

STAFF REPORT*CITY OF OCEANSIDE*

DATE: December 8, 2010

TO: Chairman and Members of the Community Development Commission
Honorable Mayor and City Council

FROM: Economic & Community Development Department/ Property Management

SUBJECT: ADOPTION OF A RESOLUTION TO FORGIVE ONE-FIFTH OF THE \$606,380 FORGIVEABLE LOAN IN THE AMOUNT OF \$121,276 MADE BY THE CITY OF OCEANSIDE TO THE CALIFORNIA SURF MUSEUM TO RENOVATE THE PREMISES AT 312 PIER VIEW WAY

SYNOPSIS:

Staff recommends that one-fifth of the loan from the Community Development Commission to the California Surf Museum be forgiven in accordance with the Loan Agreement, reducing the balance from \$606,380 to \$485,104; forgiving \$121,276. In August 2008 and amended in June of 2009, the Community Development Commission loaned \$606,380 to the California Surf Museum to renovate the building at 312 Pier View Way. The Loan Agreement provided that the loan would be forgiven over a five-year period provided established performance standards were met, which included public benefit. The California Surf Museum has provided an annual report documenting their achievements.

BACKGROUND:

In order to expand cultural opportunities in the community, in August 2008, the Community Development Commission ("CDC") agreed to provide \$575,115 in financial assistance to the Surf Museum to renovate the building at 312 Pier View Way for the Surf Museum's new facility. Additionally, as construction commenced the Surf Museum requested a change order in the amount of \$31,265, which the CDC approved in June 2009, bringing the loan amount to \$606,380. In return, the Surf Museum agreed to provide a variety of exhibits and events as well as meet other annual performance standards documented within the Loan Agreement. If the performance standards are met and the museum continues to provide public benefit, the loan is to be forgiven over a five-year period.

ANALYSIS:

The performance standards for the first year and the Surf Museum's accomplishments since June 2009 as supported by the Surf Museum are as follows:

- Goal: Hold exhibit opening reception
Accomplishments: *The Surf Museum held three separate events celebrating the opening of the CSM at 312 Pier View Way and showcasing the permanent exhibit "100 years of surfing in Southern California" and temporary exhibit "Sidewalk Surfer".*
- Goal: Hold annual event honoring surfer
Accomplishments: *Annual Legend's Day held at Oceanside Public Library Community Rooms. This event honored Duke Boyd, legendary surfer and co-founder of Hang Ten surf wear.*
- Goal: Begin researching and planning a surf film festival
Accomplishments: *Held "The Inaugural California Surf Festival-Film honoring Bruce Brown for 50 years of filmmaking". During the three days of the event, the Surf Museum screened 11 feature films and 8 short films, and hosted one VIP reception.*

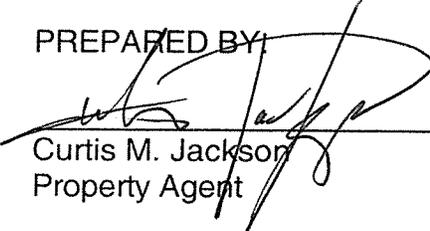
Additionally, "The Second California Surf Festival" was held in November 2010 at three venues: the California Surf Museum, Sunshine Brooks Theatre and Grace Chapel Theater. Special events included a surf history presentation by Australian surf Legend Nat Young; concert by Hawaiian ukulele phenom Jake Shimabukuro; reception with Hawaiian photographer Clarke Little; inaugural lifetime achievement award to local surfer/ surfboard shaper Gary Linden; exclusive Surfer Magazine 50 Year Tribute; 13 feature films, 7 short films and 6 films 5-minutes and under by "hot groms" 19 and under. The Surf Museum hosted two sold out VIP receptions and sold out California Surf Museum, Grace Theater and Sunshine Brooks Theatre on Friday and Saturday Evenings.

- Goal: Continue fundraising efforts
Accomplishments: *Total funds raised for all 2009 events is approximately \$60,000, which exceeds what was raised in 2008 prior to the Surf Museum's move to its new facility and before the downturn in the economy. Additionally, the Surf Museum was again awarded a \$5,000 San Diego County Community Enhancement Grant for 2009-2010. The Surf Museum board members and volunteers contributed in excess of 8,000 volunteer hours in 2009.*
- Goal: The Surf Museum will be open seven days per week from 10 am to 4 pm
Accomplishments: *The Surf Museum opened at 312 Pier View Way on February 16, 2009. Except for major holidays –New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas – The Surf Museum has been open daily. On April 1, 2009, the Surf Museum instituted a minimal admission fee with no decrease in total number of visitors.*

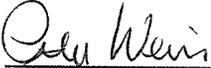
RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving and authorizing the forgiveness of one-fifth of the forgivable loan made by the CDC to the California Surf Museum to renovate the building at 312 Pier View Way and provide community activities for the benefit of the citizens of Oceanside, reducing the balance of the loan from \$606,380 to \$485,104.

PREPARED BY:


Curtis M. Jackson
Property Agent

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

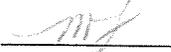
Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Kathy Baker, Redevelopment Manager

Doug Eddow, Real Property Manager

Teri Ferro, Financial Services Director







ATTACHMENTS/EXHIBITS

Resolution
Surf Museum's Annual Objectives Report
Loan Agreement
Amendment No. 1 to Loan Agreement

- Goal: Surf Museum will be open in conjunction with the Sunset Market
Accomplishments: *The Surf Museum was open until 8 pm on Thursdays when the Sunset Market was open. Average attendance on Thursdays has been approximately 150 visitors; high counts have exceeded 350 visitors.*
- Goal: Surf Museum will expand and enhance the gift shop
Accomplishments: *At the Surf Museum's previous location, the Gift Shop occupied approximately 200 sq. ft.; The new Surf Museum gift shop is approximately 675 sq. ft. and was professionally designed by Trio Display in La Jolla with an upscale look and display fixtures to properly showcase the Surf Museum's merchandise. Instead of a cash register, a computerized point-of-sale system was implemented at the time of the Surf Museum's move to 312 Pier View Way. The Surf Museum also began using a new credit card processing vendor who offers reduced rates to non-profits, saving overall credit card processing fees annually.*
- Goal: The facility will be available for a minimum of one City function
Accomplishments: *The Morro Hills Association met with the Deputy City Manager in the Archives conference room.*
- Goal: Conduct an annual membership meeting
Accomplishments: *Held Wednesday, March 18 2009 in advance of the Surf Museum's grand opening to give members and their guests behind the scenes tours of the new facility. A social reception preceded the annual business meeting required by the Surf Museum's by-laws with an estimated attendance of 150 people.*

Based on the Surf Museum's accomplishments over the past year, staff recommends that the CDC adopt the attached resolution to document the forgiveness of \$121,276, which is one-fifth of the total loan amount.

FISCAL IMPACT:

The \$606,380 loan is carried as a Redevelopment fund receivable from account 591.2075.0043. If the CDC approves the forgiveness for this year, \$121,276 will be expensed to 934942400591. The succeeding \$121,276 increments will be budgeted annually for the remaining four years.

