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DATE: July 14, 2010

TO: Community Development Commission Chair and Commissioners

FROM: Economic and Community Development Department

SUBJECT: **LEASE AGREEMENT WITH CITYMARK OCEANSIDE, LLC, TO LEASE PROPERTY FOR CONTINUED INTERIM PUBLIC PARKING**

### **SYNOPSIS**

Staff recommends that the Community Development Commission of the City of Oceanside approve a two-year Lease Agreement with CityMark Oceanside, LLC, a California limited liability company, for the use of approximately 2.4 acres of land (APN 147-350-18 & 19) along Cleveland Street between Pier View Way and Seagaze Drive to provide continued interim public parking; authorize the Executive Director to execute the agreement.

### **BACKGROUND**

In August of 1999 the Community Development Commission of the City of Oceanside ("CDC") entered into a Public Use Lease ("Lease") with Catellus Residential Group, Inc., predecessor in interest to CityMark Oceanside, LLC ("Landlord") for approximately 2.4 acres of land along Cleveland Street in the downtown area of Oceanside ("Subject Property"). The CDC leased the Subject Property for the purpose of providing interim public parking in the downtown area. As part of the Lease, the CDC has constructed parking lot improvements on the Subject Property to provide the public with interim parking spaces.

The term of the Lease commenced on the date the CDC approved the Lease, August 4, 1999. The Lease expiration date is the earlier of five years from the commencement date or 30 days after the parking structure on the APN 147-350-22 parcel of land became available for public use. After the original term of the Lease expired, the CDC and Landlord negotiated an arrangement to permit CDC to remain on the Subject Property. Currently, the CDC is occupying the Subject Property as a month-to-month tenancy.

Per the Lease, the CDC paid an escalated rent, topping out at \$10,150 per month, which is the rent amount through October 2009. In addition to rent, the CDC also paid the real estate taxes annually that were levied against the Subject Property, provided general liability insurance and was responsible for the maintenance and repair of the

improvements to the Subject Property. Since the expiration of the Lease, the CDC and Landlord have been discussing the appropriate consideration for the continued use of the Subject Property by CDC.

## **ANALYSIS**

Landlord's plan to develop the Subject Property remains on hold and as such, Landlord in its desire to cooperate with CDC regarding the development of the downtown area, is agreeable to allowing CDC to continue to lease the Subject Property for interim public parking. Since the Subject Property would most likely remain undeveloped for the next few years, the CDC wanted to work on an arrangement with Landlord to continue providing interim public parking on the Subject Property, however, at a lesser cost than under the Lease.

By entering into a new lease agreement ("New Lease") for a term of two years the CDC is in a position to continue providing interim public parking without tying up the future development of the Subject Property by Landlord. Further, reducing the rent that the CDC would be liable for over the next two years under the New Lease, assists CDC in defining the revenue needs of the CDC during these difficult economic times.

## **FISCAL IMPACT**

The total consideration to be paid to the Landlord under the terms of the New Lease is \$150,450. The total consideration is payable as follows: 1) \$30,450 under the terms of the old Public Use Lease for the months of May, September and October 2009 (at the rent of \$10,150 per month); 2) the amount of \$60,000 per year for each year of the New Lease retroactive to November 2009 (at the rate of \$5,000 per month).

There are currently funds to pay the total consideration due and payable to the Landlord. The CDC funds in the amount of \$150,450 will be paid from the Redevelopment Fund Administration Account 300010591.5390.

In the future there is the opportunity for the CDC to charge for the interim public parking at the Subject Property, which is currently free for four hours. Future parking charges could offset the total consideration payable to Landlord and the amount set aside in the Redevelopment Fund. Staff is currently looking into this potential source as part of an overall analysis of where the CDC can generate additional revenue. Staff will present an analysis at a later date.

**INSURANCE REQUIREMENTS**

The CDC will be required to self-insure for general liability insurance coverage on the Subject Property.

**COMMISSION OR COMMITTEE REPORT**

The Redevelopment Advisory Committee approved the New Lease for the continued interim public parking on the Subject Property.

