ITEM NO. 4

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 6, 2010

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

FROM: Economic & Community Development Department

SUBJECT: **PERCENTAGE PROPERTY LEASE AGREEMENT WITH MONTE C. YEARLEY, DBA YEARLEY SAILBOATS, FOR THE PREMISES AT 1850 HARBOR DRIVE NORTH, SUITE B**

SYNOPSIS

Staff recommends that the Harbor District Board of Directors approve a one-year percentage property lease agreement between the Oceanside Small Craft Harbor District and Monte C. Yearley, dba Yearley Sailboats, for the premises at 1850 Harbor Drive North, Suite B, and adjacent concrete slab, for a minimum total revenue of $7,535.64, and authorize the City Manager to execute the agreement.

BACKGROUND

The Oceanside Small Craft Harbor District (District) entered into a percentage property lease agreement dated February 21, 2007 with Monte C. Yearley, dba Yearley Sailboats (Lessee) for the office space at 1850 Harbor Drive North, Suite B and adjacent concrete slab. The current agreement will terminate on December 31, 2009.

ANALYSIS

The proposed percentage property lease agreement (Agreement) commences on January 1, 2010, and terminates on December 31, 2010. The Agreement includes a provision for two (2) additional one-year extensions at the District'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 the Agreement.

FISCAL IMPACT

The Agreement will result in minimum annual rent in the amount of $7,173.48 and five (5) percent annual administrative costs in the amount of $362.16, for a total minimum revenue to the District of $7,535.64.

INSURANCE REQUIREMENTS

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

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the Harbor District Board of Directors approve a one-year percentage property lease agreement between the Oceanside Small Craft Harbor District and Monte C. Yearley, dba Yearley Sailboats, for the premises at 1850 Harbor Drive North, Suite B, and adjacent concrete slab, for a minimum total revenue of $7,535.64, and authorize the City Manager to execute the agreement.

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PERCENTAGE PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

AND

MONTE C. YEARLEY
DBA, YEARLEY SAILBOATS

DATED

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
PERCENTAGE PROPERTY LEASE AGREEMENT
WITH YEARLEY SAILBOATS

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OCEANSIDE SMALL CRAFT HARBOR DISTRICT
PERCENTAGE PROPERTY LEASE AGREEMENT
WITH YEARLEY SAILBOATS

This Percentage Property Lease Agreement, herein after called ("AGREEMENT"), is executed between the **OCEANSIDE SMALL CRAFT HARBOR DISTRICT**, hereinafter called ("DISTRICT"), and **MONTE C. YEARLEY,** dba, **YEARLEY SAILBOATS**, hereinafter called ("LESSEE").

RECITALS

WHEREAS, DISTRICT is the lessee under a ground lease agreement with the City of Oceanside for certain premises in the City of Oceanside, County of San Diego, State of California, commonly known as the Oceanside Harbor, and

WHEREAS, LESSEE has been doing business at the Oceanside Harbor since October 1963, with lease agreements that have been renewed from time to time, and

WHEREAS, DISTRICT and LESSEE entered into a Percentage Property Lease Agreement dated February 21, 2007, terminating on December 31, 2009.

WHEREAS DISTRICT AND LESSEE are desirous of entering into a Percentage Property Lease Agreement for the term of January 1, 2010 through December 31, 2010.

WHEREAS, DISTRICT, for the consideration hereinafter set forth, hereby leases to LESSEE and LESSEE hereby hires said real property from DISTRICT 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. DISTRICT hereby leases to LESSEE and LESSEE leases from DISTRICT, 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 **1850 Harbor Drive North Suite B and concrete display slab,** shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT. Said real property is collectively referred to as ("PREMISES").

1.02 Uses. It is expressly agreed that the PREMISES is leased to LESSEE solely and exclusively **for the purpose of new and used boat sales and accessories, marine hardware sales, boating instruction and rental retail sales**, 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.

LESSEE covenants and agrees to actively and continuously use and operate the PREMISES in compliance with all applicable laws 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 owner's use of their property.

