ITEM NO. 9

STAFF REPORT

CITY OF OCEANSIDE

DATE: May 16, 2012

TO: Honorable Mayor and City Council Members

FROM: Property Management

SUBJECT: **AMENDMENT 2 TO THE CPI PROPERTY LEASE AGREEMENT WITH HOBIE CAT COMPANY FOR A PORTION OF THE PREMISES LOCATED AT 4925 OCEANSIDE BOULEVARD**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 to the CPI Property Lease Agreement with Hobie Cat Company for a portion of the property located at 4925 Oceanside Boulevard, increasing the square footage of the premises and increasing the minimum annual revenue to $616,409; and authorize the City Manager to execute the amendment.

BACKGROUND

In 1993 the City of Oceanside as landlord ("City") and the Hobie Cat Company as tenant ("Hobie") originally entered into CPI Property Lease Agreement for a portion of the property located at 4925 Oceanside Boulevard, Oceanside, CA ("Property"). In 2008 the City and Hobie entered into a new CPI Property Lease Agreement ("Agreement").

The Agreement was for the lease of approximately 66,540 square feet of space in Building C and portions of Building A and B at the Property ("Premises"), with the City occupying the remainder of the space in the buildings at the Property. The Agreement terminated on November 30, 2013, and provided Hobie with one option to extend for five years.

In January 2011, to accommodate Hobie's need for additional warehouse and office space, the Agreement was amended to increase the Premises by an additional 10,689 square feet. Additionally, the Agreement was also amended to extend the term for an additional five years to expire on November 30, 2018, and provided Hobie with another five-year option to extend.

Due to the continued growth of their business and the need for even more warehouse space, Hobie again inquired about leasing more space at the Property. As a result of the City consolidating office and warehouse space at the Property, additional warehouse space became available for lease to Hobie.

ANALYSIS

The proposed second amendment expands the Premises by an additional 7,176 square feet for a total of 84,405 square feet leased to Hobie. The additional square footage consists of warehouse space only. The 7,176 square feet of warehouse space is currently occupied by the Building Maintenance Division and the Public Works Department which will be consolidating and relocating to space previously occupied by the Water Utilities Department.

The rent for the additional 7,176 square feet will be at the same $0.61 per square foot rent that Hobie is currently paying for the existing 77,229 square feet of space. The proposed second amendment also provides for Hobie to pay for a portion of the cost of water being used at the Property that is now being charged to the Property by the Water Utilities Department.

FISCAL IMPACT

Hobie currently pays an annual rent of $564,003 subject to annual Consumer Price Index ("CPI") increases. The 7,176 square feet of additional space results in an increased annual rent of $52,406 for a total Premises rent of $616,409 per year. Over the remainder of the lease term of the Agreement the minimum rent amount for the additional 7,176 square feet is $340,641.

Additional revenue may be generated based on the annual increases in the CPI. Assuming an annual CPI increase of 2% for each remaining year of the term, the total revenue for the remainder of the lease term of the Agreement for the 84,405 square feet of space could potentially be $4,347,067.

It is estimated that the City will need to spend approximately $20,000 out of the Deferred Building Maintenance Account 630607581 to install the demising fence in the warehouse area and to relocate the Building Maintenance Division and the Public Works Department to other space at the Property. It is requested that the cost of the approximate $20,000 be reimbursed into the Public Works Department Deferred Building Maintenance Account 630607581.4351 as the increase in rent is received from Hobie.

INSURANCE REQUIREMENTS

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

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 to the CPI Property Lease Agreement with Hobie Cat Company for a portion of the property located at 4925 Oceanside Boulevard, increasing the square footage of the premises and increasing the minimum annual revenue to $616,409; and authorize the City Manager to execute the amendment.

PREPARED BY:

Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director FOR TF

AMENDMENT NO. 2 TO LEASE AGREEMENT

This Amendment No. 2 to Lease Agreement ("SECOND AMENDMENT") is made this 16th of May 2012, by and between the City of Oceanside ("CITY") and Hobie Cat Company, a Missouri corporation ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE entered into that certain CPI Property Lease Agreement, dated May 21, 2008 ("AGREEMENT"), for a portion of the premises located at 4925 Oceanside Boulevard, Oceanside, CA ("CITY BUILDING") consisting of approximately 66,540 square feet ("PREMISES");

WHEREAS, CITY AND LESSEE entered into that certain Amendment No. 1 to Lease Agreement, dated January 5, 2011, increasing the PREMISES by 10,689 square feet for a total of approximately 77,229 square feet;

WHEREAS, LESSEE is desirous of leasing additional space from CITY consisting of approximately 7,176 square feet of warehouse space in the building owned by the CITY, which is currently occupied by the CITY; and

WHEREAS, CITY is desirous of leasing to LESSEE additional space in the building owned by the City and expanding the PREMISES by 7,176 square feet for a total of approximately 84,405 square feet.

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

AGREEMENT

The AGREEMENT shall be amended to read as follows:

1. Subsection 1.01 Premises of SECTION 1: USES is deleted in its entirety and replaced with the following language:

1.01 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY, in accordance with the terms of this AGREEMENT, a portion of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as 4925 Oceanside Boulevard, Building C; a portion of Buildings A and B; and the exclusive use of the parking areas, located on a map marked Exhibit "A-2" and more particularly shown on a sketch thereof marked Exhibit "A-3", attached hereto and by this reference made a part of this AGREEMENT (hereinafter referred to as the

("PREMISES"). The building area of the PREMISES shall consist of a total of eighty-four thousand four hundred five square feet (84,405 SF).

This SECOND AMENDMENT increases the PREMISES by an additional seven thousand one hundred seventy-six square feet (7,176 SF) as more particularly shown on a sketch thereof marked Exhibit "B-4", attached hereto and by this reference made a part of this AGREEMENT ("EXPANDED PREMISES"). LESSEE agrees to accept and lease said EXPANDED PREMISES in an "AS IS" "WHERE IS" condition without any warranties express or implied, except as set forth herein below.