CITY ATTORNEY ANALYSIS:

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF OCEANSIDE APPROVING AND AUTHORIZING THE FORGIVENESS OF ONE-FIFTH OF THE \$606,380 FORGIVEABLE LOAN MADE BY THE COMMUNITY DEVELOPMENT COMMISSION TO THE CALIFORNIA SURF MUSEUM TO RENOVATE THE BUILDING AT 312 PIER VIEW WAY AND PROVIDE COMMUNITY ACTIVITIES FOR THE BENEFIT OF THE CITIZENS OF OCEANSIDE

WHEREAS, the Community Development Commission ("CDC") is engaged in activities necessary to provide public benefit and cultural activities to the citizens of Oceanside; and

WHEREAS, the CDC entered into a Loan Agreement for a loan in the amount of \$606,380 on June 17, 2009 with the California Surf Museum ("CSM") to renovate the building at 312 Pier View Way and provide a cultural arts venue for the citizens of Oceanside; and

WHEREAS, the CDC loan provided to CSM is to be forgiven over a five-year period at \$121,276 per year if certain established performance standards are met and the project provided public benefit; and

WHEREAS, on December 16, 2009, CSM submitted an annual report to the City documenting their achievement of the performance standards set for Year 1; and

WHEREAS, the CDC finds that CSM has met the performance standards and has provided significant benefit to the public; and

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8 NOW, THEREFORE, the Community Development Commission of the City of Oceanside
9 does resolve as follows:

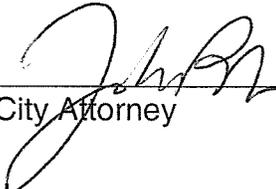
10 1. That the forgiveness of one-fifth of the \$606,380 forgivable loan is hereby
11 approved.
12

13 PASSED AND ADOPTED by the Community Development Commission of the City of
14 Oceanside, California, this _____ day of _____, 2010, by the following vote:

15 AYES:
16 NAYS:
17 ABSENT:
18 ABSTAIN:

19
20 Chairman _____

21
22 ATTEST:
23
24 _____
25 Secretary

26 APPROVED AS TO FORM:
27
28 
City Attorney



California Surf Museum

312 Pier View Way • Oceanside CA 92054 • (760) 721- 6876
www.surfmuseum.org • csm@surfmuseum.org

December 16, 2009

Curtis Jackson
Property Agent
City of Oceanside
300 N. Coast Highway
Oceanside CA 90254

Dear Curtis:

Attached please find the California Surf Museum's report for its Year 1 Performance Goal/Standard as included in the Annual Objectives for the Surf Museum in the Property Lease Agreement for 312-314 Pier View Way Building, Oceanside, CA. All goals were met or exceeded.

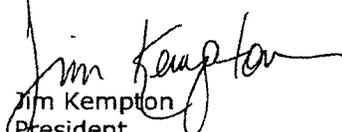
Our Lease Agreement began on January 30, 2009 when we received Certificate of Occupancy for 312-314 Pier View Way. The performance goals will be timed to approximate a calendar year rather than a July-to-June fiscal year as noted in the lease. We are referring to the 2008-09 Performance Goal/Standard as "Year 1" (or 2009) and so on through "Year 5" (or 2013) instead of 2012-13.

We would again like to thank the City of Oceanside for this beautiful facility. It has given CSM the opportunity to host the kind of events we have long wanted to bring to Oceanside. We have had more requests from authors, artists, and musicians than we can currently accommodate.

CSM plans to gather additional information to amend this report and include all that CSM has accomplished in 2009; we would like to submit this report to Council and staff as well. We look forward to meeting with you at your earliest convenience to review and discuss the performance goals for years 2-5.

Please advise of any additional information or details you need in support of the attached.

Sincerely,


Jim Kempton
President
California Surf Museum



Property Lease Agreement for 312-314 Pier View Way Building, Oceanside, CA

Annual Objectives for the Surf Museum: Year 1 Performance Goal/Standard

1. Hold exhibit opening reception

GOAL MET AND EXCEEDED. CSM held three separate events celebrating the opening of CSM at 312 Pier View Way and showcasing the permanent exhibit "100 Years of Surfing in Southern California" and temporary exhibit "Sidewalk Surfer":

1. Tuesday, March 10, 6-8pm: the Board of Directors of CSM held a VIP Reception for all those who had contributed to 312 Pier View Way.
2. Wednesday, March 18, 5-7pm: held a Members' Reception to give members and their guests behind the scenes tours of the new facility.
3. Thursday, March 26, 10am-8pm: all day festivities open to the public with the official Grand Opening and Ribbon Cutting at 5pm.

Media coverage: KOCT, KUSI, Fox 5, North County Times print and online, San Diego Union Tribune print and online; on the worldwide web on assorted surf and action sports web sites including surfermag.com, surfshot.com, surf.transworld.net, surfline.com

Estimated attendance for all three events: 750

2. Hold annual event honoring surfer

GOAL MET. Annual Legends' Day, Sunday, October 4, 1-4pm, held at Oceanside Public Library Community Rooms. Honored Duke Boyd, legendary surfer and co-founder of Hang Ten surf wear.

Media coverage: KOCT "Oceanside Update"; KPBS radio "These Days" live on-air interview; North County Times print and online; online on surfline.com; paid ad in Ocean Magazine

Estimated attendance: 200

3. Begin researching and planning a surf film festival

GOAL MET AND EXCEEDED. We are ahead of schedule on this goal as implementation of the film festival is a Year 2 goal. Last year we held "The Inaugural California Surf Festival > Film honoring Bruce Brown for 50 Years of Filmmaking" on November 7-9, 2008, at the California Surf Museum and Grace Chapel Theater. During the three days of the event, we screened 11 feature films and 8 short films, and hosted one VIP reception.

This year "The Second California Surf Festival" was held November 19-22 at three venues: CSM, Sunshine Brooks Theatre (capacity 197) and Grace Chapel Theater (capacity 550 with the addition of folding chairs set up in front of the stage). Special events included a surf history presentation by Australian surf legend Nat Young, concert by Hawaiian ukulele phenom Jake Shimabukuro, reception with Hawaiian photographer Clark Little, inaugural lifetime achievement award to local surfer/surfboard shaper Gary Linden, exclusive Surfer Magazine 50 Year Tribute, 13 feature films, 7 short films and 6 films 5 minutes and under by "hot groms" 19 and under. CSM hosted two sold out VIP receptions and sold out CSM, Grace and Brooks on Friday and Saturday evenings.

Media coverage: KOCT "Oceanside Update"; presenting sponsor FUEL TV taped coverage; live on-air interviews on KNSD, KUSI, Fox5, San Diego 6; 91X radio 16 promos per day for



a minimum of 7 days, KPBS radio "These Days" live on-air interview; North County Times print and online, San Diego Union Tribune "Nite and Day" print and online, Riviera Magazine print and online; on the worldwide web on assorted surf and action sports web sites including surfermag.com, surfshot.com, surf.transworld.net, surfline.com

Estimated attendance 2008: 1,200

Estimated attendance 2009: 2,500; a substantial percentage of attendees from out of town brought new faces and new demographics to CSM and Oceanside.

4. Continue fundraising efforts

GOAL MET AND EXCEEDED. Total funds raised for all 2009 events is approximately \$60,000, which exceeds what was raised in 2008 prior to CSM's move to its new facility and before the downturn in the economy. As well, CSM was again awarded a \$5,000 San Diego County Community Enhancement Grant for 2009-2010. CSM board members and volunteers contributed in excess of 8,000 volunteer hours in 2009.

In addition to the surf film festival, fundraising events included:

- April 11: Hawaiian ukulele phenom Jake Shimabukuro: VIP reception held at CSM (attendance: 175); in concert at Grace Chapel Theater (attendance: 450; sold out)
- April 18: "Between the Lines" VIP reception and film screening at Grace Chapel Theater (attendance: over 450; sold out with standing room only)
- May 14: Second Annual Gala Fundraiser held at CSM (estimated attendance: 225)
- Aug 28: "Sidewalk Surfer" skate industry invitation-only reception at CSM showcasing CSM and the skateboard exhibit to the elite of the skate industry (estimated attendance: 275)

We are ahead of schedule on a Year 2 goal: Booksignings/presentations at CSM:

- July 22, 6-9pm: Co-founder of Surfrider Glenn Hening, audiovisual presentation, *Celebrating Surfrider's 25th Anniversary: Surfrider Takes Off -- The Visionary Surfers of 1984*
- July 30, 6-8pm: Surf legend Doc Paskowitz, booksigning *Surfing and Health*
- Aug 20, 6-8pm: Surf legend Mike Hynson, booksigning *Transcendental Memories of a Surf Rebel*
- Oct 8, 7-8pm: Surfer and author Ryan Smith, booksigning *Planet Surf*
- Dec 3, 6-8pm: Surfer, singer, author Nava Young, booksigning *Surf Food - The Ultimate Surfers Cookbook*
- Dec 17, 6-8pm Surf legend and co-founder of Hang Ten surf wear Duke Boyd, booksigning *Legends of Surfing*