1.03 Related Discretionary Actions. By the granting of this AGREEMENT, neither the City of Oceanside nor the DISTRICT's Harbor Board 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 DISTRICT 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 and the DISTRICT, then and in either of such events, this AGREEMENT shall not be voidable nor shall DISTRICT be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the DISTRICT 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 DISTRICT a **thirty (30) day** written notice together with its justifications for such termination. The DISTRICT 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. DISTRICT shall not unreasonably or substantially interfere with LESSEE'S use of the PREMISES while LESSEE is in possession of the PREMISES; however the DISTRICT specifically retains the following rights:

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

PREMISES.

b. Easements. DISTRICT 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. DISTRICT has the right to enter the PREMISES for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

d. Harbor Operations. DISTRICT has the right to conduct all operations and maintenance activities deemed necessary by DISTRICT, including but not limited to, repair or replacement of riprap shoring, parking lot repairs, etc.

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

SECTION 2: TERM

2.01 Commencement.

2.01.1 Initial Term. The term of this AGREEMENT is for **one (1) year commencing on January 1, 2010 and terminating on December 31, 2010**.

2.02 Extension of Term. The LESSEE may request an extension of the term of this AGREEMENT for the PREMISES for **two (2) additional one-year terms** under the terms and conditions of this AGREEMENT at the DISTRICT'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 two (2) one-year extensions of term by providing the DISTRICT with its written request no later than **ninety (90) days** prior to the expiration of the term of this AGREEMENT. The DISTRICT'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 DISTRICT's Harbor Board for approval, at which time the DISTRICT shall provide LESSEE with DISTRICT's calculated fair market rent value and rental amount which the DISTRICT 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. DISTRICT's failure to provide the new rental amount within said timeframe shall not defeat DISTRICT's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute DISTRICT approval of the extension request. The City Manager in

his capacity as the DISTRICT'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 DISTRICT's Harbor Board, at its sole discretion, may approve or deny the extension of the term of this AGREEMENT. In the event the DISTRICT's Harbor Board 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 **two (2) years** beyond the expiration of the term of this AGREEMENT without the mutual agreement of the parties and prior approval of the DISTRICT's Harbor Board.

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 DISTRICT does not terminate this AGREEMENT, and DISTRICT 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, DISTRICT shall provide LESSEE with and LESSEE shall deliver to DISTRICT 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 therefore. DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT. 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 rental payments monthly in advance on or before the **tenth (10th) day** of each new month. Percentage rent payments shall be due to DISTRICT 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 DISTRICT 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 DISTRICT 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 Oceanside Small Craft Harbor District 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 DISTRICT upon **thirty (30) days** written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges. LESSEE agrees to pay DISTRICT an additional **Fifteen and No/100Dollars ($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 subsection 3.02b) or the Percentage Rent (as defined by subsection 3.02c) **whichever is higher.**

b. Minimum Rent Amount. The minimum annual rent amount shall be **Seven Thousand One Hundred Seventy Three Dollars and Forty-Eight Cents**

($7,173.48) which shall be payable monthly in advance at the rate of **Five Hundred Ninety Seven Dollars and Seventy-Nine Cents ($597.79)** on or before the **tenth (10th) day** of each new month.

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

1. **Boat Sales, New and Used. One percent (1%)** of gross income from sale of new and used boats. Boats or other items accepted in trade as part payment for a boat shall be included in gross sales; and

2. **Boat Brokerage and Other Commission Activities. Six percent (6%)** of all commissions or other fees earned from boat brokerage and other similar activities where earnings from said activities are on a commission basis on all income earned in this category up to a maximum amount of **Twenty-Five Thousand and No/100 dollars ($25,000.00)** annually and **ten percent (10%)** of all commissions or other fees earned from boat brokerage and other similar activities where earnings from said activities are on a commission basis on all income earned in this category above the amount of **Twenty-Five Thousand and No/100 Dollars ($25,000.00)** annually. One example of income to be included is marine insurance commissions where the sale of insurance is conducted in conjunction with boat brokerage or boat sales; and

3. **Outboard Motor or Sea Drive Sales. [One percent (1%)]** of gross sales of outboard motor or sea drive sales, and

4. **Marine Hardware, Equipment Sales and Marine Sails. [Four percent (4%)]** of gross sales of marine hardware, equipment and marine sails where said sales are separate from and not included as part of a sale of a boat. Where included in the sale of a boat, the equipment, hardware and marine sails shall be included in the sales price of the boat and subject to the percentage rent provided for in Paragraph 3.02c1, above, excluding merchandise sold to club members, and

5. **Retail Sales. [Five percent (5%)]** of gross sales of clothing, gifts, sundries and incidentals; and

6. **Boat Charters and Rentals**. **[Six percent (6%)]** of gross income from boat charters and rentals, skippers fees, etc.; and

7. **Boating Instruction. [Six percent (6%)]** of gross income from boating instruction, etc.; and

8. **Labor Charges.** **[Three percent (3%)]** of gross income from labor charges.