2. Subsection 2.01 Term for Premises of SECTION 2: TERM is amended by adding the following language:

2.01(a) Commencement of Term for Expanded Premises.

The commencement of the term for the EXPANDED PREMISES shall be the earlier of June 1, 2012 or the date the EXPANDED PREMISES is made available to LESSEE by CITY.

3. Rent for the EXPANDED PREMISES shall be initially calculated at Seven and 30.3/100 Dollars per square foot ($7.303) per year for an additional annual rent of Fifty-Two Thousand Four Hundred Six and 35/100 Dollars ($52,406.35). Rent shall begin on the commencement of the term for the EXPANDED PREMISES and be subject to all other terms and conditions of the AGREEMENT including the methodology and timing of any rent increases.

4. CITY, at its cost and expense shall provide a chain-link fence to separate the warehouse portion of the EXPANDED PREMISES from the CITY occupied space in the CITY BUILDING. The CITY shall also be responsible for the removal of a portion of a wall and some offices located within the EXPANDED PREMISES, as more particularly shown on a sketch thereof marked Exhibit "B-5", attached hereto and by this reference made a part of this AGREEMENT.

5. Subsection 5.05 Utilities of SECTION 5: IMPROVEMENTS/ALTERATIONS/ REPAIRS is deleted in its entirety and replaced with the following language:

5.05 Utilities.

LESSEE shall pay for all electricity and gas services and charges to the portion of the PREMISES commonly referred to as Buildings "B" and "C". In addition, beginning on the commencement date of the EXPANDED PREMISES as set forth in Subsection 2.01(a) above, LESSEE shall pay a portion of the cost of water provided to the CITY BUILDING. Said amount shall initially be Two Hundred and No/100 Dollars ($200.00) per month and shall be due and payable as Rent and subject to all of the terms and conditions set forth in Section 3 above.

6. All other terms, conditions, covenants and provisions of the AGREEMENT shall remain in full force and effect. In the event of any conflict between the terms of the AGREEMENT and this SECOND AMENDMENT, the terms of this SECOND AMENDMENT shall control.

"CITY"

THE CITY OF OCEANSIDE,
a Municipal corporation

APPROVED AS TO FORM:

By: _____
City Manager

By: _____
City Attorney

"LESSEE"

HOBIE CAT COMPANY
a Missouri corporation

By: _____

Name: DOUG SKIDMORE

Title: PRESIDENT

By: _____

Name: BILL BALDWIN

Title: SECRETARY / TREASURER

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)ss.

On 5/3/12 (Date) before me, Curtis Jackson, Notary Public (Name and Title of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared Douglas Skidmore & Bill Baldwin (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.

CURTIS JACKSON
Commission # 1815703
Notary Public - California
San Diego County
My Comm. Expires Oct 29, 2012

WITNESS my hand and official seal.

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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

