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DATE: September 22, 2010

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

FROM: Economic & Community Development Department

SUBJECT: **APPROVAL OF AMENDMENT 3 TO THE PROPERTY USE AGREEMENT WITH JAMES GARDNER, DBA OCEANSIDE BAIT COMPANY, INC., EXTENDING THE TERM OF THE AGREEMENT THROUGH AUGUST 31, 2015**

**SYNOPSIS**

Staff recommends that the Harbor District Board of Directors approve Amendment 3 to the Property Use Agreement with James Gardner, dba Oceanside Bait Company, Inc., for the use of District-owned property within the Harbor, extending the term of the agreement through August 31, 2015, for a five-year minimum total revenue of \$28,494.70; and authorize the City Manager to execute the amendment.

**BACKGROUND**

On August 1, 1995, the Oceanside Harbor District (District) and Oceanside Bait Company, Inc., entered into a Property Use Agreement, and subsequently approved Amendment 1 dated March 21, 2001, and Amendment 2 dated April 21, 2005, for the storing of live bait from the Oceanside Harbor. The agreement, which terminated on August 31, 2010, provides Permittee with a renewal option for continued use of the premises for an additional five (5) years.

**ANALYSIS**

Permittee has elected to exercise their renewal option and has requested an additional five (5)-year option. Permittee's continued use of the Oceanside Harbor allows a needed service to sportfishing boats, as well as the patrons of the harbor. The amendment extends the term of the agreement for five years, retroactive to September 1, 2010, and terminating on August 31, 2015, with provision for an additional five (5)-year extension to the term. The property use payment continues to be subject to annual adjustment by the amount of percentage change in the San Diego County Consumer Price Index, or 4 percent, whichever is greater.

**FISCAL IMPACT**

Effective September 1, 2010, the annual property use payment is adjusted to \$5,344.42. The amendment will result in revenue to the District over the five-year term in the minimum amount of \$28,494.70 (1751.4496-100361).

**INSURANCE REQUIREMENTS**

The Permittee will be required to maintain the City'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.

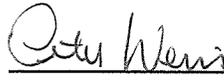
**RECOMMENDATION**

Staff recommends that the Harbor District Board of Directors approve Amendment 3 to the Property Use Agreement with James Gardner, dba Oceanside Bait Company, Inc., for the use of District-owned property within the Harbor, extending the term of the agreement through August 31, 2015, for a five-year minimum total revenue of \$28,494.70; and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:

  
\_\_\_\_\_  
Julie Cook  
Program Specialist

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

  
\_\_\_\_\_

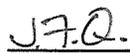
Jane McVey, Economic & Community Development Director

  
\_\_\_\_\_

Douglas E. Eddow, Real Property Manager

  
\_\_\_\_\_

Frank Quan, Harbor & Beaches Coordinator

  
\_\_\_\_\_

Teri Ferro, Financial Services Director

  
\_\_\_\_\_

## AMENDMENT NO. 3 TO PROPERTY USE AGREEMENT

THIS AMENDMENT NO. 3 TO PROPERTY USE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2010, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter referred to as "DISTRICT"), and JAMES GARDNER, doing business as Oceanside Bait Company, Inc. (hereinafter referred to as "PERMITTEE").

### RECITALS

WHEREAS, DISTRICT and PERMITTEE are parties to a Property Use Agreement, dated August 1, 1995, Amendment No. 1 dated March 21, 2001 and Amendment 2 to Property Use Agreement dated April 20, 2005, hereinafter collectively referred to as the "Agreement".

WHEREAS, the Agreement terminated on August 31, 2010 and LESSEE has occupied the premises on a month-to-month basis since that time.

WHEREAS, the parties hereto desire to extend the term of the Agreement for five (5) years and to provide for an option to extend the term for an additional five (5)-year period.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS AND PROVISIONS CONTAINED HEREIN AND IN THE AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Agreement shall be amended as follows:

#### **SECTION 2: TERM**

Subsections 2.01 Commencement and 2.02 Renewal Option shall be deleted in their entirety and replaced with the following language.