**CITY ATTORNEY’S ANALYSIS**

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

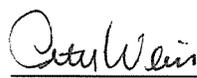
**RECOMMENDATION**

Staff recommends that the Community Development Commission of the City of Oceanside approve a two-year Lease Agreement with CityMark Oceanside, LLC, a California limited liability company, for the use of approximately 2.4 acres of land (APN 147-350-18 & 19) along Cleveland Street between Pier View Way and Seagaze Drive to provide continued interim public parking; authorize the Executive Director to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:

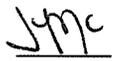
  
\_\_\_\_\_  
Peter A. Weiss  
Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



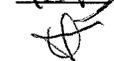
Jane McVey, Economic and Community Development Director



Kathy Baker, Redevelopment Manager



Teri Ferro, Financial Services Director



**LEASE AGREEMENT**

**BY AND BETWEEN**

**THE COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OCEANSIDE**

**AND**

**CITYMARK OCEANSIDE, LLC**

**FOR**

**APN 147-350-18 & 19  
OCEANSIDE, CA**

**DATED EFFECTIVE AS OF**

**NOVEMBER 1, 2009**

THIS LEASE AGREEMENT, dated effective as of November 1, 2009 ("Lease"), is executed between the **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "CDC," and **CITYMARK OCEANSIDE, LLC**, a California limited liability company, hereinafter called ("Lessor").

## RECITALS

WHEREAS, Lessor is the lawful owner of certain real property and improvements thereon, consisting of approximately 2.4 acres, commonly known as Assessor Parcel Numbers 147-350-18 and 147-350-19, located on North Cleveland Street, Oceanside, California ("Premises"); and

WHEREAS, Lessor, through its predecessor in interest, and CDC entered into a Public Use Lease recorded on August 20, 1999, in the Official Records of the San Diego County Recorder's Office for the use of the Premises in order to provide interim public parking;

WHEREAS, CDC is desirous of continuing to use the Premises to provide interim public parking and Lessor is desirous of leasing the Premises to CDC for such use; and

WHEREAS, Lessor and CDC are desirous of terminating the Public Use Lease and entering into a new lease of the Premises upon the covenants, conditions and provisions hereinafter set forth.

NOW THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the parties hereto do mutually agree as follows:

## AGREEMENT

### SECTION 1: PROPERTY

**1.01 Premises.** Lessor hereby leases the Premises to CDC and CDC hereby leases the Premises from Lessor, in accordance with the terms, covenants, conditions and provisions of this Lease. The Premises is more particularly described on attached Exhibit "A" and is incorporated herein by this reference.

**1.02 Uses.** CDC shall have the exclusive use of the Premises for the purpose of providing interim public parking. Subject to Lessor's prior written consent (which shall not be unreasonably withheld), the Premises may also be used for other related municipal or incidental purposes.

**1.03 Property Condition.** Lessor shall deliver the Premises in an "as is, where is" condition and CDC agrees to accept the Premises in said condition. Lessor shall have no obligation to make any improvements to the Premises during the term of the Lease.

**1.04 Quiet Possession.** Subject to CDC's compliance with all provisions of this

Lease (including without limitation the payment of rent), (a) CDC shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises and (b) Lessor shall not unreasonably or substantially interfere with CDC's use of the Premises while CDC is in possession of the Premises.

If during the term hereof CDC is temporarily dispossessed through action or claim of a title superior to the Lessor, then this Lease shall not be voidable nor shall Lessor be liable to CDC for any loss or damage resulting therefrom. In such an event, there shall be determined and stated in writing by the Lessor a proportionate abatement of rent for the period or periods during which CDC is prevented from having the quiet possession of all or a portion of the Premises. In the event that such dispossession causes an economic burden on CDC, CDC shall have the option to terminate this Lease by submitting to the Lessor a **thirty (30) day** prior written notice together with its justifications for such termination.

**1.05 Discharge of Liens, Encumbrances.** In using the Premises, and in constructing, maintaining, operating and using the improvements thereon, CDC agrees it shall comply in all material respects with any and all requirements imposed by federal or state laws and statutes, and with ordinances, orders, or regulations of any governmental body having jurisdiction over CDC or the Premises. Without limiting the foregoing, CDC agrees to comply in all material respects with all applicable federal, state and local environmental laws and regulations. CDC agrees to promptly pay and discharge any and all liens arising out of any construction, alteration or repair work done, or suffered or permitted to be done, by Lessee on the Premises, and Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that the failure of Lessor to take any such action shall not relieve Lessee of any obligations or liability under this or any other paragraph hereof.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Lease shall be for a period of two (2) years, commencing on November 1, 2009 ("Lease Commencement Date").