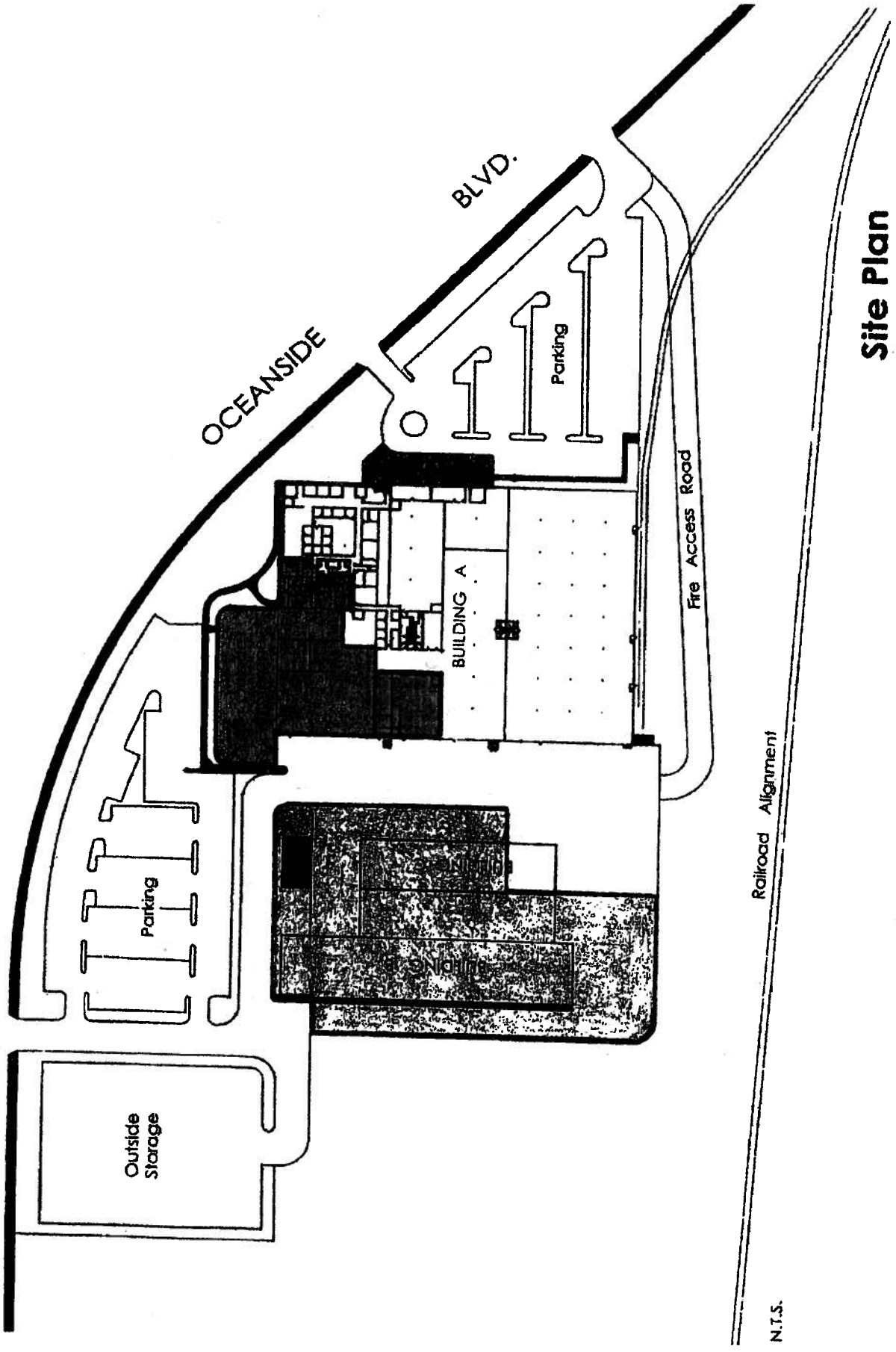
Signer's Name: _____

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

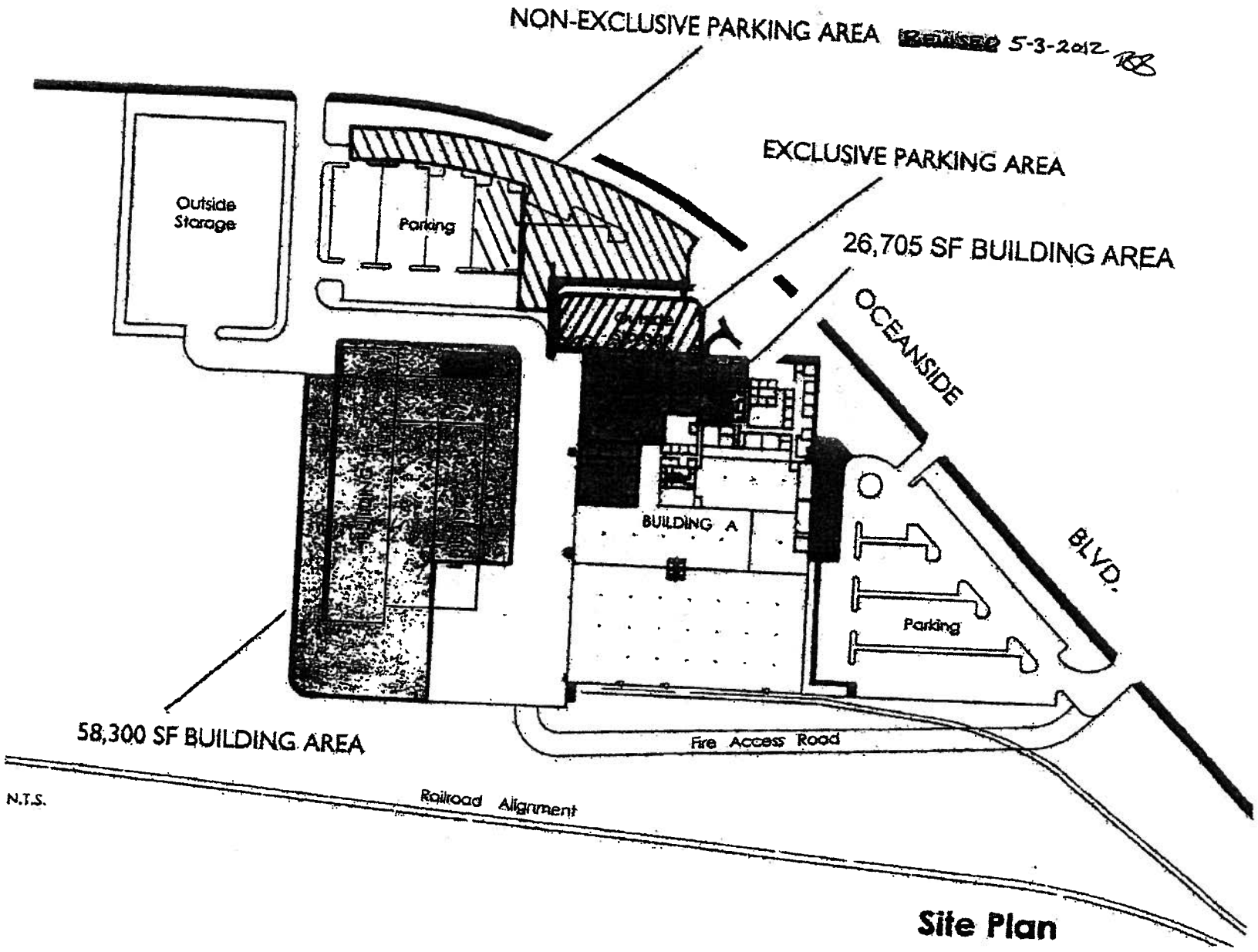
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

EXHIBIT "A-2"



Site Plan



Site Plan

EXHIBIT "A-3"