**2.01 Term.** The term of this Agreement for use of the premises is extended for five (5) years retroactive from **September 1, 2010 and terminating August 31, 2015.**

#### **2.02 Extension of Term.**

The PERMITTEE may request an extension of the term of this Agreement for use of

the premises for an additional five (5) years under the terms and conditions of this Agreement at the DISTRICT's calculated fair market Property Use Payment rate of similar businesses, provided that the PERMITTEE is not in default or breach of any term, condition, or covenant of this Agreement.

The PERMITTEE may request not more than one (1) five (5)-year extension of term by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Agreement. The City Manager or City Manager's designee shall notify the PERMITTEE not later than thirty (30) days after receipt of such request whether such request will be recommended to the Harbor Board for approval, at which time the City Manager shall provide PERMITTEE with DISTRICT's calculated fair market rent value and rental amount which the DISTRICT is willing to accept for PERMITTEE'S use and occupation of the PREMISES during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. City Manager'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 PERMITTEE not later than thirty (30) days from receipt of the request for extension.

In no event shall the term of this Agreement be extended in excess of five (5) years beyond the expiration of the term of this Agreement without the mutual written agreement of the parties and the prior approval of the Harbor Board.

### **SECTION 3: PROPERTY USE PAYMENT**

Subsection 3.02 Property Use Payment shall be deleted in its entirety and replaced with the following language.

**3.02 Property Use Payment.** The minimum annual Property Use Payment for the first (1st) year of the extended term, beginning September 1, 2010, shall be **Five Thousand Three Hundred Forty-four Dollars and Forty-two Cents (\$5,344.42)** which shall be payable quarterly in advance at the rate of **One Thousand Three Hundred Thirty-six Dollars and Eleven Cents (\$1,336.11)** on or before the fifteenth (15th) day of each new quarter.

2. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect.

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 Amendment No. 3 to Property Use 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 \_\_\_\_\_

Name: Peter A. Weiss

Title: City Manager

APPROVED AS TO FORM:

By *Robert Hamilton, ASST.*  
City Attorney

**PERMITTEE**

James Gardner  
dba Oceanside Bait Company, Inc.

Date 9-8-2010

By *[Signature]*  
Name: JAMES GARDNER  
Title: PRESIDENT

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

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 9/8/10 before me, Curtis Jackson, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared James Gardner  
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/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

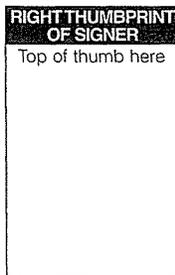
Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



## AMENDMENT NO. 2 TO PROPERTY USE AGREEMENT

THIS AMENDMENT NO. 2 TO PROPERTY USE AGREEMENT is made and entered into this 20th day of April 2005, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter referred to as "DISTRICT"), and JAMES GARDNER, doing business as Oceanside Bait Company, Inc. (hereinafter referred to as "PERMITTEE").

### RECITALS

WHEREAS, DISTRICT and PERMITTEE are parties to a Property Use Agreement, dated August 1, 1995, and Amendment No. 1 to Property Use Agreement dated March 21, 2001, hereinafter collectively referred to as the "Agreement".

WHEREAS, the Agreement, unless extended, terminates on August 31, 2005.

WHEREAS, the parties hereto desire to extend the term of the Agreement for five (5) years and to provide for an extension of term for an additional five (5)-year period.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS AND PROVISIONS CONTAINED HEREIN AND IN THE AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Agreement shall be amended as follows:

#### **SECTION 2: TERM**

Subsections 2.01 Commencement and 2.02 Renewal Option shall be deleted in their entirety and replaced with the following language.

**2.01 Term.** The term of this Agreement for use of the premises is extended for five (5) years commencing **September 1, 2005 and terminating August 31, 2010.**

#### **2.02 Extension of Term.**

The PERMITTEE may request an extension of the term of this Agreement for use of the premises, which will not be unreasonably withheld by the DISTRICT, for an additional five (5) years under the terms and conditions of this Agreement at the DISTRICT's

calculated fair market Property Use Payment rate of similar businesses, provided that the PERMITTEE is not in default or breach of any term, condition, or covenant of this Agreement.