In 2009, CSM was a designated charity for the following:

- Annual Oceanside Longboard Surfing Club Contest held at Oceanside Pier
- San Diego Woodies Annual Wavecrest Woodie Meet held at Moonlight Beach, Encinitas: pancake breakfast
- Ukulele Masters: Bill Tapia in Concert with Pat Enos at Grace Chapel Theater
- "The Women in the Waves" film screening at Grace Chapel Theater: prize drawing ticket sales
- The Royal Dive, Oceanside: "Phil's Place" neon sign winning bidder

Private event rentals:

- April 11: Jake Shimabukuro's Fan Club workshop
- Dec 31: wedding and reception



5. CSM will be open seven days per week from 10 am to 4 pm

GOAL MET. CSM opened at 312 Pier View Way on February 16, 2009. Except for major holidays -- New Year's, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas -- CSM has been open daily. On April 1, 2009, CSM instituted a minimal admission fee with no decrease in total number of visitors.

6. CSM will be open in conjunction with the Sunset Market

GOAL MET. CSM is open until 8 pm on Thursdays when the Sunset Market is open. Average attendance on Thursdays has been approximately 150 visitors; high counts have exceeded 350 visitors.

7. CSM will expand and enhance the gift shop

GOAL MET. At CSM's previous location, the Gift Shop occupied approximately 200 sq. ft.; store fixtures were unmatched second-hand donations and found items; as well, storage for merchandise was extremely limited. The new CSM Museum Store, which opened on Monday, February 16, is approximately 675 sq. ft. and was professionally designed by Trio Display in La Jolla with an upscale look and display fixtures to properly showcase CSM's merchandise. The merchandise focus is on CSM-branded, exhibit-themed and unique surf-themed items, including the work of San Diego County artists and photographers; CSM hangtags are used on all merchandise. A dedicated storage closet for store merchandise allows purchasing in larger quantities to get better quantity discounts.

Instead of a cash register, a computerized point-of-sale system which tracks merchandise sales, inventory, etc., was implemented at the time of CSM's move to 312 Pier View Way. CSM also began using a new credit card processing vendor who offers reduced rates to non-profits, saving thousands of dollars in credit card processing fees annually.

8. The facility will be available for a minimum of one City function

GOAL MET. On Thursday, May 21, the Morro Hills Association met with then Deputy City Manager Mike Blessing in the Archives.

9. Conduct an annual membership meeting

GOAL MET. Held Wednesday, March 18 in advance of CSM's Grand Opening to give members and their guests behind the scenes tours of the new facility. A social reception preceded the annual business meeting required by CSM's by-laws.

Estimated attendance: 150



CSM's 2009 Calendar of Notable Things

- Jan 30 Certificate of Occupancy for 312-314 Pier View Way received
Jan 30 CSM's lease agreement for 312 Pier View Way commences
- Feb 5 Tour: 10 pre-school kids field trip at 223 N. Coast Highway
Feb 16 Museum Store opens at 312 Pier View Way
- Mar 7 Off-site Presentation: Jerome Hall and Jane Schmauss at San Diego Congress of History's annual meeting, Barona Casino
Mar 20 Media: NC Times interview
Mar 21 "Garage sale" at 223 N. Coast Highway
Mar 24 Media: Fox5 interview
Mar 26 Media for Grand Opening: KOCT interview; Ch. 8 news coverage aired at 9pm; NC Times front page
Mar 31 Vacate 223 N. Coast Highway
- Apr 2 Tour: 68 students field trip
Apr 11 Rental: Jake Shimabukuro Fan Club workshop at CSM
Apr 11 Event: Jake Shimabukuro at CSM and Grace Chapel Theater
Apr 15 Media: 5:15am KUSI news interview; 9am Fuel TV filmed "New Pollution" here
Apr 18 Off-site Event: participated in Oceanside's "Days of Art"
Apr 22 Tour: Oceanside Girl Scouts
Apr 23 Tour: Field Trip from North Terrace Elementary, 40 kids
- May 6 Tour: Tri-City Christian, 15 students
May 15 Tour: St. Mary's School, 6 girls
May 17 Tour: Vanguard Class, 20 students
May 21 Tour: Ten 9-year-old boys
May 21 Tour: Senior Citizens field trip
May 31 Tour: Girl Scout group
- Jun 2 Tour: School of Architecture & Design, 20 students
Jun 5 Visit: Rodes Fishburn, interviews for Smithsonian Magazine story "Museums Across America"
Jun 6 Tour: Girl Scout #4948, 6 girls
- Jul 2 Media: KUSI interviewed Roxy girls at CSM
Jul 8 Tour: 25 kids, 3 adults
Jul 8 Tour: Coronado Recreation Dept., 10 students, 2 adults
Jul 22 Event: Glenn Hening audiovisual presentation
Jul 30 Tour: group of 30 kids
Jul 30 Event: Doc Paskowitz booksigning
- Aug 3 Tour: 10 kids for Megan's birthday party
Aug 6 Tour: 40 students from CSM member Richard Elwell
Aug 20 Event: Mike Hynson booksigning
Aug 20 Off-site Presentation: John Elwell, Woody Ekstrom and Jane Schmauss at San Diego Save Our Heritage Organization monthly book series and *Surfing in San Diego* booksigning
Aug 28 Event: Sidewalk Surfer invitation-only reception for skate industry
Aug 29 Benefit: Bill Tapia concert at Grace Chapel Theater



California Surf Museum

PRESERVING OUR SURFING HERITAGE

- Sep 1 Benefit: Women and the Waves movie, Grace Chapel Theater

- Oct 1 Tour: P.E.O Women's Group, 25 active seniors
- Oct 4 Event: Legends' Day honoring Duke Boyd
- Oct 8 Event: Ryan Smith booksigning
- Oct 18 Tour: Vanguard Class, 12 people

- Nov 5 Media: PassmoreLab: on-site filming for inclusion in IMAX movie
 "Physics of Surfing"
- Nov 19 Event: 2nd Annual California Surf Festival, Nat Young presentation
- Nov 20 Event: 2nd Annual California Surf Festival, films and Jake Shimabukuro
 VIP, concert
- Nov 21 Event: 2nd Annual California Surf Festival, films, Clark Little reception, and
 Surfer Magazine 50 Year VIP, Tribute
- Nov 22 Event: 2nd Annual California Surf Festival, films, Silver Surfer Award to
 Gary Linden, and festival awards

- Dec 3 Event: Nava Young booksigning
- Dec 7 Visit: Bill Stern from Museum of California Design
- Dec 17 Event: Duke Boyd booksigning
- Dec 31 Rental: wedding reception

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is entered into as of August 13, 2008, by and between the **OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION**, ("CDC"), and the **CALIFORNIA SURF MUSEUM**, a California nonprofit corporation ("Surf Museum").

RECITALS

The following recitals are a substantive part of this Agreement:

Whereas, the CDC is the owner of that real property situated at 312 – 314 Pier View Way, City of Oceanside, County of San Diego, California, more particularly described as ("Premises");

Whereas, the CDC and the Surf Museum have entered to a Property Lease Agreement for the Premises ("Lease"), which Lease requires the Surf Museum to construct certain tenant improvements to the Premises ("Improvements") as a condition of said Lease and to occupy the Premises as of a date certain ("Commencement Date");

Whereas, the CDC has agreed to provide a loan of Five Hundred Seventy-Five Thousand One Hundred Fifteen Dollars (\$575,115) to the Surf Museum to be used in connection with the construction of the Improvements to the Premises, which loan can be forgiven provided the Surf Museum satisfies certain performance criteria during the term of the Lease; and

Whereas, the providing of financial assistance to the Surf Museum, the maintenance and operation of the Premises and the performance of certain activities during the term of the Lease pursuant to the terms and conditions of this Agreement are in the vital and best interest of the CDC.