**2.02 Termination of Public Use Lease.** Upon the execution of this Lease by both parties, the Public Use Lease between Lessor and CDC shall terminate. Upon termination of the Public Use Lease, neither party shall have any remaining obligations under the Public Use Lease, except for the following, all of which shall survive termination of the Public Use Lease: (a) those provisions set forth in Article 9, Environmental Provisions of the Public Use Lease and (b) payment of outstanding rent by CDC to Lessor, as required pursuant to Section 3.02 below.

**2.03 Termination Provisions.** Notwithstanding the provisions of Section 2.01 above or any other contrary provisions in this Lease, either party shall have the right to terminate this Lease upon providing **thirty (30) days** prior written notice to the other party. No other special termination options are available, except those described elsewhere in this Lease.

**2.04 Holdover.** Any holding over by CDC after expiration or termination shall not be considered as a renewal or extension of this Lease. Any occupancy of the Premises by CDC after the expiration or termination of this Lease shall constitute a month-to-month tenancy. All other terms and conditions of this Lease shall continue in full force and effect during any holdover period.

**2.05 Intentionally deleted.**

**2.06 Surrender of Property.** At the expiration or earlier termination of this Lease, CDC shall surrender the Premises to Lessor free and clear of all liens and encumbrances created by CDC, except those liens and encumbrances which existed on the date of the execution of this Lease by Lessor. The Premises, when surrendered by CDC, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

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

### **SECTION 3: CONSIDERATION**

#### **3.01 Rent.**

**a. Rent Amount.** CDC shall pay an annual rent of Sixty Thousand and No/100 Dollars (\$60,000.00) payable in monthly installments of Five Thousand and No/100 Dollars (\$5,000.00).

**b. Rent Payment.** Rent shall be due and payable in advance on or before the first day of each new month starting on the Lease Commencement Date. Inasmuch as the Lease is retroactive to the Lease Commencement Date, CDC shall pay all amounts that are due and owing as rent within ten (10) days after the CDC Board of Directors approves the Lease and in any event no later than August 1, 2010.

**3.02 Prior Rent Obligation.** As further consideration, on the date the CDC makes the first payment of rent above, CDC shall also pay Lessor the amount of Thirty Thousand Four Hundred Fifty and No/100 Dollars (\$30,450.00) for rent amounts owing under Public Use Lease for the period of May, September and October of 2009.

#### **3.03 Delinquent Rent.**

CDC will have a ten (10) day grace period to pay the rent at the beginning of each calendar month. If CDC fails to pay the rent before expiration of the grace period, CDC will pay in addition to the unpaid rents, ten percent (10%) of the delinquent rent. It is hereby mutually agreed by the parties to be appropriate that CDC compensate Lessor for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

## SECTION 4: INDEMNITY AND INSURANCE

### 4.01 Indemnity.

a. **CDC Indemnification.** CDC shall indemnify and hold harmless Lessor and its managers, members, officers, agents and employees against all claims for damages to persons or property in any way arising out of or in connection with (1) the conduct, acts or omissions of the CDC, its employees or invitees in connection with the Premises under this Lease and (2) the business activities of CDC on or near the Premises, except that CDC shall not indemnify Lessor for those claims arising from the sole gross negligence or sole willful misconduct of the Lessor, its managers, members, officers, agents, or employees. CDC's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the Lessor, its managers, members, officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

b. **Lessor Indemnification.** Lessor shall indemnify and hold harmless the CDC and its officers, agents and employees against all claims for damages to persons or property arising in any way out of or in connection with the conduct of the Lessor or its employees in connection with the Premises, except that Lessor shall not indemnify CDC for those claims arising from the sole gross negligence or sole willful misconduct of CDC, its officers, agents, or employees. Lessor's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by CDC, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

c. **Survival.** The obligations of CDC and Lessors under this Section 4.01 shall survive the expiration or earlier termination of this Lease.

4.02 **Insurance.** CDC shall, at its sole cost and expense, obtain and keep in force at all times during the term the following insurance:

a. **Insurance Coverage.**

(1) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage and, if necessary, CDC shall provide for restoration of the aggregate limit, and provide that the policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of CDC's indemnity obligations under this Lease.