The PERMITTEE may request not more than one (1) five (5)-year extension of term by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Agreement. The City Manager or City Manager's designee shall notify the PERMITTEE not later than thirty (30) days after receipt of such request whether such request will be recommended to the Harbor Board for approval, at which time the City Manager shall provide PERMITTEE with DISTRICT's calculated fair market rent value and rental amount which the DISTRICT is willing to accept for PERMITTEE'S use and occupation of the PREMISES during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. City Manager'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 PERMITTEE not later than thirty (30) days from receipt of the request for extension.

In no event shall the term of this Agreement be extended in excess of five (5) years beyond the expiration of the term of this Agreement without the mutual written agreement of the parties and the prior approval of the Harbor Board.

### **SECTION 3: PROPERTY USE PAYMENT**

Subsection 3.02 Property Use Payment shall be deleted in its entirety and replaced with the following language.

**3.02 Property Use Payment.** The minimum annual Property Use Payment for the first (1st) year of the extended term, beginning September 1, 2005, shall be **Four Thousand Four Hundred Thirty-one Dollars and Fifty-one Cents (\$4,431.51)** which shall be payable quarterly in advance at the rate of **One Thousand One Hundred Seven Dollars and Eighty-eight Cents (\$1,107.88)** on or before the fifteenth (15th) day of each new quarter.

2. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect.

## AMENDMENT NO. 1 TO PROPERTY USE AGREEMENT

THIS AMENDMENT NO. 1 TO PROPERTY USE AGREEMENT is made and entered into this 1st day of February, 2001, by and between the THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter referred to as "DISTRICT"), and JAMES GARDNER, doing business as Oceanside Bait Co., Inc. (hereinafter referred to as "PERMITTEE").

### RECITALS

WHEREAS, DISTRICT and PERMITTEE, previously doing business as J & D Fish Company, were the parties to a Property Use Agreement, dated August 1, 1995 (hereinafter referred to as the "Agreement").

WHEREAS, the initial term of the Agreement terminated August 31, 2000, and PERMITTEE has since used the Premises on a month-to-month basis.

WHEREAS, the parties hereto do desire to extend the term of said Agreement pursuant to the Renewal Option in said Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, conditions and provisions contained herein and in the Agreement, the parties hereto agree as follows:

1. **Subsection 2.01 Commencement.** shall be and hereby is amended in its entirety to read as follows:

"The term of this extension to the Agreement shall be for a period of five (5) years commencing retroactively from September 1, 2000 and terminating August 31, 2005.

2. PERMITTEE shall continue to have the right to a renewal option as set forth in **Subsection 2.02 Renewal Option.** It is understood that PERMITTEE shall have no further right to extend the term of the Agreement beyond an additional five (5) year period as set forth in Subsection 2.02.



6. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect.

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 Amendment No. 1 to Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

**DISTRICT**

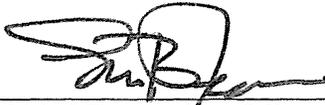
Oceanside Small Craft Harbor District

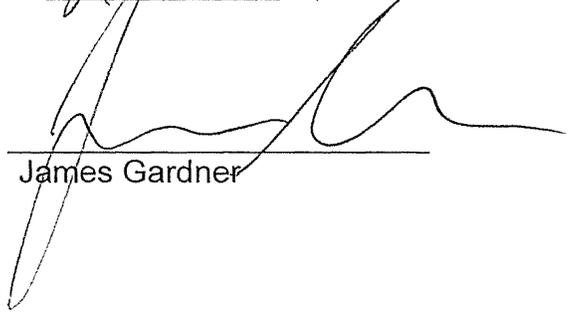
**PERMITTEE**

James Gardner, dba Oceanside Bait Co., Inc.