NOW, THEREFORE, the CDC and the Surf Museum in consideration of the mutual covenants, conditions and promises herein below contained hereby agree as follows:

AGREEMENT

1. Tenant Improvement Loan. Subject to Surf Museum's performance of all of the terms, covenants and conditions set forth herein, the CDC hereby agrees to loan to the Surf Museum, and the Surf Museum agrees to borrow from the CDC, the sum of Five Hundred Seventy-Five Thousand One Hundred Fifteen Dollars (\$575,115) (the "Improvement Loan") for the construction of the Improvements to the Premises. CDC shall make the Improvement Loan to Surf Museum from available funds in the CDC's 591.879454.5241 Trust Fund, which shall be disbursed to Surf Museum as provided herein.

1.1 Forgiveness of Improvement Loan. The CDC shall forgive portions or all of the Improvement Loan upon satisfaction of certain performance criteria as set forth in this Agreement during the term of the Lease. The performance criteria are more particularly described in the Performance Plan as set forth in Subsection 1.3b below.

1.2 Security for Improvement Loan. The Promissory Note, in the form of Exhibit "A" (the "Promissory Note") attached hereto and incorporated herein, shall be secured by the recordation of a UCC-1 fixture filing with respect to the Improvements to the Premises.

1.3 Disbursement of Improvement Loan. The proceeds of the Improvement Loan shall be disbursed by the CDC pursuant to the Disbursement Schedule and Disbursement Schedule Procedure criteria more particularly shown on Exhibit "B" and "B-1" attached hereto and incorporated herein by this reference ("Disbursement Schedule") and the conditions set forth below, any of which conditions may be waived by the CDC or its designee in its sole and absolute discretion:

("Disbursement Schedule") and the conditions set forth below, any of which conditions may be waived by the CDC or its designee in its sole and absolute discretion:

a. **Execution of Documents.** Surf Museum shall have executed and delivered to the CDC the Promissory Note and any other documents required hereunder.

b. **Performance Plan.** Surf Museum shall have provided, and CDC shall have reasonably approved the Performance Plan, in the form of Exhibit "C" ("Performance Plan") attached hereto and incorporated herein, showing the specified performance to be accomplished by the Surf Museum, to the CDC's reasonable satisfaction, in exchange for the forgiveness of the Improvement Loan.

c. **Proof of Insurance.** Surf Museum shall have provided to the CDC a certificate of insurance that satisfies the requirements of Section 3.3 this Agreement.

d. **No Default, Representations and Warranties.** Surf Museum shall not be in default in any of its obligations under the terms of this Agreement and/or the Lease. All representations and warranties of Surf Museum contained herein shall be true and correct in all material respects on and as of the date of any disbursement of the Improvement Loan as though made at that time, and all covenants of Surf Museum which are required to be performed prior to the disbursement of the Improvement Loan shall have been performed by such date.

1.4 **Assumption.** The Promissory Note shall not be assumable by successors and assigns of Surf Museum without the prior written consent of the CDC.

2. **Conditions of Improvement Loan.** Subject to Surf Museum's performance of all of the terms, covenants and conditions set forth herein, including the timely accomplishment of the items and goals listed in the Performance Plan, the CDC hereby agrees to forgive the repayment of the Improvement Loan. CDC's forgiveness of the Improvement Loan as and when specified in the Performance Plan is conditioned upon the Surf Museum's performance of the following obligations:

a. **Permits and Land Use Approvals.** Surf Museum shall obtain each and all of the architectural plans, engineering plans and building permits in addition to any other approvals necessary for the Improvements to the Premises.

b. **Construction Contract.** Surf Museum shall provide to the CDC a copy of the construction contract to be signed between the Surf Museum and one or more duly licensed general contractors for the construction of the Improvements to the Premises, certified by the Surf Museum to be true and correct copies thereof, upon approval of the Lease Agreement between the CDC and the Surf Museum, of which the CDC or its designee shall have reasonably approved such contractor or contractors as having the experience and financial resources necessary to construct the Improvements to the Premises.

c. **No Default, Representations and Warranties.** Surf Museum shall not be in default in any of its obligations under the terms of this Agreement and/or the Lease. All representations and warranties of Surf Museum contained herein shall be true and correct in all material respects on and as of the date of any of the disbursements of the Improvement Loan as though made at that time, and all covenants of Surf Museum which are required to be performed prior to the disbursement of the Improvement Loan shall have been performed by such date.

2.1 **Repayment of Improvement Loan.** The Surf Museum's obligation to repay the Improvement Loan shall be set forth in the Promissory Note. The Promissory Note shall be for a term of five (5) years from the date of the Commencement Date of the Lease. The Surf Museum shall annually, on or before ninety (90) days after the end of the Surf Museum's fiscal year, beginning in the year after the Commencement Date, submit to the CDC a Performance Satisfaction Report, in the form attached hereto as

Exhibit "D" incorporated herein, for approval by the CDC, which shall provide the basis for the forgiveness of the Improvement Loan by the CDC.

2.2 Security for Improvement Loan. The Promissory Note shall be secured by the recordation of a UCC-1 fixture filing with respect to the Improvements to the Premises and a UCC-1 fixture filing against the Surf Museum's personal property (defined as personal property owned by the Surf Museum and not on loan to the Surf Museum by third parties).

a. Lien Waivers. CDC shall have received appropriate waivers of mechanics' and materialmen's lien rights and stop notice rights executed by all contractors and other persons rendering services or delivering materials for and/or associated with the Improvements to the Premises.

b. Use of Disbursement. Surf Museum shall use or apply the Improvement Loan disbursements solely for the purpose of paying down the expenses and costs associated with the Improvements to be constructed upon the Premises.

3. Operating Requirements.

3.1 Operation of the Premises. The Surf Museum shall construct the Improvements to the Premises, use the Premises in accordance with the Lease, and operate and maintain the Premises pursuant to the terms and conditions of the Lease and in compliance with the requirements of this Agreement.

3.2 Maintenance. The Surf Museum shall maintain the Premises in good condition, free of debris, waste and graffiti, in a clean and presentable manner, and in compliance with the Lease and this Agreement and all applicable provisions of the Oceanside Municipal Code. The Premises shall not be demolished or converted to another use without the prior written approval of the CDC. If the Premises are not so maintained, and such condition is not corrected within a reasonable period after written notice thereof from the CDC, then the CDC may perform the necessary maintenance and Surf Museum shall pay such costs as are reasonably incurred for such maintenance.

3.3 Insurance. During the term of the Promissory Note and any security interest thereof, the Surf Museum, at its sole cost and expense, shall itself take out and maintain, or cause to be taken out and maintained, the following insurance coverage:

a. Maintain or cause to be maintained a policy or policies of all-risk property insurance covering all of the Improvements to the Premises. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Premises, as defined herein in Section 3.3.1 of this Agreement.

b. Maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils of fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies.

c. Maintain, or cause to be maintained, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit per occurrence and \$4,000,000 general aggregate, comprehensive general liability insurance. The required amount of insurance shall be subject to increases as the CDC may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Oceanside area. The Surf Museum agrees that provisions of this paragraph as to the maintenance of insurance shall not be construed as limiting in any way the extent to which the Surf Museum may be held responsible for the payment of damages to persons or

property resulting from the Surf Museum's activities, activities of its lessees, invitees, permittees or patrons or the activities of any other person or persons for which the Surf Museum is otherwise responsible.

d. Maintain, or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by the Surf Museum in connection with the Premises and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Premises or the operation thereof by the Surf Museum.