(2) Automobile Liability Insurance. Business automobile liability insurance having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and insuring CDC against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles.

(3) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by CDC in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

(4) Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of CDC's personal property, fixtures, equipment and alterations (collectively "CDC's Property") and coverage for the full replacement cost thereof including business interruption of Lessee.

(5) Garagekeepers Legal Liability Insurance. A Garagekeepers Legal Liability insurance policy (occurrence form) having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate.

b. **General.**

(1) Insurance Companies. Insurance required to be maintained by CDC hereunder shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A – VIII" (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

(2) Certificate of Insurance. CDC shall deliver to Lessor certificates of insurance for all insurance required to be maintained by CDC in the form of the ACORD standard certificate of insurance (or in a form acceptable to Lessor in its sole discretion). CDC shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Lessor). If CDC fails to maintain any insurance required in this Lease, CDC shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(3) Additional Insureds. Lessor, Lessor's lender, if any, and any property management company of Lessor for the Premises shall be named as additional insureds on a form approved by Lessor under all of the policies required by Section 4.02.a above. The policies required under Section 4.02.a(1) above shall provide for severability of interest.

(4) Primary Coverage. All insurance to be maintained by CDC shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by CDC shall not limit CDC's liability under this Lease.

(5) Waiver of Subrogation. CDC waives any right to recover against Lessor for claims for damages to CDC's Property whether or not covered by insurance. This provision is intended to waive fully, and for the benefit of Lessor, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by CDC pursuant to this Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(6) Notification of Incidents. CDC shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises or the Property which could give rise to a claim under any of the insurance policies required under Section 4.02.

- c. **Self-Insurance.** Notwithstanding anything herein to the contrary, CDC may self-insure any of its insurance coverage obligations hereunder as long as CDC's tangible net worth is in excess of Five Million Dollars (\$5,000,000), as evidenced by annual financial statements prepared under generally accepted accounting principles, provided to Lessor by CDC's accountants. At any time that CDC's tangible net worth falls below the above-required amount, CDC shall promptly obtain the necessary insurance policies required hereunder. It is understood that if CDC elects to self-insure as herein provided, Lessor shall have the same benefits and protections as if CDC carried insurance with third-party insurance companies satisfying the requirements of this Lease.

## SECTION 5: MAINTENANCE OF PROPERTY

**5.01 CDC's Maintenance.** CDC agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, throughout the term of this Lease. CDC will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition to the

reasonable satisfaction of Lessor.

**5.02 Operational and Management Costs and Expenses.** During the Lease term, CDC shall be solely responsible for all operational and management costs and expenses incurred by CDC for the Premises.

## **SECTION 6: UTILITIES AND TAXES**

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

**6.02 Real Property Taxes.** Lessor shall be responsible for payment of all taxes, assessments, and fees assessed or levied upon the Premises, including the land, any buildings, structures, machines, equipment or other improvements or property of any nature whatsoever erected, installed, or maintained by CDC, other than trade fixtures and other items that can be removed from the Premises without material damage thereto. CDC shall be responsible for the payment of all fees and taxes relating to CDC's Property (as defined in Section 4.02.a(4)), including without limitation all personal property maintained on the Premises by or on behalf of CDC, including without limitation all machines, equipment and appliances that can be removed from the Premises without material damage thereto.

## **SECTION 7: IMPROVEMENTS/ALTERATIONS AND PERSONAL PROPERTY**

**7.01 Improvements/Alterations** CDC shall have the right to construct, at CDC's sole cost, improvements to the Premises, which are appropriate for the permitted parking use set forth in this Lease. Provided however, Lessor shall have the right to approve plans and specifications for such improvements, which approval shall be at Lessor's sole discretion.

### **7.02 Ownership of Improvements and Personal Property**

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

**b.** If Lessor elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, Lessor shall so notify CDC in writing **thirty (30) days** prior to expiration or termination of this Lease, and CDC shall remove all such improvements, structures and installations as directed by Lessor at CDC's sole cost and expense within a reasonable period after the Lease expiration or termination.