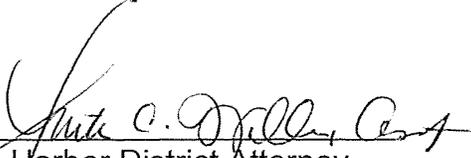
Date: 3-26-01

Date: 2-6-01

By   
Chief Executive Officer

By   
James Gardner

APPROVED AS TO FORM:

By   
Harbor District Attorney

**NOTARY ACKNOWLEDGMENT OF PERMITTEE'S SIGNATURE MUST BE ATTACHED**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

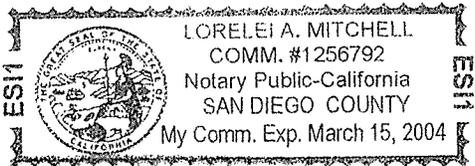
State of CALIFORNIA

County of SAN DIEGO

On Feb 6, 2001 before me, Lorelei A Mitchell, Notary Public

personally appeared JAMES GARDNER

personally known to me **OR**  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lorelei A Mitchell  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Amendment No. 1 to Property Use Agreement

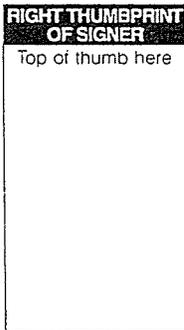
Document Date: 2/6/01 Number of Pages: 4

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

**OCEANSIDE SMALL CRAFT HARBOR DISTRICT  
PROPERTY USE AGREEMENT  
WITH J & D FISH COMPANY**

This Use Agreement, hereinafter called "Agreement", is executed between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, a public corporation, acting by and through the Board of Directors of said DISTRICT, hereinafter called "DISTRICT," and James Gardner, doing business as J & D Fish Company, hereinafter referred to as "PERMITTEE."

**RECITALS**

WHEREAS, DISTRICT is owner of the real property described hereinbelow; and

WHEREAS, PERMITTEE has heretofore operated bait receiving facilities for the DISTRICT and agrees to continue to provide quality service; and

WHEREAS, the DISTRICT is interested in the PERMITTEE continuing to operate bait receiving facilities for the DISTRICT; and

WHEREAS, DISTRICT hereby acknowledges said services provided by PERMITTEE as valuable services to the citizens of the City of Oceanside and the Oceanside commercial sportfishing industry and hereby permits PERMITTEE's use of said real property in accordance with the terms, covenants, conditions and provisions contained hereinbelow.

**AGREEMENT**

**SECTION 1: USES**

**1.01 PREMISES.** DISTRICT hereby authorizes to PERMITTEE, in accordance with the terms of this Agreement, the non-exclusive use of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **Oceanside Small Craft Harbor District** and more particularly described in Exhibit "A" attached hereto and by this reference made part of this Agreement. Said real property is hereinafter called the "PREMISES".

In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this agreement.

**1.02 Uses.** It is expressly agreed that the PREMISES is used by PERMITTEE solely and exclusively for the purpose of **providing bait receiving facilities and to be used to store live bait to be dispensed commercially to the public and to commercial sportfishing boats**, and for such other related or incidental purposes as may be first approved in writing by the DISTRICT's Chief Executive Officer and for no other purpose whatsoever.

PERMITTEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. PERMITTEE

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PROPERTY USE AGREEMENT  
WITH J & D FISH COMPANY**

shall not use the PREMISES in any manner which disturbs the quiet enjoyment of other Harbor users and of surrounding property owners use of their property. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

**SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of **five (5) years** commencing on **September 1, 1995** and terminating **August 31, 2000**.

**2.02 Renewal Option.** PERMITTEE shall have the option to extend the term of this Agreement for an additional **five (5) years** under the terms and conditions of this Agreement at the DISTRICT's calculated fair market rental rate of similar businesses, provided that the PERMITTEE is not in default of this Agreement.

**2.03 Termination.** Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least thirty (30) days prior written notice of such termination.

