



DATE: June 20, 2012
TO: Honorable Mayor and City Councilmembers
FROM: Economic and Community Development Department
SUBJECT: **LEASE AGREEMENT WITH CITYMARK OCEANSIDE, LLC, TO LEASE
PROPERTY FOR CONTINUED INTERIM PUBLIC PARKING**

SYNOPSIS

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

BACKGROUND

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

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

On July 14, 2010, a new two-year lease agreement was approved retroactively for the period of November 1, 2009 through October 31, 2011, and the CDC has continued making monthly payments.

ANALYSIS

On December 29, 2011, the California Supreme Court upheld AB 26x1, which dissolved all redevelopment agencies in California as of January 31, 2012. The City of Oceanside adopted a resolution and elected to become the Successor Agency to the Oceanside Redevelopment Agency effective February 1, 2012. Because the Redevelopment Agency no longer exists and is currently in a shut-down mode and has no funding to continue making the monthly payments, a new lease agreement must be agreed upon to continue providing interim parking in the downtown.

The Landlord's plan to develop the Subject Property remains on hold and as such, the Landlord desires to cooperate with the City Council to continue to lease the Subject Property for interim public parking and has agreed upon a monthly lease payment of \$100 for the two parking lots. In exchange, the City agrees to continue with the maintenance and insurance obligations on the two parking lot parcels in the interest of the goodwill of the downtown. The annual cost of \$30,844 for both lots includes maintenance such as sweeping, landscaping, trash removal, pressure washing the perimeter, striping, signage and graffiti, but does not include any asphalt repairs or slurry, amortized over 20 years.

By entering into a new lease agreement ("New Lease") for a term of two years, the City Council is in a position to continue providing interim public parking in the downtown while pursuing the development of the Lot 23 parking structure at Pier View Way and Cleveland Street using uncommitted bond funds. Additional parking in the downtown is crucial as in the near future these parking spaces may no longer be available to the public and that eventually the Landlord will develop the land.

FISCAL IMPACT

The total consideration to be paid to the Landlord under the terms of the New Lease is \$100 per year. The total consideration is payable as follows: the amount of \$100 per year for each year starting July 1, 2012.

There are currently funds to pay the total consideration due and payable to the Landlord. Funds in the amount of \$100.00 will be paid from the General Fund Account - Parking Lot Maintenance & Enforcement, 600612101.5390.

INSURANCE REQUIREMENTS

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

CITY ATTORNEY'S ANALYSIS

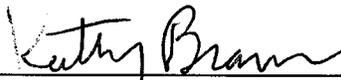
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

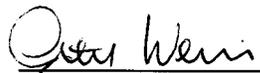
Staff recommends that the City Council approve a two-year Lease Agreement with CityMark Oceanside, LLC, a California limited liability company, for the use of approximately 2.4 acres of land (APN 147-350-18 and 19) along Cleveland Street between Pier View Way and Seagaze Drive to provide continued interim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

PREPARED BY:

SUBMITTED BY:



Kathy Brann
Downtown Development Manager



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director



LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

CITYMARK OCEANSIDE, LLC

FOR

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

DATED EFFECTIVE AS OF

July 1, 2012

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

RECITALS

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

WHEREAS, Lessor, through its predecessor in interest, and the Community Development Commission of the City of Oceanside ("CDC") entered into a Public Use Lease recorded on August 20, 1999, in the Official Records of the San Diego County Recorder's Office (the "Public Use Lease") and a subsequent Lease Agreement dated effective as of November 1, 2009 between Lessor and CDC (the "Prior Lease") for the use of the Premises in order to provide interim public parking;

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

WHEREAS, Lessor and CITY are desirous of terminating the Lease dated November 1, 2009 and entering into a new lease of the Premises upon the covenants, conditions and provisions hereinafter set forth.

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

AGREEMENT

SECTION 1: PROPERTY

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

1.02 Uses. CITY shall have the exclusive use of the Premises for the purpose of providing interim public parking. Subject to Lessor's prior written consent (which may be granted or withheld in Lessor's sole discretion), the Premises may also be used for other related municipal or incidental purposes.

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

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

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

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

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of two (2) years, commencing on July 1, 2012 ("Lease Commencement Date").

2.02 Termination of Lease dated November 1, 2009. Immediately prior to the effective date of this Lease, the Prior Lease shall terminate. Neither party shall have any remaining obligations arising under the Prior Lease after the date of such termination, except for the following, all of which shall survive termination of the Prior Lease: (a) those provisions set forth in Article 9, Environmental Provisions, of the Public Use Lease and (b) those provisions set forth in (i) Section 1.05, Discharge of Liens, Encumbrances, and (ii) Section 4.01(a), CDC Indemnification, of the Prior Lease.