## SECTION 8: DAMAGE AND/OR DESTRUCTION

**8.01 CDC's Obligations.** In the event the Premises and/or improvements are damaged and/or destroyed to any extent for any reason whatsoever, CDC in its sole discretion shall have the right to either repair said damage and/or destruction or elect not to repair the damage or destroyed portion of the Premises and/or improvements. In the event CDC elects not to repair said damage and/or destruction, and said damage and/or destruction materially affects CDC's ability to conduct its operation in the Premises, either party shall have the right to terminate the Lease by giving at least **thirty (30) days** written notice to the other party.

## SECTION 9: CONDEMNATION

**9.01 Eminent Domain.** If all or parts of the Premises are taken through condemnation proceedings or under threat of condemnation by any governmental entity (other than CDC or the City), CDC shall be relieved from a prorated portion of CDC's obligations under this Lease as to Rent and/or other consideration for the Premises, determined by the proportion of the amount of the Premises which has been so taken and which is not available to CDC for parking uses relative to the amount of the Premises which is still available for such use.

## SECTION 10: DEFAULT BY LESSEE

**10.01 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 or should CDC fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **ten (10) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **thirty (30) days** (or such longer period as shall be reasonably required to cure such default, provided that CDC has commenced the cure within such thirty-day period and is diligently proceeding to cure the default as expediently as possible) after written notice thereof if default is in the performance of any other covenant, condition and agreements, Lessor shall have the right to terminate this Lease; and that in the event of such termination, CDC shall have no further rights hereunder and CDC shall thereupon forthwith remove itself from the Premises and shall have no further right or claim thereto. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from CDC in the amount necessary to compensate Lessor for damages it sustains arising from any breach of this Lease by CDC or which in the ordinary course of things would be likely to result therefrom.

**SECTION 11: GENERAL PROVISIONS**

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

To CDC:

COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OCEANSIDE  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: Redevelopment Manager

To Lessor:

CITYMARK OCEANSIDE, LLC  
  
c/o The Landbourn Company  
7817 Ivanhoe Avenue, Suite 102  
La Jolla CA 92037  
Attention: Nicholas Arthur

c/o GF Properties Group, LLC  
175 Mercado Street, Suite 240  
Durango, CO 81301  
Attention: Patrick Vaughn  
Vickie Lehnhardt

c/o GF Properties Group, LLC  
1675 Larimer Street, Suite 623  
Denver, CO 80202  
Attention: Justin Roberts

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 (3) 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.

**11.02 CDC Approval.** The Executive Director shall be the CDC's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The Executive Director may delegate authority in connection with this Lease to the Executive Director's designee(s). For the purposes of directing CDC in accordance with this Lease, which does not result in a change to this Lease, the

Executive Director delegates authority to the City's Redevelopment Manager.

**11.03 Entire Agreement.** This Lease comprises the entire integrated understanding between CDC and Lessor concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements, except as to those provisions that survive per the terms of the prior Public Use Lease as set forth in Section 2.02 above. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

**11.04 Interpretation of the Lease.** The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California.

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

**11.06 Binding Effect.** This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns except as otherwise provided in this Lease.

**11.07 No Third Party Obligation.** This Lease shall not be deemed to confer any rights upon, nor obligate either of the parties to this Lease, to any person or entity not a party to this Lease.

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

**11.09 Dispute Resolution, Attorney's Fees.** In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Lease shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

**11.10 Assignment and Subletting.** CDC may not assign its interest under this Lease or sublease all or a portion of the Premises with the prior written consent of the Lessor, except that CDC shall have the right to assign its interest to the City of Oceanside ("City"), subject to delivery to the Lessor of an express written assumption by the City of CDC's obligations under this Lease. No permitted assignment shall relieve CDC of its obligations and liabilities under this Lease unless an express written assumption is



**SECTION 12: SIGNATURES**

**12.01 Signature Page.** The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessor and the CDC. By execution and delivery of this Lease by CDC, CDC hereby represents and warrants that there is no present impediment to enforceability of this Lease against CDC, and to the extent permitted by applicable law CDC waives any governmental immunity it may have under local law that would limit or otherwise adversely affect Lessor's ability to enforce the terms of this Lease against CDC, provided that this waiver shall not be construed as a waiver of the protections afforded to CDC under the state governmental immunity act