**2.04 Services.** PERMITTEE shall provide bait receiving facilities to be used to store live bait to be dispensed commercially to the public and to sportfishing boats, and for such other related or incidental purposes as may be first approved in writing by the DISTRICT's Chief Executive Officer and for no other purpose whatsoever.

The services provided by PERMITTEE at the PREMISES shall be limited to the PREMISES. In no event shall PERMITTEE interfere with quiet enjoyment of other Harbor users. PERMITTEE shall not obstruct the free flow of boat, automobile or pedestrian traffic in and around the PREMISES.

**2.05 Hours of Operation.** PERMITTEE shall maintain at least the following minimum hours of operation:

- From Memorial Day to Labor Day of each year, 5 AM to 5 PM.
- During the balance of the year, the business shall be open for operation as needed to adequately and properly supply bait to the fishing public.
- At all times during the year provide sufficient bait to meet the needs of the local commercial sportfishing fleet.

**2.06 Prices.** Bait prices to be charged by the PERMITTEE to its customers shall be set by PERMITTEE with the prior written approval of the Harbor Chief Executive Officer. In the event of a disagreement between the Chief Executive Officer and the PERMITTEE as

**OCEANSIDE SMALL CRAFT HARBOR DISTRICT  
PROPERTY USE AGREEMENT  
WITH J & D FISH COMPANY**

to the prices to be charged for bait, the matter shall be determined, and the price set by the Harbor District Board of Directors whose decision shall be final.

**2.07 Parking.** PERMITTEE shall have the use of one parking stall located in lot #11A, northeast corner, for two (2) employee vehicles. PERMITTEE is allotted two (2) temporary parking passes every six (6) months.

**2.08 Failure to Provide Adequate Supplies.** In the event the Chief Executive Officer determines that the PERMITTEE is failing to provide adequate supplies of bait, the Chief Executive Officer will issue a twenty-four (24) hour written notice to the PERMITTEE demanding compliance with the terms and conditions of this lease. If the PERMITTEE fails to perform in accordance with the notice within twenty-four hours, the DISTRICT will issue thirty (30) day stop work notice to the PERMITTEE during which time the DISTRICT may supply live bait to all persons desiring to purchase live bait, and the PERMITTEE will suspend all performance under the Agreement.

**2.09 Equipment and Supply Storage.** No PERMITTEE owned equipment or supplies of any nature or kind shall be permitted to be stored on the PREMISES at any time, excepting the use of said equipment and supplies while carrying out PERMITTEE's operations under this Agreement.

**2.10 Business License.** PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for PERMITTEE's operations under this Agreement.

### **SECTION 3: PROPERTY USE PAYMENT**

**3.01 Time and Place of Payment.** The PERMITTEE shall make all payments quarterly on or before the fifteenth (15th) day of each new quarter. Checks should be made payable to the Oceanside Small Craft Harbor District and delivered to the DISTRICT at the address set forth in Section 6.1 of this Agreement. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

**3.02 Property Use Payment.** The initial minimum payment amount for the first (1st) year of this Agreement shall be **three thousand fifty two dollars,(\$3052.00)** which shall be payable quarterly in advance at the rate of **seven hundred sixty-three dollars,(\$763.00)** on or before the fifteenth (15th) day of each new quarter.

**3.03 Minimum Payment Adjustment Date.** The minimum payment adjustment date shall be the first (1st) day of September. The minimum annual payment amount, and the

**OCEANSIDE SMALL CRAFT HARBOR DISTRICT  
PROPERTY USE AGREEMENT  
WITH J & D FISH COMPANY**

corresponding prorated quarterly payments under this Agreement shall be adjusted on each payment adjustment date as set forth below.

**3.04 Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of DISTRICT and PERMITTEE. If the parties cannot agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.04.

Regardless of the index publication dates, the minimum payment adjustment dates shall be on the dates defined by Subsection 3.03 above. Until the minimum payment adjustment can be actually calculated in accordance with this Agreement, PERMITTEE shall continue to make payments at the existing payment rate. When the adjustment is calculated, the balance of payments due at the adjusted rate, from the payment adjustment date through the date of calculation, will be paid to DISTRICT within 30 days of written notice by the DISTRICT. The adjusted payment increase shall be as established by the CPI or four percent (4%), whichever is greater, but not more than eight percent (8%) per year.

