hours as the restaurant is open for business, EXCEPT that it may remain open for business one hour longer in the evenings.

This waiver of the provision contained in the original lease restricting the sale of intoxicating liquors is understood

to be effective only so long as the Lessees operate the bar or cocktail lounge in an orderly, dignified and respectable manner and if, in the sole opinion of the Lessor, such is not the case the Lessor may terminate the right to sell intoxicating liquors on giving the Lessees thirty days written notice in advance of the effective date of such consolidation.

II.

The Lessor agrees to construct, without any expense to the Lessees, an addition to the leased premises containing approximately one thousand (1000) square feet, which can be used as a cocktail bar or lounge.

It is understood and agreed that the Lessor's obligation hereunder shall be fully discharged when it has constructed the building addition or improvement as the same is now set forth in those certain blue prints dated December 1952, identified as JOHN S.H. DANIELS' JOB 1201, which prints also contain the specifications for the addition. The Lessor agrees to provide an asphalt tile floor covering for the new building, but lighting fixtures and all other fixtures, furnishings and decorations of every nature whatsoever shall be provided by the Lessees at their expense.

The Lessor agrees to start construction on the new building just as soon as this amendment to the lease is executed and will use its reasonable best efforts to have the same completed at the earliest date possible.

III.

The gross receipts from the sale of alcoholic beverages shall be subject to the same five percent rental that now apply to the sale of food but effective December 1, 1952, in addition to the minimum of \$400.00 per month now applicable to the sale of food there shall be an additional minimum of

\$200.00 per month on the sale of alcoholic beverages.

Nothing herein provided with respect to the payment of a monthly minimum rental or the sale of food and alcoholic beverages is intended to modify or change in any way the letter agreement of July 25, 1952.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ____ day of _____, 1953.

LESSOR:

SECURITY TRUST & SAVINGS BANK OF SAN DIEGO,
TRUSTEE,

By _____

LESSEES:

ANTHONY GHIO

COTTARDO M. GHIO

CATHERINE B. GHIO

ROY WEBER

DOCUMENT NO. 486251

FILED MAR 8 - 1954
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

*Copy of Sublease and
Amendment between
A. E. Shepard Contracting
Co. and "Anthony's
Bottle"*

117044
MAR 11 1954