3.3.1 Definition of "Full Insurable Value". The term "Full Insurable Value" as used in this Section 3.3 shall mean the actual replacement cost of the Premises, including, but not limited to, the cost of construction of the Improvements, architectural and engineering fees, applicable governmental fees, and inspection and supervision. Surf Museum shall maintain the insurance policy required by Section 3.3 (a) hereof at the current Full Insurable Value of the Premises.

3.3.2 General Insurance Provisions. All policies of insurance provided for in this Section 3.3, except for the workers' compensation insurance, shall name the Surf Museum as the insured and the CDC and the City of Oceanside and their officers, employees, agents, and representatives, as "additional insured", as their respective interests may appear. Insurance coverage provided to CDC as additional insured shall be primary insurance and other insurance maintained by the CDC and the City of Oceanside, their officers, employees, agents, and representatives shall be excess only and not contributing with insurance provided pursuant to this Section 3.3. All property casualty insurance policies shall include the interest of any Surf Museum's mortgagee, and may provide that any loss is payable jointly to the Surf Museum and the Surf Museum's mortgagee in which event such policies shall contain standard mortgage loss payable clauses.

The Surf Museum agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. The Surf Museum agrees to submit policies of all insurance required by this Section 3.3, or certificates evidencing the existence thereof, to the CDC on or before the effective date of this Agreement, indicating the coverage of the contractual liability imposed by this Agreement. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof shall be submitted to the CDC. All policies shall be written by good and solvent insurers qualified to do business in California, or holding an AM Best rating (or its reasonable equivalent) of A-X or better, and reasonably acceptable to the CDC (or designee). All policies or certificates of insurance shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to the CDC; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the CDC and shall contain a waiver of subrogation for the benefit of the CDC.

3.3.3 Failure to Maintain Insurance. If the Surf Museum fails or refuses to procure or maintain insurance as required by this Agreement, the CDC shall have the right, at the CDC's election, and upon ten (10) days prior notice to Surf Museum, to procure and maintain such insurance. The premiums paid by the CDC shall be treated as amounts due to the CDC from the Surf Museum, to be paid on the first day of the month following the date on which the premiums were paid. The CDC shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

3.3.4 Insurance Proceeds Resulting from Loss or Damage to Premises. Subject to the requirements of senior mortgagees, all proceeds of insurance with respect to loss or damage to the Premises and any improvement appurtenant thereto during the term of the Promissory Note and any security interest thereof shall be payable, under the provisions of the policy of insurance, to the Surf Museum, and said

proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Premises in accordance with plans and specifications approved in writing by the CDC. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be used to repay any outstanding loans secured by encumbrances upon the Premises, and any remaining proceeds shall be apportioned between the Surf Museum and the CDC as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Premises, such proceeds shall be payable in accordance with mortgage loan documents.

In the event this Agreement, the Promissory Note, any security interest thereof or the Lease is terminated by mutual agreement of the CDC and the Surf Museum and the Premises is not restored, repaired or rebuilt, subject to any lien claims thereto, the insurance proceeds and any other proceeds associated with the Premises and/or the improvement thereto shall be jointly retained by the CDC and the Surf Museum and shall be applied first to any payments due under this Agreement from the Surf Museum to the CDC, second to restore the Premises to its original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Premises, and finally any excess shall be apportioned between the Surf Museum and the CDC as their interests may appear, and the Surf Museum shall have no further obligation hereunder to restore, repair or rebuild the Premises; provided, however, that within any period when there is an outstanding mortgage upon the Premises, such proceeds shall be applied in accordance with the mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 3.3.4 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

In the event this Agreement, the Promissory Note, any security interest thereof or the Lease is partially terminated by mutual agreement of the CDC and the Surf Museum and a portion of the Premises are not restored, repaired or rebuilt, a pro rata portion of the insurance proceeds and proceeds of any capital replacement reserve and/or operating reserve attributable to the portion of the Improvements which has been terminated shall be jointly retained by the CDC and the Surf Museum and shall be applied first to any payments due under this Agreement from the Surf Museum to the CDC, second to restore the applicable portion of the Premises to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Premises, and finally any excess shall be apportioned between the Surf Museum and the CDC as their interests may appear, and the Surf Museum shall have no further obligation hereunder to restore, repair or rebuild the applicable portion of the Premise subject to termination; provided, however, that within any period when there is an outstanding mortgage upon the Premises, such proceeds shall be applied in accordance with the mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 3.3.4 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

3.4 Indemnification and Hold Harmless. Surf Museum shall, subject to the terms of the Promissory Note, indemnify, hold harmless and defend, with attorney(s) reasonably acceptable to the CDC, the CDC and its officers, elected and appointed boards and officials, employees, representatives and agents, from and against any and all liability, damages, costs, losses, claims and expenses, suits, actions, proceedings and judgments, including attorney's fees, however caused, resulting directly or indirectly from or connected with the Premises and/or the performance of this Agreement by Surf Museum or its contractors, subcontractors, agents, employees or other persons acting on its behalf, except to the extent caused by the sole or active negligence or willful misconduct of the CDC or its officers, boards, officials, employees, representatives or agents.

3.5 Compliance with Laws. The Surf Museum shall construct the Improvements, use, maintain and operate the Premises in conformity with all applicable laws, including without limitation all applicable state labor standards (including but not limited to California Labor Code sections 1774 and 1775), the zoning and development standards of the City of Oceanside, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Oceanside Municipal Code, all applicable environmental laws, all state and federal fair housing laws, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government

Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.6 Nondiscrimination. Surf Museum for itself and its successors and assigns, agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation in the leasing, subleasing, rental, transferring, use, occupancy, tenure, or enjoyment of the Premises nor shall the Surf Museum or any person claiming under or through the Surf Museum establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, leases, sublessees, subtenants, contractors or vendees in the Premises.

3.7 Condition of the Site.

a. Surf Museum Precautions. Surf Museum shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials (as defined in section 3.7.c, below) that may be located in, on or under the Site on which the Premises are situated (the "Site"). Such precautions shall include compliance with all governmental requirements with respect to Hazardous Materials. In addition, Surf Museum shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

b. Environmental Indemnity. Surf Museum shall indemnify, defend and hold CDC harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the release from the Site, use on the Site, generation on the Site, discharge from the Site, storage on the Site, disposal on or from the Site, or transportation to or from the Site, of any Hazardous Materials during the term of this Agreement, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment; provided, however, under no circumstances shall these indemnity obligations of Surf Museum include any obligation for payment of punitive damages assessed against CDC or its officers, employees, agents or representatives, or for damages, penalties or costs assessed against the CDC due to actions of CDC employees, officers, agents or representatives.

c. Definitions. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, San Diego County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to

Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Premises, including without limitation alcohol, aspirin, tobacco and saccharine.

3.8 Liens and Stop Notices. Surf Museum shall use its best efforts to prevent any lien or stop notice from being placed on the Site or the Premises or any part thereof. If a claim of a lien or stop notice is given or recorded affecting the Site or the Premises the Surf Museum shall within thirty (30) days of such recording or service:

- a. pay and discharge the same; or
- b. effect the release thereof by recording and delivering to CDC a surety bond in sufficient form and amount, or otherwise; or
- c. provide CDC with indemnification from a title insurance company reasonably acceptable to the CDC against such lien or other assurance which CDC deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of CDC from the effect of such lien or bonded stop notice.

4. Surf Museum's Representations and Warranties. Surf Museum represents and warrants to CDC as follows:

4.1 Authority. Surf Museum has full right, power and lawful authority to undertake all obligations as provided herein, and the execution, performance and delivery of this Agreement by Surf Museum has been fully authorized by all requisite actions on the part of the Surf Museum. The parties who have executed this Agreement on behalf of Surf Museum are authorized to bind Surf Museum by their signatures hereto.

4.2 Litigation. To the best of Surf Museum's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Surf Museum or any parties affiliated with Surf Museum, at law or in equity before any court or governmental agency, domestic or foreign, which if adversely determined, would materially impair the right or ability of Surf Museum to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Surf Museum, or which would materially adversely affect the financial condition of Surf Museum or any parties affiliated with Surf Museum.