**3.05 Minimum Payment Adjustment Computation.** The annual minimum payment adjustment shall be computed in accordance with the following definitions and formulas:

**Definitions:**

**Initial Minimum Annual Payment:** The minimum annual payment at the commencement of this Agreement as listed in Subsection 3.03 above.

**Existing Minimum Annual Payment:** The existing minimum annual payment shall be the minimum annual payment amount in effect on the date preceding the payment adjustment date.

**Percent change in the CPI:** The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding 12 month period covered by the most recent publication of the Index or four percent (4%), whichever is greater, but in no case will it exceed eight percent (8%) per year.

**OCEANSIDE SMALL CRAFT HARBOR DISTRICT  
PROPERTY USE AGREEMENT  
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**Payment Adjustment Formulas:**

First Adjustment: Initial minimum annual payment + (Initial minimum annual payment x the percent change) = New minimum annual payment.

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

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

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

**3.06 Delinquent Payment.** If PERMITTEE fails to pay the payment when due, PERMITTEE shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days, PERMITTEE 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 payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

**SECTION 4: RECORDS**

**4.01 Inspection of Records.** PERMITTEE agrees to make any and all records and accounts available to DISTRICT for inspection at all reasonable times, so that DISTRICT can determine PERMITTEE's compliance with this Agreement. These records and accounts shall be made available by PERMITTEE at the PREMISES and shall be complete and accurate showing all income and receipts from use of the PREMISES. PERMITTEE's failure to keep and maintain such records and make them available for inspection by DISTRICT shall be deemed a default of this Agreement. PERMITTEE shall maintain all such records and accounts for a minimum period of **five (5) years**.

**SECTION 5: INSURANCE**

**5.01 Indemnity.** PERMITTEE shall indemnify and hold harmless the DISTRICT and the City of Oceanside and their officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PERMITTEE or its employees, agents, or others in connection with its use and occupation of the PREMISES under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the DISTRICT, its officers, agents, or employees. PERMITTEE's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the DISTRICT and or the City of Oceanside, their officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at

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its own expense shall, upon written request by the DISTRICT, defend any such suit or action brought against the DISTRICT or the City of Oceanside, their officers, agents, or employees.

**5.02 Insurance.** PERMITTEE 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 PERMITTEE, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

PERMITTEE shall maintain the following minimum limits:

**General Liability**

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$1,500,000

Said policies shall provide that such insurance coverage shall not be cancelled or reduced without at least thirty (30) days prior written notice to the DISTRICT. At the signing of the Agreement and thirty (30) days prior to the expiration of any such policies a certificate showing that such insurance coverage has been renewed or extended shall be filed with the DISTRICT.

Certificates of such insurance shall be filed with the DISTRICT upon the execution of this agreement and shall be satisfactory in form to the DISTRICT.

The foregoing provisions as to maintenance of insurance shall not be construed as limiting in any way the extent to which the PERMITTEE may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or person for which it is responsible.

**5.03 Workers' Compensation Insurance.** PERMITTEE shall also maintain in full force and effect during the full term of this agreement and any extension thereof, workers' compensation insurance in such amount and with such coverage as is required by law.

**SECTION 6: GENERAL PROVISIONS**

**6.01 Maintenance.** With respects to PERMITTEE's operations at or on the PREMISES, PERMITTEE shall 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.

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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 PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE 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. PERMITTEE shall make payment no later than thirty (30) days after written notice from the DISTRICT. Further, if at any time DISTRICT determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, DISTRICT may at its sole option, upon written notice, require PERMITTEE to file with DISTRICT a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of DISTRICT to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on DISTRICT or increase obligations elsewhere in this Agreement imposed on DISTRICT.

**6.02 Utilities.** PERMITTEE agrees to order, obtain, and pay for all utilities and service, if any, and installation charges in connection with its occupation and operations on the PREMISES.