1. PRIOR BUILDING "A" SPACE LEASED TO HOBIE – 18,929 SF
2. ADDITIONAL BUILDING "A" SPACE LEASED TO HOBIE – 7,176 SF

TOTAL BUILDING "A" SPACE LEASED TO HOBIE – 26,105 SF

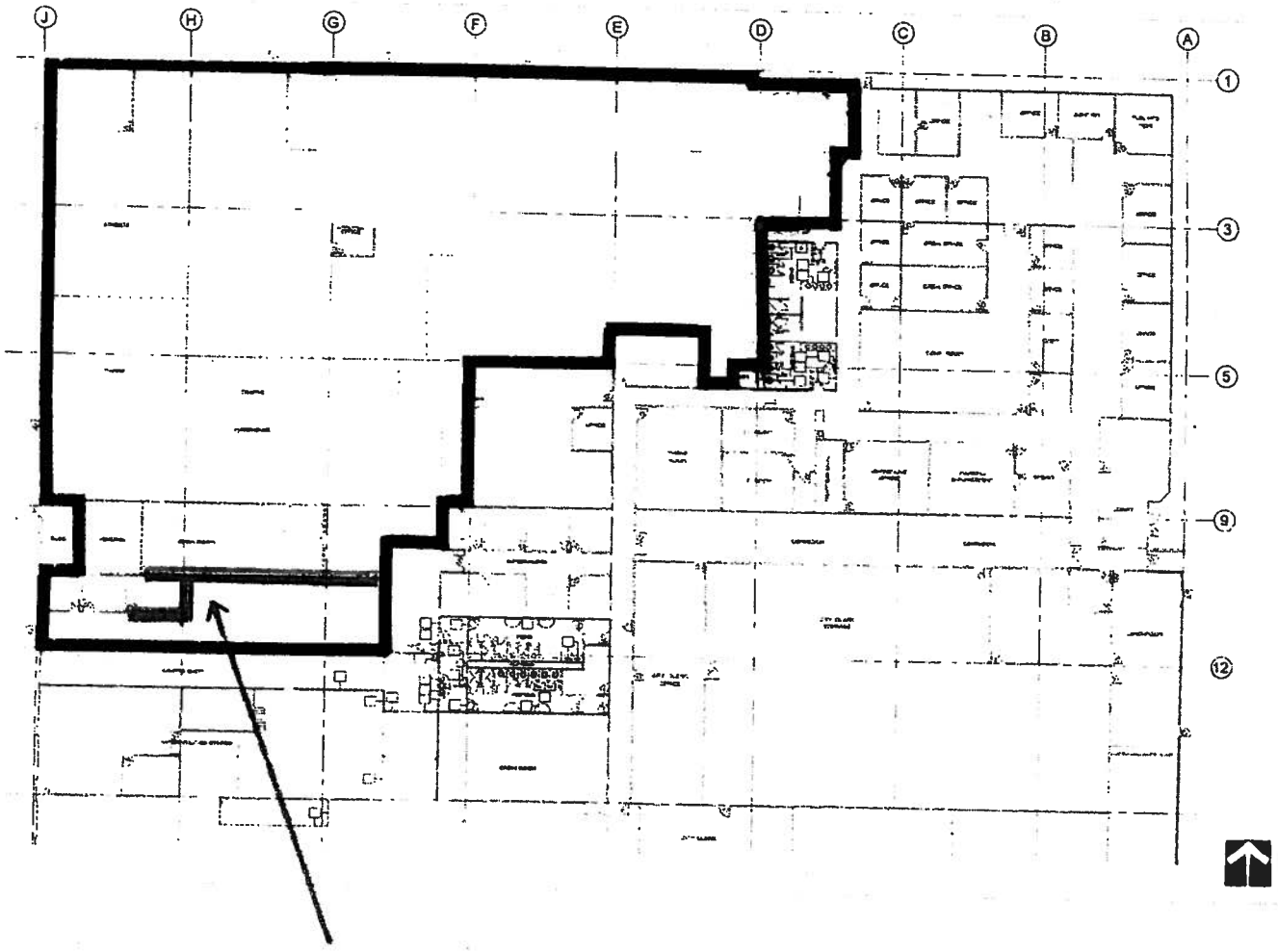
CITY OF OCEANSIDE – C.O.C.

1"=50'

EXHIBIT "B-4"

REVISED 5-3-2012 BB

EXHIBIT "B-5"



PORTION OF WALL AND OFFICE AREA TO BE REMOVED

CITY OF OCEANSIDE – C.O.C.

1"=50'

City Original
Document No. 08-D0326-1
5/21/08 (10)

CPI PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

HOBIE CAT COMPANY

FOR THE LEASE OF CITY OWNED REAL PROPERTY

LOCATED AT

4925 OCEANSIDE BOULEVARD

DATED

May 21, 2008

CITY OF OCEANSIDE
CPI PROPERTY LEASE AGREEMENT
WITH HOBIE CAT
FOR PROPERTY AT 4925 OCEANSIDE BLVD.

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CPI PROPERTY LEASE AGREEMENT
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CITY OF OCEANSIDE
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WITH HOBIE CAT
FOR PROPERTY AT 4925 OCEANSIDE BLVD.

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City Original
Document No. 08-D0326-1
5/21/08 (10)

CITY OF OCEANSIDE
CPI PROPERTY LEASE AGREEMENT
WITH HOBIE CAT
FOR PROPERTY AT 4925 OCEANSIDE BLVD.

THIS LEASE AGREEMENT, herein after called "AGREEMENT", is executed between the **CITY OF OCEANSIDE**, a Municipal Corporation, hereinafter called "CITY", and the **HOBIE CAT COMPANY**, a Missouri Corporation, hereinafter called "LESSEE".

A G R E E M E N T

NOW THEREFORE, the parties hereto mutually agree as follows:

SECTION 1:USES:

1.01 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY, in accordance with the terms of this Agreement, a portion of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as 4925 Oceanside Boulevard, Building C and a portion of Building A and B, located on a map marked Exhibit "A", attached hereto and by this reference made a part of this Agreement (hereinafter referred to as the "PREMISES").

1.02 Parking Lot and Other Common Areas.

It is expressly understood that LESSEE shall have non-exclusive use of common areas on Premises, including the parking lot, where LESSEE will share spaces with CITY as shown on Exhibit "B". The parking lot shall be delivered to LESSEE paved and striped.

1.03 Uses.

It is expressly agreed that the PREMISES are leased to LESSEE solely and exclusively for the purpose of **general industrial purposes, including but not limited to, the manufacturing of small water craft, sailboats and kayaks**, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. LESSEE shall not use the PREMISES in any manner which disturbs the quiet enjoyment of surrounding property owner's use of their property. In the event that LESSEE fails to continuously use the PREMISES for said purposes, or uses the

PREMISES for purposes not expressly authorized herein, the LESSEE shall be deemed in default under this Agreement.

1.04 Related Council Actions.

By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the PREMISES. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the PREMISES.