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

**"CDC"**

**COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OCEANSIDE**

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

By: \_\_\_\_\_

By: *Paula Hamilton*, ASST.  
City Attorney

Title: \_\_\_\_\_

**"Lessor"**

**CITYMARK OCEANSIDE, LLC**

OCEANSIDE

By: \_\_\_\_\_  
Mark Mitchell

Title: Its Authorized Representative

Dated: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENTS OF LESSOR'S SIGNATURE(S) MUST BE ATTACHED**

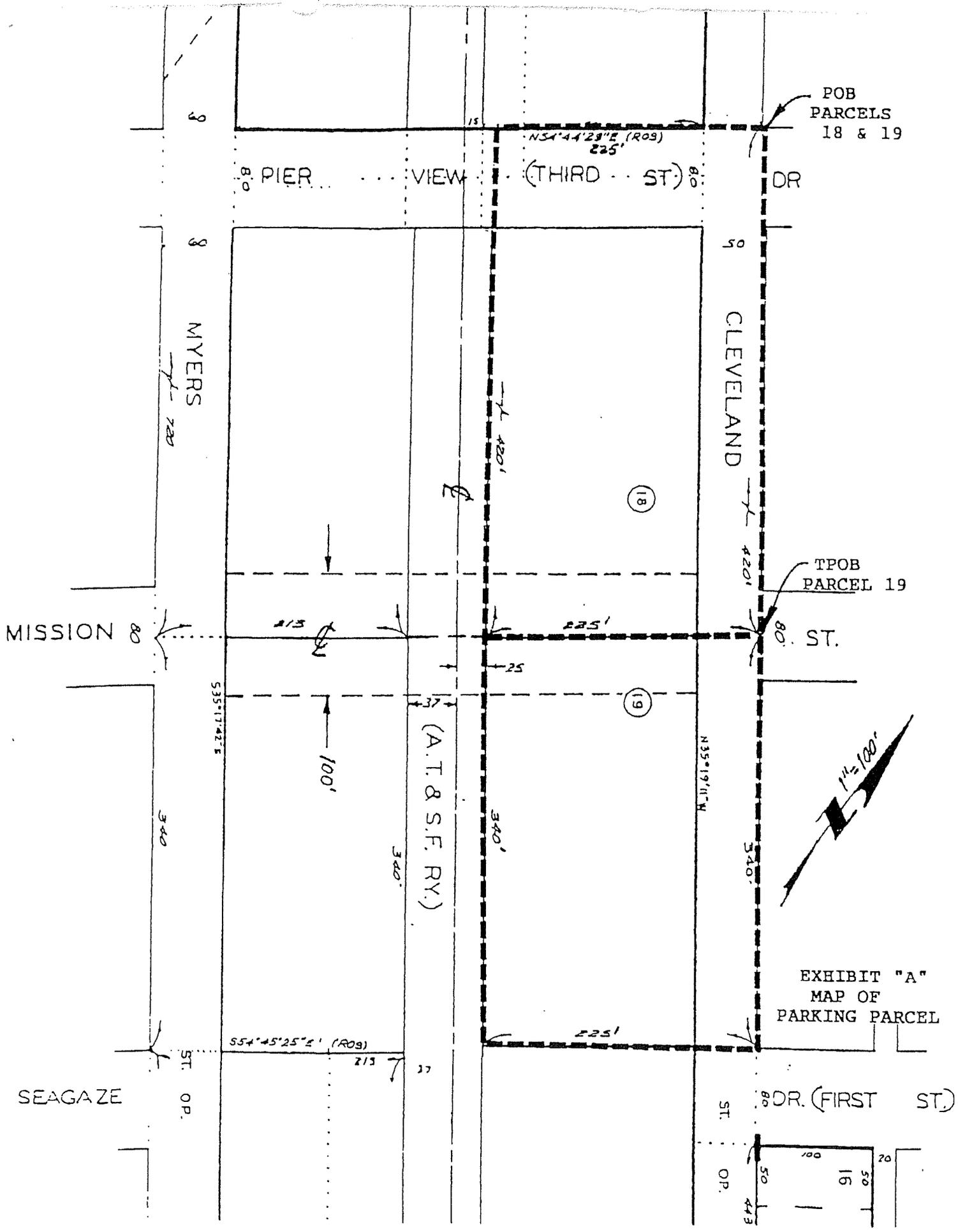


EXHIBIT "A"  
MAP OF  
PARKING PARCEL