4.3 No Conflict. To the best of Surf Museum's knowledge, Surf Museum's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Surf Museum or any parties affiliated with Surf Museum is a party or by which it is bound.

4.4 No Bankruptcy. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings have been filed or are pending or threatened against the Surf Museum or any parties affiliated with Surf Museum, nor are any of such proceedings contemplated by Surf Museum or any parties affiliated with Surf Museum.

4.5 Notice of Changed Conditions. Until the final disbursement of the Improvement Loan, Surf Museum shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 4 not to be true in any material respect, immediately give written notice of such fact or condition to CDC. Such exception(s) to a representation shall not be deemed a breach by Surf Museum hereunder, but shall constitute an exception which CDC shall have a right to approve or disapprove if such exception would have a material adverse effect on the Premises and/or operation of at the Premises. If CDC elects to disburse the Improvement Loan to the Surf Museum following disclosure of such information, Surf Museum's representations and warranties contained herein shall be deemed to have been made as of the date of the disbursement of the Improvement Loan, subject to such exception(s). If following the disclosure of such information the Surf Museum fails to cure such matter within the time set forth in Section 5 hereof for the cure of defaults, CDC may elect in its sole and exclusive discretion to terminate this Agreement by written notice to the Surf Museum.

5. Remedies for Default. A failure by either party to perform any action or covenant required by this Agreement, the Promissory Note, any security interest thereof or the Lease, or any loan or deed of trust for the Premises which is senior to the Improvement Loan, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the Promissory Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in any security interest to the Promissory Note, the Lease or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event that the Surf Museum is in default on any loan or deed of trust senior to the Development Loan, the Surf Museum shall immediately deliver to the CDC a copy of such notice of default. Even if the holder of such loan or deed of trust has not exercised its rights or remedies with respect to such default, the CDC shall have the right (but not be obligated to) cure such default. In such event, the CDC shall be entitled to reimbursement from the Surf Museum of all costs and expenses actually incurred by the CDC in curing such default, plus interest at the rate of seven percent (7%) per annum. The CDC shall be entitled to add such amount to the amounts owing pursuant to the Promissory Note, and security interest related thereto.

5.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. The CDC may also cause all indebtedness of the Surf Museum under this Agreement and the Promissory Note to become immediately due and payable, and may institute any applicable legal and/or equitable action. Legal and/or equitable action(s) must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Southern District of California.

5.2 Acceptance of Service of Process. In the event that any legal action is commenced by the Surf Museum against CDC, service of process on CDC shall be made by personal service upon the CDC or in such other manner as may be provided by law. In the event that any legal action is commenced by CDC against the Surf Museum, service of process shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

5.3 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or

more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

5.4 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.5 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.6 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

6. General Provisions.

6.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice:

To CDC: Oceanside Community Development Commission
300 North Coast Highway
Oceanside, CA 92054
Attention: Executive Director

with a copy to: Oceanside Community Development Commission
300 North Coast Highway
Oceanside, CA 92054
Attention: CDC General Counsel

To Surf Museum: Prior to the Commencement Date

Oceanside Surf Museum
223 North Coast Highway
Oceanside, CA 92054

After the Commencement Date

To the Premises

with a copy to: Steven M. Angus, Esq.
2611 South Coast Highway 101, Suite 204
Cardiff by the Sea, California 92027

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute

receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

6.2 Non-Liability of Officials and Employees of CDC and CDC. No member, official, officer or employee of CDC shall be personally liable to the Surf Museum, or any successor in interest, in the event of any Default or breach by CDC or for any amount which may become due to the Surf Museum or its successors, or on any obligations under the terms of this Agreement.

6.3 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

6.4 Integration. This Agreement, together with the Property Lease Agreement, Promissory Note, any security interest thereof, as well as any other attachments thereto, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Exhibits "A", "B", "B-1", "C", and "D", which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

6.5 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

6.6 Modifications. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

6.7 Severability. If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

6.8 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

6.9 Time of Essence. Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

6.10 Cooperation. Each party shall cooperate with the other in this transaction and, in that regard, sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

6.11 Definitions. Any terms used in this Agreement but not separately defined herein shall have the meaning given to such terms in the Promissory Note or any security interest thereto, as appropriate.

IN WITNESS WHEREOF, CDC and the Surf Museum have executed this Loan Agreement as of the date first set forth above.

CDC:

APPROVED AS TO FORM:

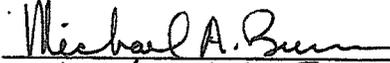

CDC General Counsel

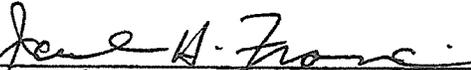
OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION

By: 
Name: Mr. Peter Weiss
Title: Executive Director/City Manager

SURF MUSEUM:

CALIFORNIA SURF MUSEUM
a California nonprofit corporation

By: 
Name: MICHAEL A. BURWER
Title: DIRECTOR

By: 
Name: JACK H. FRANCIS
Title: DIRECTOR

Surf Museum's Signature(s) Must be Notarized

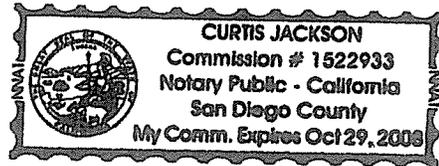
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)^{SS.}

On 8.6.08 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Michael A. Burner
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.



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]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: Loan Agreement

Document Date: 8.6.08 Number of Pages: _____

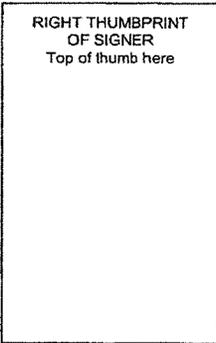
Signer(s) Other Than Named Above: Jack H. Francis

Capacity(ies) Claimed by Signer

Signer's Name: Michael A. Burner

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

Signer Is Representing: _____



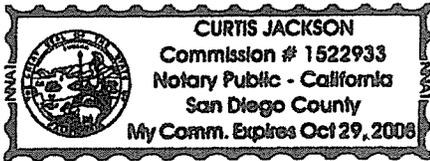
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)^{SS.}

On 8.6.08 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Jack H. Francis
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.



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]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: Loan Agreement

Document Date: 8.6.08 Number of Pages: _____

Signer(s) Other Than Named Above: Michael A. Turner

Capacity(ies) Claimed by Signer

Signer's Name: Jack H. Francis

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

Signer Is Representing: _____

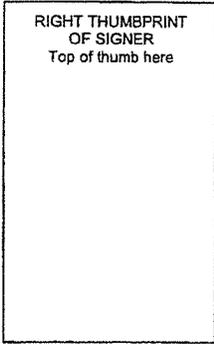


Exhibit "A"

PROMISSORY NOTE

\$575,115.00

_____, 2008
Oceanside, California

FOR VALUE RECEIVED, THE CALIFORNIA SURF MUSEUM, a California nonprofit corporation (the "Borrower"), promises to pay to the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, (the "CDC"), or order, at the CDC's office at 300 North Coast Highway, Oceanside, California or at such other place as the CDC may designate in writing, the sum of Five Hundred Seventy-Five Thousand One Hundred Fifteen and No/100 Dollars (\$575,115), which represents the "Improvement Loan Amount" pursuant to the Loan Agreement executed by the CDC and the Borrower dated as of _____, 2008 (the "Loan Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement. Provisions for reduction in the principal balance hereof are set forth in Section 3 of this Promissory Note. Payments shall be made in currency of the United States of America which at the time of payment is lawful for the payment of public and private debts.

1. **Agreement.** This Promissory Note (the "Note") is given in accordance with provisions of the Loan Agreement. The rights and obligations of the Borrower and the CDC under this Note shall be governed by the Loan Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Loan Agreement or any other document related to the principal balance of this Note, the terms of this Note shall prevail.