1.05 Quiet Possession.

LESSEE, paying the rent and performing the covenants and Agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the PREMISES. If CITY for any reason cannot deliver possession of the PREMISES to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of the CITY a proportionate reduction of the rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the PREMISES.

1.06 Reservation of Rights.

CITY shall not unreasonably or substantially interfere with LESSEE'S use of the PREMISES while LESSEE is in possession of the PREMISES; however, the CITY specifically retains the following rights:

A. **Subsurface Rights.** CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the PREMISES.

B. **Easements.** CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased PREMISES for utilities, thoroughfares, or access as it deems advisable for the public good.

C. **Right to Enter.** CITY has the right to enter the PREMISES for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

SECTION 2: TERM

2.01 Commencement.

The term of this Agreement for the Premises is for five (5) years, commencing **December 1, 2008** and terminating **November 31, 2013**.

If during the term of this Agreement LESSEE is dispossessed of the PREMISES for any reason whatsoever, CITY shall not be liable to LESSEE for any loss or damage resulting there from.

2.02 Renewal Options.

The LESSEE may request an extension of the term of this Agreement for the PREMISES, which will not be unreasonably withheld by the CITY, for an additional five (5) years under the terms and conditions of this Agreement at the CITY's calculated fair market lease payment rate of similar businesses, provided that the LESSEE is not in default or breach of any term, condition, covenant or provision of this Agreement.

The LESSEE may request not more than one (1) five-year extension of term by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Agreement. The City Manager or City Manager's designee shall notify the LESSEE not later than thirty (30) days after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City- Manager shall provide LESSEE with the CITY's calculated fair market rent value and rental amount which the CITY is willing to accept for LESSEE's use and occupation of the Premises during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. City Manager's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to LESSEE not later than thirty (30) days from receipt of the request for extension.

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

2.03 Holdover.

Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the PREMISES by LESSEE or by LESSEE's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement, including rental adjustments, shall continue in full force and effect. In addition to the adjusted rent, LESSEE shall, in the event of any holding over beyond ninety (90) days, pay an increase in rent equal to the product of: 1) the adjusted rent, and 2) five percent (5%) per year for each year of the term of Agreement counting from the original commencement date of the Agreement to the expiration or termination date of the Agreement.

2.04 Abandonment by LESSEE.

Even if LESSEE breaches the Agreement and abandons the PREMISES, this Agreement shall continue in effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.05 Quitclaim of LESSEE'S Interest.

On termination of this lease for any reason, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the PREMISES. LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. CITY may record such deed only on the expiration or earlier termination of this Agreement. If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Agreement and all LESSEE's rights to the PREMISES.

2.06 Surrender of Premises.

At the expiration or earlier termination of this Agreement, LESSEE shall surrender the PREMISES to CITY free and clear of all liens and encumbrances created by LESSEE, except those liens and encumbrances which existed on the date of the

execution of this Agreement by CITY. The PREMISES, when surrendered by LESSEE, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

2.07 Time is of Essence.

Time is of the essence of all of the terms, covenants, conditions and provisions of this Agreement.

SECTION 3:RENT

3.01 Time and Place of Payment.

The LESSEE shall make all rental payments monthly in advance on or before the first day of each new month. Checks should be made payable to the City of Oceanside and delivered to the City of Oceanside at the address set forth in Section 7 of this Agreement. The place and time of payment may be changed at anytime by CITY upon thirty (30) days' written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges.

3.02 Rent.

A. **Initial Rent Amount.** The initial annual rent amount for the first year of this Agreement shall be Four Hundred Fifty-Five Thousand One Hundred Thirty-Four Dollars and Fifty-Six Cents(**$ 455,134.56**) which shall be payable monthly in advance at the rate of Thirty-Seven Thousand Nine Hundred Twenty-Seven Dollars and Eighty-Eight Cents(**$ 37,927.88**) on or before the first day of each new month. 3/8/05

B. **Rental Adjustment Date.** The rental adjustment date shall be each one year anniversary of said start date (as defined in Section 2.01) of this Agreement. The annual rent amount, and the corresponding prorated monthly payments, under this Agreement shall be adjusted on each rental adjustment date as set forth below.

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

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

Regardless of the index publication dates, the minimum rent adjustment dates shall be on the dates defined by Subsection 3.02 B above. Until the minimum rent adjustment can be actually calculated in accordance with this Lease, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to CITY within **30 days** of written notice by the CITY. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

D. **Minimum Rent Adjustment Computation.** The annual minimum rent adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Minimum Annual Rent: The minimum annual rent at the commencement of this Lease as listed in Subsection 3.02.A above.

Existing Minimum Annual Rent: The existing minimum annual rent shall be the minimum annual rent amount in effect on the date preceding the rental adjustment date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12 month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

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

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

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

For example: $105 + ($100 x 7%) = $112

However, in no event shall the adjusted rent increase be less than **two percent (2%)** nor more than **eight percent (8%)** per year."

3.03 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.04 Security Deposit.

None

3.05 Renewal Option Rent.

Not Applicable.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity.

LESSEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the LESSEE or its employees, agents, or others in connection with its use and occupation of the PREMISES under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. LESSEE's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same

proceed to judgment or not. Further, LESSEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

4.02 Insurance.

A. LESSEE shall, throughout the duration of this Agreement maintain comprehensive general liability or commercial general liability insurance and property damage insurance covering all operations and activities of LESSEE, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

B. LESSEE shall maintain the following minimum limits:

General Liability

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

Automobile Liability

Combined Single Limit Per Occurrence	$1,000,000

Fire, extended coverage, and vandalism insurance policy(s) on all LESSEE's insurable property on the PREMISES.

C. All insurance companies affording coverage to the LESSEE shall be required to add the City of Oceanside as "insured" under the insurance policy(s) required in accordance with this Agreement.

D. All insurance companies affording coverage to the LESSEE shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

E. All insurance companies affording coverage shall provide thirty (30) day written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a

cancellation.

F. LESSEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

G. LESSEE shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the LESSEE to provide such a substitution and extend the policy expiration date shall be considered a default by LESSEE and may subject the LESSEE to a termination of this Agreement.

H. Maintenance of insurance by the LESSEE as specified in this Agreement shall in no way be interpreted as relieving the LESSEE of any responsibility whatever and the LESSEE may carry, at its own expense, such additional insurance as it deems necessary.

I. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by LESSEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

4.03 Accident Reports.

LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS ($10,000) worth of property damage or any serious injury to persons on the PREMISES. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

4.04 Waiver of Subrogation

Notwithstanding anything herein to the contrary, neither party shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring in or on the PREMISES, or in any manner growing out of or connected with LESSEE's uses and occupation of the PREMISES, or the condition thereof, whether caused by the negligence or other fault of CITY or LESSEE, or of their respective agents, employees, subtenants, licensees, or assignees. This release shall apply to the extent that such business interruption, loss, or damage to property or injury to or death of persons is covered by insurance, regardless of whether such insurance is payable to or protects CITY or LESSEE, or both. Nothing herein shall be construed to impose any other or greater liability upon either CITY or LESSEE than would have existed in the absence of this provision. This release shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this release shall not affect the right of the insured and additional insured to recover under such policies. Such clauses shall be obtained whenever possible.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises.

LESSEE represents and warrants that it has independently inspected the PREMISES and made all tests, investigations, and observations necessary to satisfy itself of the condition of the PREMISES. LESSEE acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. LESSEE further acknowledges that the PREMISES are in the condition called for by this Agreement and that LESSEE does not hold CITY responsible for any defects in the PREMISES.

5.02 Waste, Damage, or Destruction.

LESSEE shall give notice to CITY of any fire or other damage that occurs on the PREMISES within ten-days or such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to the PREMISES clean and clear or refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the PREMISES shall be damaged by any cause which puts the PREMISES into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to made full repair of said damage and/or to restore the PREMISES to the

condition which existed prior to said damage.

The repair and/or reconstruction of the damage and/or destruction to the building or buildings of which the PREMISES are a part, provided such risk is covered by CITY's insurance, shall be the responsibility of the CITY. In the event the City elects to repair and/or reconstruct the building or buildings, or any portion thereof, LESSEE shall, upon completion of CITY's repair and/or reconstruction, complete its repair and/or restoration of the PREMISES portion of the building or buildings (e.g. tenant improvements, trade fixtures and personal property, etc.). LESSEE shall be responsible for all costs incurred in the repair and/or restoration of the PREMISES portion of the building or buildings.

5.03 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the PREMISES throughout the term of this Agreement. LESSEE will make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, upon written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. LESSEE shall make payment no later than thirty (30) days after written notice from the CITY. Further, if at any time CITY determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY. Excepting maintenance for structural integrity, which will be the responsibility of CITY.

5.04 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the PREMISES, and the PREMISES may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major

structural or architectural design alterations to approved improvements, structures, or installations may not be made on the PREMISES without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Agreement to maintain the PREMISES in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations, except as provided for in Section 6.04 of this Agreement.

5.05 Utilities.

NONE

5.06 Liens.

LESSEE shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES without the prior written consent of the City Manager. LESSEE shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES for which LESSEE does not have the prior written consent of the City Manager.

5.07 Encumbrance.

Upon receiving prior consent by the City Manager, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the leased PREMISES. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the PREMISES; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural , engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the PREMISES or on any permanent improvements thereon, shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the PREMISES or otherwise to the benefit of the CITY at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not amend or alter any of the terms, covenants or conditions of this Agreement.

5.08 Taxes.

LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE for its machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the PREMISES, including any licenses or permits.

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

5.09 Signs.

LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the PREMISES, LESSEE shall remove the item at its expense within 24 hours of written notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost.

5.10 Ownership of Improvements and Personal Property.

A. Any and all leasehold improvements, structures, and installations or additions, except for those items listed in Exhibit "C," to the PREMISES now existing or constructed on the PREMISES by LESSEE shall at Agreement expiration or termination be deemed to be part of the PREMISES and shall become, at CITY's option, CITY's property, free of all liens and claims except as otherwise provided in this Agreement.

B. If CITY elects not to assume ownership of all or any improvements, structures and installations, CITY shall so notify LESSEE in writing thirty

(30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before Agreement expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

C. LESSEE-owned machines, appliances, equipment and other items of personal property (shown on Exhibit "C") shall be removed by LESSEE by the date of the expiration or termination of this Agreement. Any said items which LESSEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.

D. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the PREMISES, LESSEE shall repair all such damage.

5.11 Eminent Domain.

If all or part of the PREMISES are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

A. **Total Taking.** In the event the entire PREMISES are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

B. **Partial Taking.** In the event of a partial taking, if, in the opinion of CITY, the remaining part of the PREMISES is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of CITY, the remainder of the PREMISES is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the PREMISES taken.

C. **Award.** All monies awarded in any such taking shall belong to CITY,

whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

D. **Transfer.** CITY has the right to transfer CITY'S interests in the PREMISES in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the PREMISES in accordance with this lease.

E. **No Inverse Condemnation.** The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation so long as such rights do not unreasonably or substantially interfere with LESSEE'S operations.

SECTION 6: GENERAL PROVISIONS

6.01 Notices.

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

To CITY:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054
ATTN: Doug Eddow

To LESSEE:

Hobie Cat Company
4925 Oceanside Boulevard
Oceanside, CA 92056
ATTN: Douglas Skidmore

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 CITY Approval.

The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing LESSEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Senior Property Agent of the Engineering Department.

6.03 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the PREMISES.

6.04 Equal Opportunity.

LESSEE agrees to abide by CITY`s Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this Agreement. A copy of the program effective as of the date of this Agreement is on file with the CITY's City Clerk's Office.

6.05 Entire Agreement.

This Agreement comprises the entire integrated understanding between CITY and

LESSEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

6.06 Interpretation of the Agreement.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

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

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

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.07 Agreement Modification.