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

2.04 Holdover. Any holding over by CITY after expiration or termination shall not be considered as a renewal or extension of this Lease. Any occupancy of the Premises by CITY after the expiration or termination of this Lease shall constitute a month-to-month tenancy. All other terms and conditions of this Lease shall continue in full force and effect during any holdover period, provided that the rent to be paid by CITY during any holdover period pursuant to Section 3.01.a shall automatically increase from an annual aggregate amount of \$100 to an annual aggregate amount of \$60,000.

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

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

SECTION 3: CONSIDERATION

3.01 Rent.

a. Rent Amount. CITY shall pay an annual rent of One Hundred Dollars (\$100.00) payable July 1, 2012.

SECTION 4: INDEMNITY AND INSURANCE

4.01 Indemnity.

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

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

employees in defending against such claims, whether the same proceed to judgment or not.

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

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

a. **Insurance Coverage.**

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

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

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

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

b. **General.**

(1) Insurance Companies. Insurance required to be maintained by CITY hereunder shall be written by companies licensed to do business in

the state in which the Premises are located and having a "General Policyholders Rating" of at least "A – VIII" (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

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

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

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

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

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

c. **Self-Insurance.** Notwithstanding anything herein to the contrary, CITY may self-insure any of its insurance coverage obligations hereunder as

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

SECTION 5: MAINTENANCE OF PROPERTY

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

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

SECTION 6: UTILITIES AND TAXES

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

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

SECTION 7: IMPROVEMENTS/ALTERATIONS AND PERSONAL PROPERTY

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

7.02 Ownership of Improvements and Personal Property.

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

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

SECTION 8: DAMAGE AND/OR DESTRUCTION

8.01 CITY's Obligations. In the event the Premises and/or improvements are damaged and/or destroyed to any extent for any reason whatsoever, CITY in its sole discretion shall have the right to either repair said damage and/or destruction or elect not to repair the damage or destroyed portion of the Premises and/or improvements. The foregoing notwithstanding, CITY shall promptly make a claim under its insurance policies to cover the repair costs associated with any damage and/or destruction to the Premises. Any insurance proceeds CITY receives, or is entitled to receive, in connection with any damage or destruction to the Premises shall be used by CITY to promptly repair the Premises, provided that in the event CITY elects not to repair said damage and/or destruction, CITY shall promptly tender all insurance proceeds to Lessor. If any such damage and/or destruction materially affects CITY's ability to conduct its operation in the Premises, either party shall have the right to terminate the Lease by giving at least **thirty (30) days** written notice to the other party, and in such event, all insurance proceeds received by CITY (or which CITY is entitled to receive) shall be promptly tendered to Lessor. Upon Lessor's request, CITY shall assign to Lessor its rights to any claim to be made by CITY against its insurance policies as contemplated under this Section 8.01.

SECTION 9: CONDEMNATION

9.01 Eminent Domain. If the entire Premises are taken through condemnation proceeding or under threat of condemnation by any governmental entity (other than CITY or any subdivision or instrumentality of the CITY), then this Lease shall automatically terminate, CITY shall vacate the Premises and Lessor shall return to CITY a prorated portion of the annual rent paid by CITY, determined based on the number of days the Lease was in effect. If less than the entire Premises is taken through such a proceeding or under such a threat, Lessor shall have the right to terminate this Lease by written notice delivered to CITY, in which event Lessor shall return to CITY a prorated portion of the annual rent paid, again determined based on the number of days the Lease was in effect. If Lessor elects not to terminate this Lease in the event of such a proceeding or threat, CITY shall be relieved from a prorated portion of CITY's obligations

under this Lease as to rent for the Premises, determined by the proportion of the amount of the Premises which has been so taken and which is not available to CITY for parking uses relative to the amount of the Premises which is still available for such use.

SECTION 10: DEFAULT BY LESSEE

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

SECTION 11: GENERAL PROVISIONS

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

To CITY:

THE CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

To Lessor:

CITYMARK OCEANSIDE, LLC

c/o GF Properties Group, LLC
355 S. Teller Street, Suite 210
Lakewood, CO 80226
Attention: Justin Roberts

With a copy to:

Krendl Krendl Sachnoff & Way, P.C.

370 Seventeenth Street, Suite 5350
Denver, CO 80202
Attention: Sherri Way

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) **three (3) working days** following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

11.02 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 Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

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

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

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

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

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

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

11.09 Dispute Resolution, Attorney's Fees. In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee

to be fixed by the Court. Venue for enforcement of this Lease shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

11.10 Assignment and Subletting. CITY may not assign its interest under this Lease or sublease all or a portion of the Premises with the prior written consent of the Lessor. No permitted assignment shall relieve CITY of its obligations and liabilities under this Lease.

11.11 Section Headings. The section headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision thereof.

SECTION 12: SIGNATURES

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

[SIGNATURE PAGE TO FOLLOW]

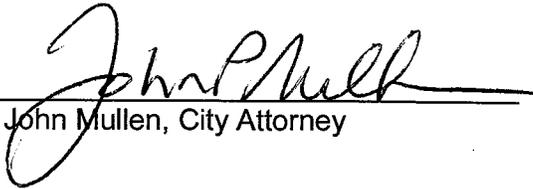
IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease to be executed on the day and year respectively written hereinbelow.