9. **Other Transactions.** For all other transactions not covered by the above, **[three percent (3%)]** of the gross sales as defined in Section 3.02d of this AGREEMENT.

The monthly percentage rent shall be payable to DISTRICT monthly in arrears not later than **ten (10) days** following the end of each calendar month of the term of this AGREEMENT.

d. 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 AGREEMENT.

3.03 Inspection of Records. LESSEE agrees to make any and all records and accounts available to DISTRICT for inspection at all reasonable times, so that DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT as compensation to DISTRICT 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 DISTRICT will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by DISTRICT shall in no event constitute a waiver by DISTRICT of LESSEE default with respect to late payment, nor prevent DISTRICT from exercising any of the other rights and remedies granted in this AGREEMENT.

3.05 Rent for Extended Term. The DISTRICT shall calculate the fair market rental value of the PREMISES based on similar businesses within the DISTRICT, 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 DISTRICT 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 misconduct of the DISTRICT, its officers, agents, or employees. LESSEE's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the DISTRICT, 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 DISTRICT, defend any such suit or action brought against the DISTRICT, 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:

General Liability

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 Oceanside Small Craft Harbor District and the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with 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 Oceanside Small Craft Harbor District 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 Harbor 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, DISTRICT has the right to obtain the insurance. LESSEE shall reimburse DISTRICT for the premiums paid with interest at the maximum allowable legal rate then in effect in California. DISTRICT 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 DISTRICT.

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 DISTRICT 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 DISTRICT responsible for any defects in the PREMISES.

5.02 Waste, Damage, or Destruction. LESSEE shall give notice to DISTRICT 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 DISTRICT. 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 DISTRICT'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 DISTRICT 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 DISTRICT and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, DISTRICT 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 DISTRICT 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 DISTRICT. The rights reserved in this section shall not create any obligations on DISTRICT or increase obligations elsewhere in this AGREEMENT imposed on DISTRICT.

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 DISTRICT. 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 DISTRICT 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. DISTRICT 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 DISTRICT. 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 DISTRICT.

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 DISTRICT and device(s) shall conform to all City of Oceanside and DISTRICT 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 DISTRICT, or DISTRICT may thereupon remove the item at LESSEE's cost.

5.09 Ownership of Improvements and Personal Property.

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

b. If DISTRICT elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT's property free of all claims and liens, or DISTRICT 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 DISTRICT 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 DISTRICT, 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. DISTRICT shall have no liability to LESSEE for any award not provided by the condemning authority.

d. Transfer. DISTRICT has the right to transfer DISTRICT'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 DISTRICT right under this AGREEMENT shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon DISTRICT 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 DISTRICT:

Oceanside Small Craft Harbor District
Attn: Property Management
300 North Coast Highway
Oceanside, CA 92054

To LESSEE:

Monte C. Yearley, dba, Yearley Sailboats
1850-B Harbor Drive North
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 DISTRICT Approval. The City Manager shall be the DISTRICT'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 DISTRICT's designee(s).

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

6.04 Equal Opportunity. LESSEE agrees to abide by DISTRICT`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 DISTRICT 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 DISTRICT.