2. **Repayment of Note.** The principal balance hereof shall be paid by the Borrower as follows:

a. **Repayment Term.** The Promissory Note shall be for a term of five (5) years from the date of the commencement date of the Property Lease Agreement between the CDC and the Borrower entered into as of _____ 2008 ("Lease").

b. **Forgiveness of Note.** The Surf Museum shall annually, on or before ninety (90) days after the end of the Surf Museum's fiscal year, beginning in the year after the Commencement Date, submit to the CDC a Performance Satisfaction Report as set forth in the Loan Agreement, which shall provide the basis for the forgiveness of the Note by the CDC. The CDC shall forgive portions of or the Note, as applicable, upon Borrower's satisfaction of certain performance criteria as set forth in the Loan Agreement. The performance criteria are more particularly set forth in the Performance Plan described in the Loan Agreement.

4. **Security.** This Note is secured by a UCC-1 fixture filing.

5. **Waivers**

a. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the CDC's sole discretion and that the CDC may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Note made by agreement by the CDC with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

c. Subject to the Provisions of Section 17 of this Note, the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by CDC in acting with respect to the terms of this Note or any security interest shall constitute a waiver of any breach, default, or failure or condition under this Note, any security interest or the obligations secured thereby. A waiver of any term of this Note, any security interest or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

6. Attorneys' Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

7. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

8. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the CDC.

9. CDC May Assign. CDC may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Borrower.

10. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Note without the prior express written consent of the CDC, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Loan Agreement.

11. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Loan Agreement.

12. Acceleration and Other Remedies. Upon: (a) the occurrence of an event of Default as defined in the Loan Agreement, or (b) Borrower selling, contracting to sell, giving an option to purchase, conveying, leasing, further encumbering, mortgaging, assigning or alienating the Borrower's interest in the premises described in the Lease ("Premises"), whether directly or indirectly, whether voluntarily or involuntarily or by operation of law, or any interest in the Premises, or suffering its title, or any interest in the Premises to be divested, whether voluntarily or involuntarily, without the consent of the CDC or as otherwise permitted under the Loan Agreement, CDC may, at CDC's option, declare the outstanding principal amount of this Note, together with other charges hereunder, and all other sums secured by any security interest, to be due and payable immediately, and upon such declaration, such principal and other sums shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. CDC shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as CDC may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of the CDC in exercising any right hereunder, under the Loan Agreement shall

not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Loan Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of CDC's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

13. Consents. Pursuant to the terms and condition of the Loan Agreement and any changes thereto, Borrower hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms and/or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Borrower, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

14. Successors and Assigns. Whenever "CDC" is referred to in this Note, such reference shall be deemed to include the Oceanside Community Development Commission and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the CDC and CDC's successors and assigns.

15. Usury. It is the intention of Borrower and CDC to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;
- b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by CDC or, if this Note shall have been paid in full, refunded to Borrower; and
- d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to CDC for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that CDC may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

16. Miscellaneous. Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as CDC hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

17. No Personal Liability. In the event of any default under the terms of this Note or any security interest, Borrower's officers, directors, agents and employees shall not be personally liable for the payment of this Note; provided, however, that the foregoing shall not in any way affect any rights the CDC may have (as a secured party or otherwise) hereunder or under the Loan Agreement or any security interest to recover directly from Borrower any losses, damages, costs and expenses incurred by the CDC, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by CDC as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the CDC in connection thereof (including without limitation reasonable attorneys' fees and costs).

BORROWER:

California Surf Museum, a California nonprofit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

LOAN AGREEMENT
EXHIBIT "B"
DISBURSEMENT SCHEDULE

No.	Item Description	Amount	Date	Beginning Balance	Balance
				\$575,115.00	
1.	Development soft costs	\$0.00			\$575,115.00
2.	Construction deposit		(est.)		\$575,115.00
3.	Phase 1 of construction (building façade)		(est.)		
4.	Phase 2 of construction (standard tenant improvements)		(est.)		
5.	Phase 3 of construction (specific Lessee improvements)		(est.)		
	Balance Remaining				

LOAN AGREEMENT
EXHIBIT "B-1"
DISBURSEMENT SCHEDULE
PROCEDURE

The proceeds of the Improvement Loan, in accordance with the terms and conditions of the Loan Agreement and Promissory Note between the Oceanside Community Development Commission ("CDC") and the California Surf Museum ("Surf Museum"), shall be disbursed to the Surf Museum as follows:

1. Surf Museum shall submit for CDC's prior approval, the construction contract ("Contract") between Surf Museum and its contractor for the Tenant Improvements required by the Property Lease Agreement between the CDC and the Surf Museum ("Tenant Improvements"), which Contract shall include a detailed line item scope of work for the Tenant Improvements together with the corresponding cost for each line item.
2. Upon commencement of the Tenant Improvement scope of work, Surf Museum, no more frequently than every two (2) weeks, may submit an Application and Certificate for Payment, similar to the standard AIA Document G702 and G703 forms (AIA Form).
3. Upon satisfactory completion of the AIA Form and subsequent approval of the AIA Form by CDC, together with the submittal of the requisite supporting documentation and other applicable forms, CDC will issue a check (or joint check if the CDC, in its absolute and sole discretion deems necessary) to the Surf Museum for payment to its contractor. Said check shall be payable to the Surf Museum within thirty (30) days of receipt of a completed and approved AIA Form.

EXHIBIT "C"

CALIFORNIA SURF MUSEUM
PERFORMANCE PLAN

The following performance goals/standards were approved by the California Surf Museum Board of Directors via email March 5-6, 2008, by a vote of 13-0 in favor (two members absent from vote; one member had previously approved) to be included in lease/loan agreement for 312 Pier View Way with the Oceanside Community Development Commission. 20% of the loan from the CDC will be forgiven each year if these goals/standards are timely accomplished to the CDC's reasonable satisfaction.

YEAR	PERFORMANCE GOAL/STANDARD
<u>2008-09</u>	<ol style="list-style-type: none">1. Hold exhibit opening reception2. Hold annual event honoring surfer3. Begin researching and planning a surf film festival4. Continue fundraising efforts5. CSM will be open seven days per week from 10 am to 4 pm6. CSM will be open in conjunction with the Sunset Market7. CSM will expand and enhance the gift shop8. The facility will be available for a minimum of one City function9. Conduct an annual membership meeting
<u>2009-10</u>	<ol style="list-style-type: none">1. Hold exhibit opening reception2. Hold annual event honoring surfer3. Host book signing /artist reception/surf music concert4. Hold at least one surf film festival5. CSM will enhance website and keep information current6. CSM will apply for grants and continue fundraising efforts7. CSM will be open seven days per week from 10 am to 4 pm8. CSM will be open in conjunction with the Sunset Market9. The facility will be available for a minimum of one City function10. Conduct an annual membership meeting
<u>2010-11</u>	<ol style="list-style-type: none">1. Hire an Executive Director2. Work on plan to accelerate fundraising campaign3. Hold exhibit opening reception4. Host annual event honoring surfer5. Host 2 book signings / artist receptions / concerts6. Host at least two surf film festivals7. CSM will be open seven days per week from 10 am to 4 pm

8. CSM will be open in conjunction with the Sunset Market
9. The facility will be available for a minimum of one City function
10. Conduct an annual membership meeting

2011-12

1. Institute the plan to accelerate fundraising campaign
2. Implement a school tour program
3. Hold exhibit opening reception
4. Host annual event honoring surfer
5. Host 4 book signings / artist receptions / concerts
6. Host at least two surf film festivals
7. CSM will be open seven days per week from 10 am to 4 pm
8. CSM will be open in conjunction with the Sunset Market
9. The facility will be available for a minimum of one City function
10. Conduct an annual membership meeting

2012-13

1. Continue with planned fundraising campaign
2. Implement a school tour program
3. Hold exhibit opening reception
4. Host annual event honoring surfer
5. Host 4 book signings / artist receptions / concerts
6. Host at least two surf film festivals
7. CSM will be open seven days per week from 10 am to 4 pm
8. CSM will be open in conjunction with the Sunset Market
9. The facility will be available for a minimum of one City function
10. Conduct an annual membership meeting

CALIFORNIA SURF MUSEUM
PERFORMANCE SATISFACTION REPORT

Per the terms and conditions of the Loan Agreement and Promissory Note ("Loan Agreement") between the Oceanside Community Development Commission ("CDC") and the California Surf Museum ("Surf Museum"), as an obligation to the repayment of the improvement loan described in the Loan Agreement ("Improvement Loan"), the Surf Museum is required to annually submit to the CDC, for its approval, a Performance Satisfaction Report ("Report"). Said Report shall provide the basis for the forgiveness of the Improvement Loan by the CDC on an annual basis.