**6.03 Sign.** PERMITTEE 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 DISTRICT. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its expense within 24 hours of written notice thereof by DISTRICT, or DISTRICT may thereupon remove the item at PERMITTEE's cost.

**6.04 Taxes.** PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the PREMISES, including the water, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the PREMISES, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

**6.05 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:

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**To DISTRICT:**

**Oceanside Small Craft Harbor District  
Administration Office  
300 North Hill Street  
Oceanside, CA 92054**

**To PERMITTEE:**

**J and D Fish Company  
Attn: James Gardner  
10665 Fuerte Drive  
La Mesa, CA 92041**

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.

**6.06 District Approval.** The Chief Executive Officer shall be the DISTRICT's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Chief Executive Officer may delegate authority in connection with this Agreement to the Chief Executive Officer's designee(s). For the purposes of directing PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the Chief Executive Officer delegates authority to the Senior Property Agent of the Community Services Department.

**6.07 Entire Agreement.** This Agreement comprises the entire integrated understanding between DISTRICT and PERMITTEE 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.

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 PERMITTEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

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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.

**6.08 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.

**6.09 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'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.

**6.10 Defaults and Termination.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within Thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within Thirty (30) days of the notice, or, if more than Thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within Ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

DISTRICT may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- PERMITTEE has previously been notified by DISTRICT of PERMITTEE's default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or
- PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- PERMITTEE shall be adjudicated a bankruptcy, or
- PERMITTEE shall make a general assignment for the benefit of creditors.

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Upon termination, DISTRICT may immediately enter and take possession of the PREMISES.

**6.11 Other Regulations.** All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and the Rules and Regulations promulgated by their authority with reference to boating and navigational waters and in accordance with all applicative rules and regulations and ordinances of the DISTRICT and the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

In all activities on or in connection with the use for which this Agreement is given, the PERMITTEE shall abide by and conform to all rules and regulations prescribed by the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, any ordinance of the City of Oceanside, and any applicable laws whether municipal, federal or state, as to any of the same that may now exist or be hereafter issued, enacted or amended.

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OCEANSIDE SMALL CRAFT HARBOR DISTRICT  
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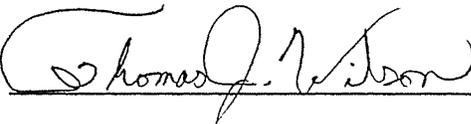
SECTION 7: SIGNATURES

7.01 **SIGNATURES.** 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 CONTRACTOR and the CITY.

IN WITNESS WHEREOF the parties hereto agree to the full performance of the covenants herein contained and have caused this Use Agreement to be executed by setting hereunto their signatures this 1st day of August, 1995.

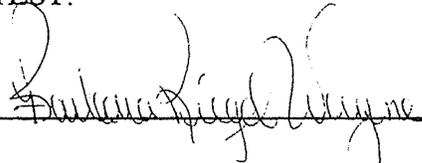
DISTRICT  
THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date 8-2-95

By 

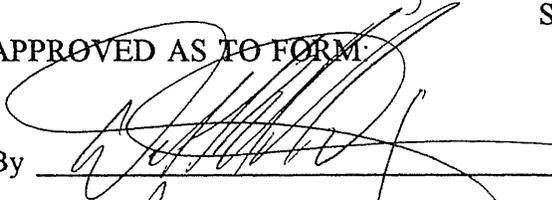
Chief Executive Officer

ATTEST:

By 

Secretary

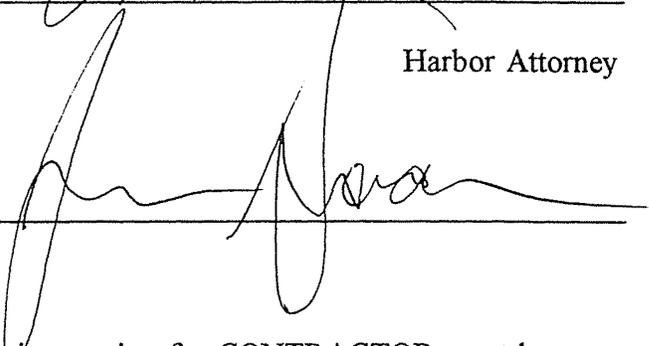
APPROVED AS TO FORM:

By 

Harbor Attorney

PERMITTEE

Date 7-18-95

By 

Notary acknowledgments and proof of authorization to sign for CONTRACTOR must be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of San Diego

On June 23, 1995 before me, Vicki Collo, Notary

DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James Gardner

NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Vicki Collo  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

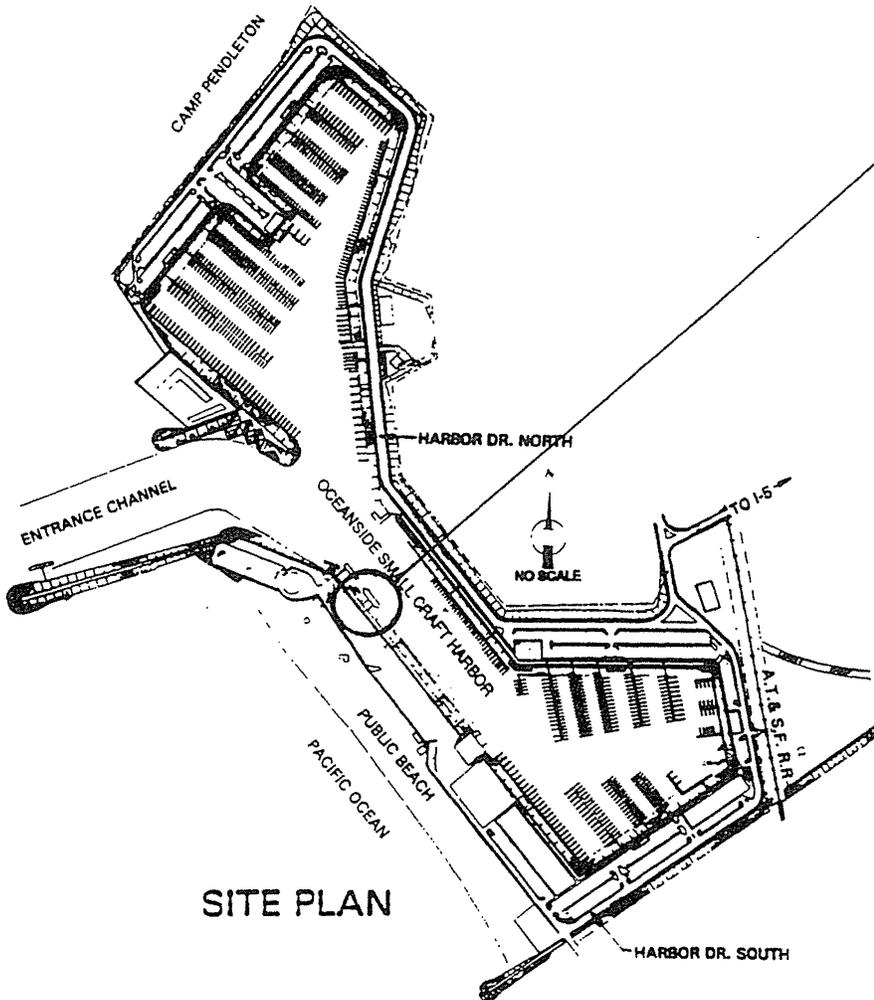
Oceanside Small Craft Use  
TITLE OR TYPE OF DOCUMENT  
Agreement

\_\_\_\_\_  
NUMBER OF PAGES

6/23/95  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

BAIT RECEIVING FACILITIES



Revision	By	Approved	Date

**OCEANSIDE HARBOR DISTRICT**  
 SKETCH OF LEASED PREMISES AT  
 HARBOR SERVICE BUILDING NO.  
 LESSEE:

**EXHIBIT "A"**