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 DISTRICT 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 DISTRICT in order to constitute a valid and binding waiver. DISTRICT delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this AGREEMENT. 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. DISTRICT's acceptance of any rents is not a waiver of any default preceding the rent payment. DISTRICT and LESSEE specifically agree that the property constituting the PREMISES is DISTRICT-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 DISTRICT staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but DISTRICT 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 DISTRICT's Harbor Board directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the DISTRICT's Harbor Board by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by DISTRICT against LESSEE to enforce payment of rent due, or to enforce any of the terms and conditions hereof, or in case DISTRICT shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this AGREEMENT and the possession of the PREMISES, provided DISTRICT effects a recovery, LESSEE shall pay DISTRICT 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 DISTRICT. Any attempt to assign or delegate this AGREEMENT without the express written consent of DISTRICT shall be void and of no force or effect. A consent by DISTRICT 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 **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), DISTRICT 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 DISTRICT shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the PREMISES. DISTRICT 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 DISTRICT 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, DISTRICT 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 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, DISTRICT 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 DISTRICT and has been consented to by resolution of the DISTRICT's Harbor Board, or to said beneficiary's successors in interest consented to by resolution of the DISTRICT's Harbor Board, 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 DISTRICT 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 AGREEMENT.

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 Administrative Costs. LESSEE shall pay DISTRICT'S administrative costs in an amount equal to five percent (5%) of the Minimum Rent Payment. LESSEE shall make all administrative cost payments monthly in advance **on or before the tenth (10th) day of each new month.** The administrative cost payments shall begin on commencement date of this AGREEMENT. Checks should be made payable to the City of Oceanside and delivered to the DISTRICT at the address set forth in Section 6.01 of this AGREEMENT. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days' written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges.

7.02 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.

7.03 Manner of Providing Service. LESSEE shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by LESSEE on the PREMISES. Said supervisor shall be empowered with authority to act on behalf of LESSEE in response to reasonable requests from DISTRICT 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 DISTRICT. LESSEE shall maintain a staff in adequate size and number, to DISTRICT's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the PREMISES.

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

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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 DISTRICT.

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 hereinbelow.

DISTRICT
THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date _____ By _____
City Manager

APPROVED AS TO FORM:

By Leslie M. Gallagher, DCA
City Attorney

LESSEE
MONTE C. YEARLEY, dba YEARLEY SAILBOATS

Date 30 Dec 09 By Monte C Yearley
Monte C. Yearley

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SANDIEGO }

On Dec. 30, 2009 (Date) before me, HOLLY J. TROBAUGH, NOTARY (Here Insert Name and Title of the Officer),

personally appeared MONTE CARROL YEARLEY (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.

HOLLY J. TROBAUGH
Commission # 1819166
Notary Public - California
San Diego County
My Comm. Expires Nov 19, 2012

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 Holly J. Trobaugh (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: Percentage Property Lease Agreement w/ Harbor