YEAR - 20__

<u>NO.</u>	<u>PERFORMANCE GOAL</u>	<u>DESCRIPTION OF ACTIVITY COMPLETED</u>	<u>STATUS</u>
------------	-------------------------	--	---------------

1.

2.

3.

4.

**AMENDMENT NO. 1 TO THE TENANT IMPROVEMENT LOAN AGREEMENT
BETWEEN
THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSISON
AND
THE CALIFORNIA SURF MUSEUM**

This Amendment to the Tenant Improvement Loan Agreement ("Amendment") is made this 17th day of June, 2009, by and between the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a municipal corporation, hereinafter called "CDC", and the CALIFORNIA SURF MUSEUM, hereinafter called "Surf Museum".

RECITALS

WHEREAS, CDC and the Surf Museum are the parties to that certain Tenant Improvement Loan Agreement, dated August 13, 2008, ("the Agreement"), wherein CDC loaned to the Surf Museum \$575,115 for the construction of the improvements to that certain real property located at 312 Pier View Way Building (the "Premises");

WHEREAS, the Surf Museum requires additional funds in the amount of \$31,265 to complete the improvements of Premises for the operation of the California Surf Museum;

WHEREAS, CDC and the Surf Museum mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Tenant Improvement Loan Agreement be modified as follows:

A G R E E M E N T

1. Section 1 of the original Agreement shall be and hereby is amended and modified to read:

- 1. Tenant Improvement Loan.** Subject to Surf Museum's performance of all of the terms, covenants and conditions set forth herein, the CDC hereby agrees to loan to the Surf Museum, and the Surf Museum agrees to borrow from the CDC, the sum of Six Hundred Six Thousand Three Hundred Eighty Dollars (\$606,380) (the "Improvement Loan") for

the construction of the Improvements to the Premises. CDC shall make the Improvement Loan to Surf Museum from available funds in the CDC's 591.879454.5241 Trust Fund, which shall be disbursed to Surf Museum as provided herein.

2. Exhibit "A" of the Agreement shall be and hereby is amended and modified by Amendment No.1 to the Promissory Note dated June 10, 2009, attached to this Amendment.

3. Exhibit "B" of the Agreement shall be and hereby is amended and modified in its entirety by replacing it with a modified Exhibit "B" dated August 13, 2008, attached to this Amendment.

4. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.

5. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

6. All provisions in the Agreement that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Next Page]

7. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the respective entities of the CDC and the Surf Museum.

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 Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CDC

THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION

Date 6-18-09

By: Oster Klein
Executive Director

APPROVED AS TO FORM:

By: Paula Hamilton, ABST.
General Counsel

Borrower

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 5/22/09

By: Michael A. Buer Sr.
Name: Michael A. Buer Sr.
Title: Director

Date 5/22/09

By: Jack H. Francis
Name: JACK H. FRANCIS
Title: Director

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 5/22/09 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael Burner & Jack Francis
Name(s) of Signer(s)

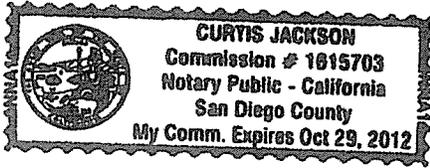
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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 [Signature]
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: _____

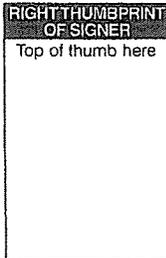
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

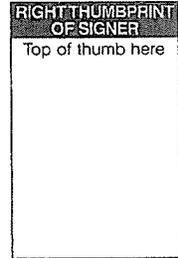
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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. 1 TO THE PROMISSORY NOTE TO
THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION
FROM
THE CALIFORNIA SURF MUSEUM**

This Amendment to the Promissory Note ("Amendment") is made this 10th day of June, 2009, by the CALIFORNIA SURF MUSEUM, hereinafter called "Borrower".

RECITALS

WHEREAS, Borrower has executed that certain Promissory Note, dated August 13, 2008 ("the Note"), pursuant to that certain Loan Agreement wherein the Oceanside Community Development Commission ("CDC") loaned to the Borrower \$575,115 for the construction of improvements to that certain real property located at 312 Pier View Way (the "Premises");

WHEREAS, the Borrower requires additional funds in the amount of \$31,265 to complete the improvements of Premises for the operation of the California Surf Museum;

WHEREAS, CDC and the Borrower mutually desire to amend and modify certain terms and conditions of the Note as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Note be modified as follows:

AGREEMENT

1. Intro of the original Note shall be and hereby is amended and modified to read:

\$606,265.00

FOR VALUE RECEIVED, THE CALIFORNIA SURF MUSEUM, a California nonprofit corporation (the "Borrower"), promises to pay to the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, (the "CDC"), or order, at the CDC's office at 300 North Coast Highway, Oceanside, California or at such other place as the CDC may designate in writing, the sum of Six Hundred Six Thousand Three Hundred Eighty and No/100 Dollars (\$606,380), which represents the "Improvement Loan

Amount" pursuant to the Loan Agreement executed by the CDC and the Borrower dated as of August 13, 2008 (the "Loan Agreement"), as amended by Amendment No. 1 dated June 10, 2009. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement. Provisions for reduction in the principal balance hereof are set forth in Section 3 of this Promissory Note. Payments shall be made in currency of the United States of America which at the time of payment is lawful for the payment of public and private debts.

2. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Note.

3. The provisions of this Amendment shall control over any inconsistent provisions of the Note.

4. All provisions in the Note that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

5. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the Borrower.

IN WITNESS WHEREOF, the Borrower for itself, its heirs, executors, administrators, successors, and assigns does hereby agree to the full performance of the covenants herein contained and has caused this Amendment to be executed by setting hereunto Borrower's authorized signatures on the day and year respectively written herein below.

Borrower

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 5/22/09

By: Michael A. Buerer Sr.
Name: Michael A. Buerer Sr.
Title: Director

Date 5/22/09

By: Jack H. Francis
Name: JACK H. FRANCIS
Title: DIRECTOR

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

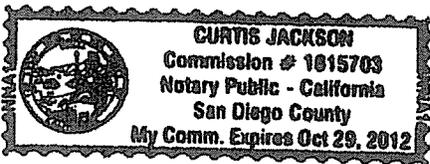
On 5/22/09 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael Burner & Jacke Francis
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.

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 [Handwritten Signature]
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: _____

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: _____

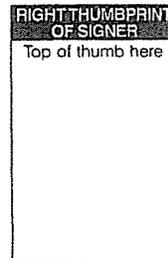
Signer Is Representing: _____



Signer's Name: _____

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

Signer Is Representing: _____



**LOAN AGREEMENT
EXHIBIT "B"
DISBURSEMENT SCHEDULE**

No.	Item Description	Amount	Date	Balance
			Beginning Balance	\$606,380.00
1.	Development soft costs			\$606,380.00
2.	Construction deposit		(est.)	\$606,380.00
3.	Phase 1 of construction (building façade)		(est.)	
4.	Phase 2 of construction (standard tenant improvements)		(est.)	
5.	Phase 3 of construction (specific Lessee improvements)	_____	(est.)	_____
	Balance Remaining			