This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver.

Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the PREMISES is CITY-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the

legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Dispute Resolution.

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be settled first by submission of the matter to mediation the cost of which shall be borne equally by the parties hereto.

6.10 Assignment and Subletting-No Encumbrance.

This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the LESSEE's duties be delegated, without the express written consent of CITY, said consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. A consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination.

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

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

CITY may also terminate this Agreement upon written notice to LESSEE in the event that:

A. LESSEE has previously been notified by CITY of LESSEE's default under this Agreement and LESSEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or

B. LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

C. LESSEE shall be adjudicated a bankruptcy; or

D. LESSEE shall make a general assignment for the benefit of creditors.

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

SECTION 7: SPECIAL PROVISIONS

None

CITY OF OCEANSIDE
CPI PROPERTY LEASE AGREEMENT
WITH HOBIE CAT
FOR PROPERTY AT 4925 OCEANSIDE BLVD.

SECTION 8: SIGNATURES

8.01 Signature Page.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the LESSEE and the CITY.

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 Property Use Permit to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

CITY
THE CITY OF OCEANSIDE, a California municipal corporation

Date _____ By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

LESSEE
HOBIE CAT COMPANY, a Missouri corporation

Date 4/24/08 By: _____

Doug Skidmore President
(Print Name & Title)

Date 5/5/08 By: _____

BILL BALDWIN, V.P. ADMIN.
(Print Name & Title)

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego }

On 5-5-08 (Date) before me, Jeana Reagan, Notary (Here Insert Name and Title of the Officer),

personally appeared Bill Baldwin (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.

JEANA REAGAN
Commission # 1738174
Notary Public - California
San Diego County
My Comm. Expires Apr 18, 2011

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 Jeana Reagan (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: Lease agreement

Document Date: 5-5-08 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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego }

On 4-24-08 (Date) before me, Jeana Reagan (Here Insert Name and Title of the Officer),

personally appeared Doug Skidmore (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 Jeana Reagan (Signature of Notary Public)

JEANA REAGAN
Commission # 1738174
Notary Public - California
San Diego County
My Comm. Expires Apr 18, 2011

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: Lease Agreement

Document Date: 4-24-08 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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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SECTION 9: EXHIBITS

9.01 Exhibit "A".

A sketch showing the PREMISES attached hereto and incorporated herein by reference.

9.02 Exhibit "B".

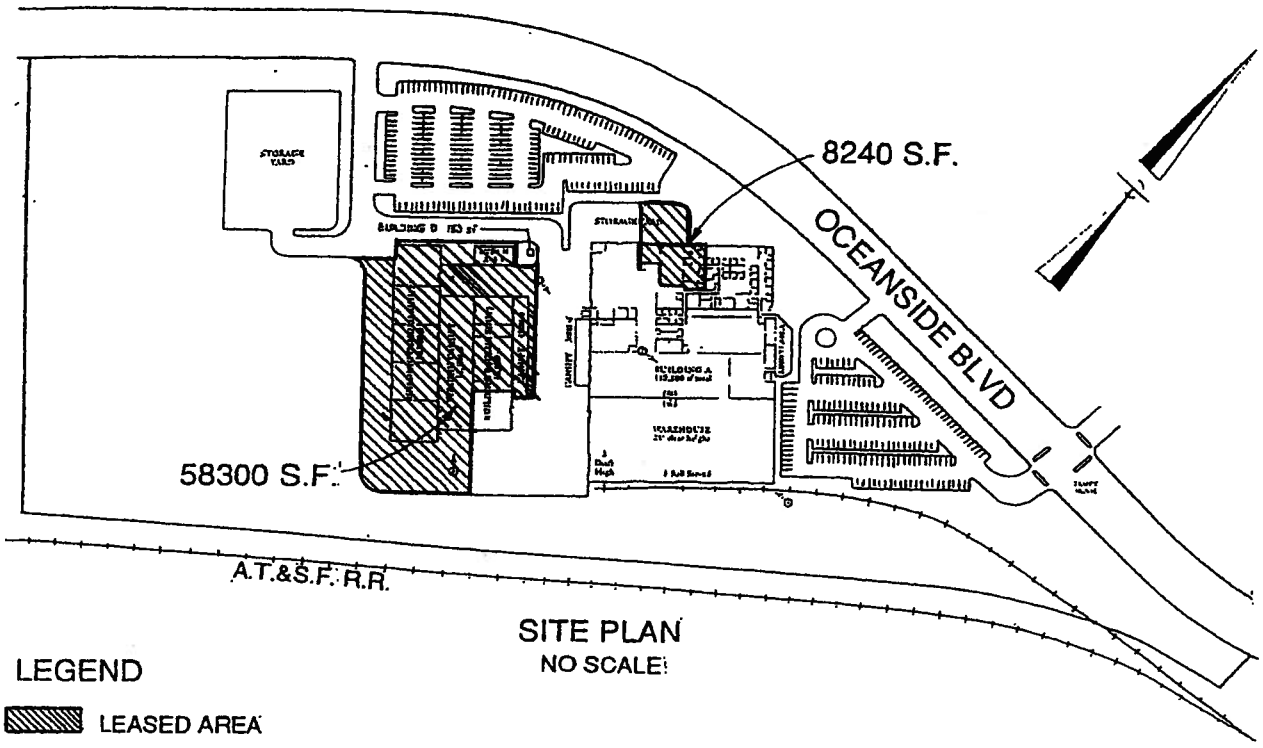
A sketch showing the NON-EXCLUSIVE PARKING attached hereto and incorporated by reference.

9.03 Exhibit "C".

A list of tenant improvements LESSEE is authorized to remove upon termination of LEASE attached hereto and incorporated herein by reference.