Document Date: Dec 30, 2009 Number of Pages: 20

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Monte Carrol Yearly

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

Signer Is Representing: Yearley Sailboats

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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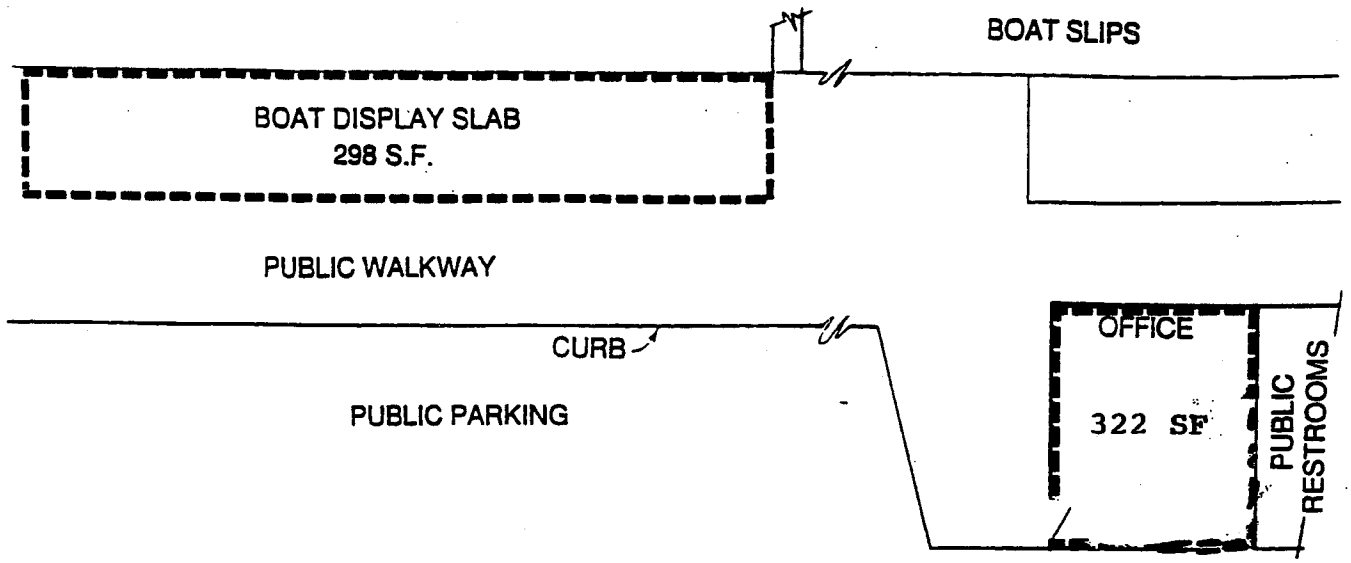
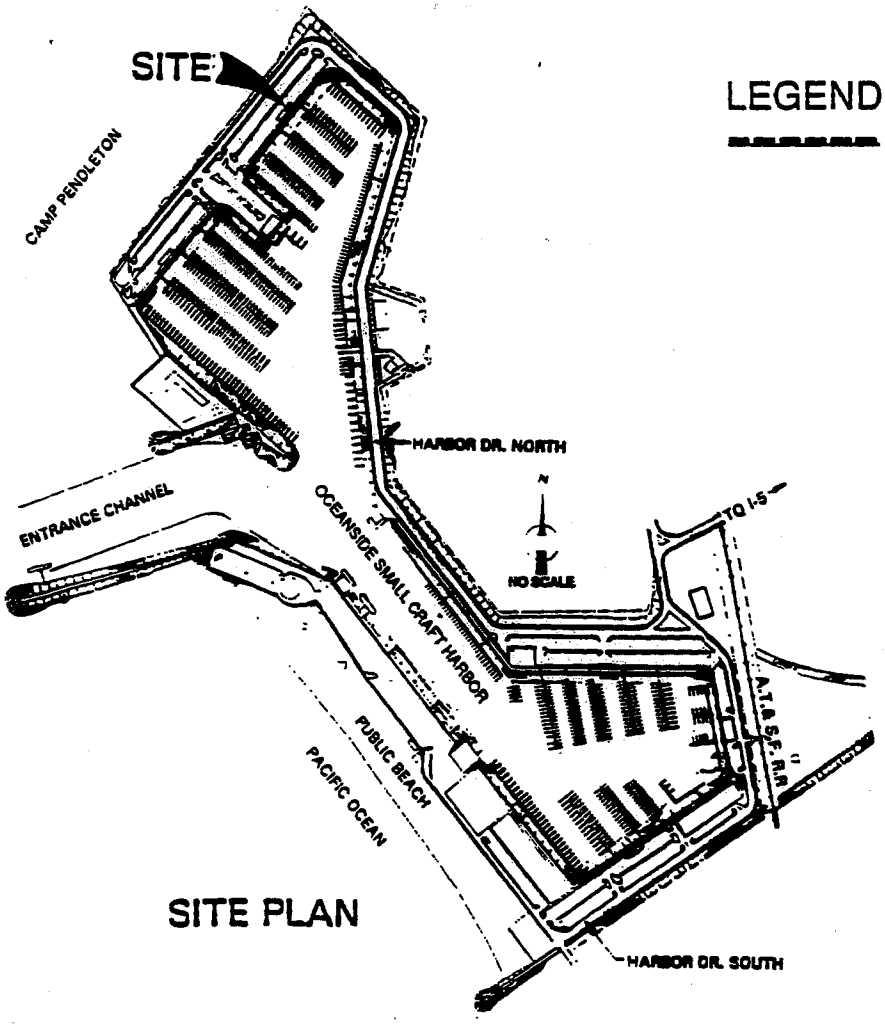
OCEANSIDE SMALL CRAFT HARBOR DISTRICT
PERCENTAGE PROPERTY LEASE AGREEMENT
WITH YEARLEY SAILBOATS

124137



FLOOR PLAN DIAGRAM
NO SCALE



SITE PLAN

LEGEND

BOUNDARY OF LEASED PREMISES

N

Revision	By	Approved	Date

OCEANSIDE HARBOR DISTRICT

SKETCH OF LEASED PREMISES