City Original
Document 08-D0326-1
5/21/08 (10)

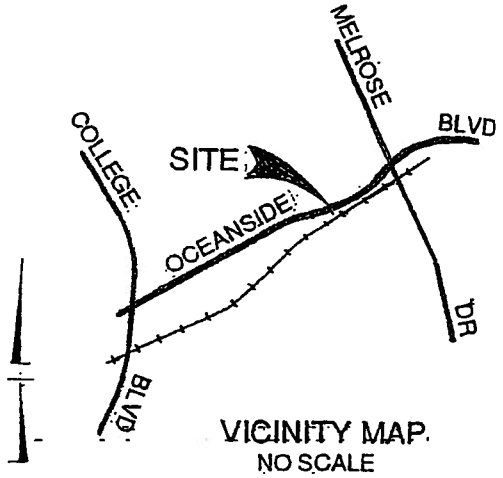
124137



SITE PLAN
NO SCALE

LEGEND

LEASED AREA



VICINITY MAP
NO SCALE

Revision	By	Approved	Date

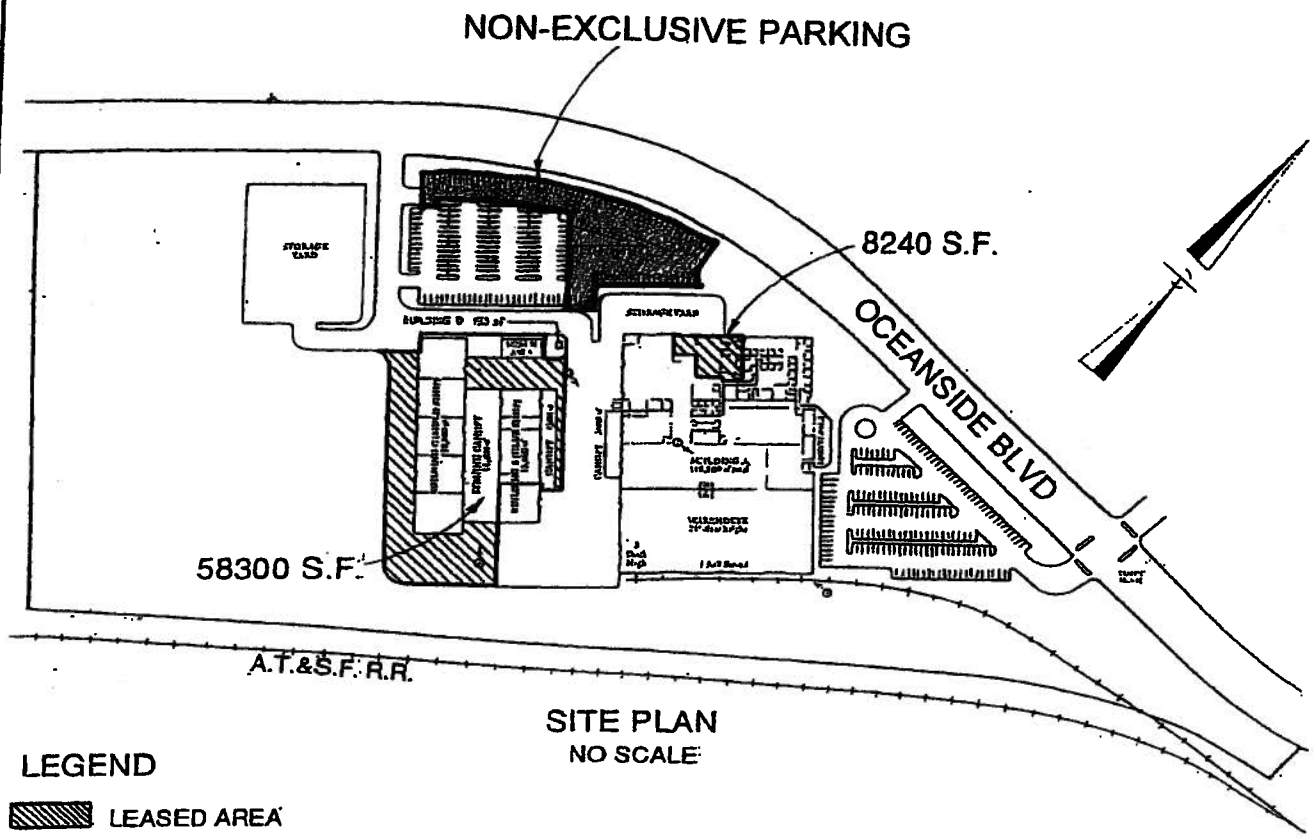
CITY OF OCEANSIDE

SKETCH SHOWING CITY OF OCEANSIDE PREMISES FOR LEASE AGREEMENT WITH THE HOBIE CAT COMPANY

EXHIBIT "A"

City Original
Document No. 08-D0326-1
5/21/08 (10)

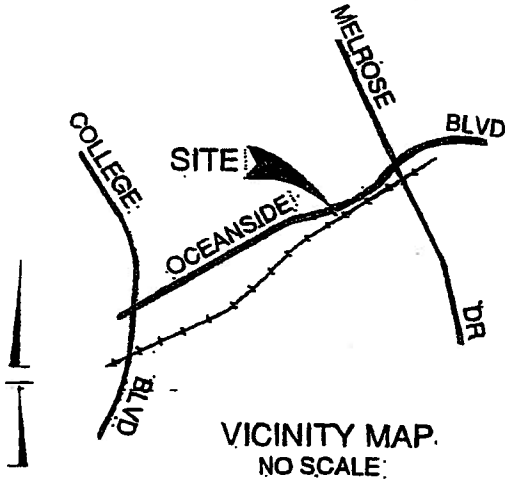
124137



SITE PLAN
NO SCALE

LEGEND

LEASED AREA



VICINITY MAP
NO SCALE

Revision	By	Approved	Date	CITY OF OCEANSIDE	EXHIBIT "B"
				SKETCH SHOWING CITY OF OCEANSIDE NON-EXCLUSIVE PARKING AGREEMENT WITH THE HOBIE CAT COMPANY	