"CITY"

THE CITY OF OCEANSIDE

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

By: _____
Peter Weiss, City Manager

By: 
John Mullen, City Attorney

"Lessor"

CITYMARK OCEANSIDE, LLC

By: 
Mark Mitchell

Title: Its Authorized Representative

Dated: 5/30/12

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

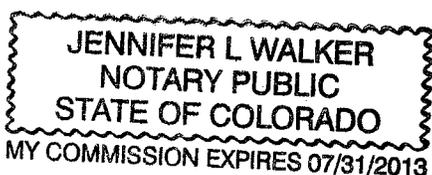
ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
COUNTY OF Jefferson)

On May 30, 2012, before me personally appeared MARK MITCHELL, Authorized Representative of CITYMARK OCEANSIDE, LLC, a California limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SEAL



Jennifer L Walker
Notary Public
My Commission Expires: _____

Exhibit "A"

Legal Description

Real property in the City of Oceanside, County of San Diego, State of California, described as follows:

PARCEL 1:

A PARCEL OF LAND IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 500-FOOT WIDE OCEANSIDE STATION GROUNDS AS DESCRIBED IN DEED DATED FEBRUARY 19, 1887 TO CALIFORNIA SOUTHERN RAILROAD COMPANY (PREDECESSOR IN INTEREST TO SAID RAILWAY COMPANY), RECORDED FEBRUARY 23, 1887 IN BOOK 78 OF DEEDS AT PAGE 390, RECORDS OF SAID COUNTY, LYING IN THE NORTHWEST QUARTER OF SECTION 26 IN TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF THIRD STREET (80 FEET WIDE) AS SHOWN ON MAP OF OCEANSIDE, FILED AS MAP NUMBER 310, ON OCTOBER 13, 1883 IN RECORDS OF SAID COUNTY, WITH THE NORTHEASTERLY LINE OF CLEVELAND STREET (50 FEET WIDE) AS ESTABLISHED BY DEED RECORDED IN BOOK 751 OF DEEDS, PAGE 282, RECORDS OF SAID COUNTY;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF CLEVELAND STREET, 420 FEET TO THE PROLONGATION OF SAID CENTERLINE OF MISSION AVENUE (FORMERLY SECOND STREET) 100.00 FEET WIDE, AS DESCRIBED IN EASEMENT DATED NOVEMBER 11, 1988, TO THE CITY OF OCEANSIDE, RECORDED DECEMBER 20, 1988 AS INSTRUMENT NO. 88-653383 OF OFFICIAL RECORDS OF THE RECORDS OF SAID COUNTY;

THENCE SOUTHWESTERLY ALONG SAID CENTERLINE AND PROLONGATION, 225 FEET TO INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT NORTHEASTERLY, 25 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF THE MAIN TRACT OF SAID RAILWAY COMPANY'S SAN DIEGO SUBDIVISION OF THE WESTERN REGION;

THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, 420 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY PROLONGATION OF SAID NORTHWESTERLY LINE OF THIRD STREET;

THENCE NORTHEASTERLY ALONG SAID PROLONGATION, 225 FEET TO POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS CONTAINED IN THE ABOVE-DESCRIBED LAND, INCLUDING, WITHOUT LIMITING THE GENERALLY THEREOF, OIL, GAS, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GO UPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS. SANTA FE MAY, HOWEVER, AND HEREBY RESERVED THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LAND BY MEANS OF WELLS, SHAFTS, TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN NO WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED IN A DEED RECORDED FEBRUARY 18, 1992 AS INSTRUMENT NO. 1992-0085416 OF OFFICIAL RECORDS.

APN: 147-350-18-00

PARCEL 2:

A PARCEL OF LAND IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 500-FOOT WIDE OCEANSIDE STATION GROUNDS AS DESCRIBED IN DEED DATED FEBRUARY 19, 1887 TO CALIFORNIA SOUTHERN RAILROAD COMPANY (PREDECESSOR IN INTEREST TO SAID RAILWAY COMPANY), RECORDED FEBRUARY 23, 1887 IN BOOK 78 OF DEEDS AT PAGE 390, RECORDS OF SAID COUNTY, LYING IN THE NORTHWEST QUARTER OF SECTION 26, IN TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF THIRD STREET (80 FEET WIDE) AS SHOWN ON MAP OF OCEANSIDE, FILED AS MAP NUMBER 310, ON OCTOBER 13, 1883 IN RECORDS OF SAID COUNTY, WITH THE NORTHEASTERLY LINE OF CLEVELAND STREET (50 FEET WIDE) AS ESTABLISHED BY DEED RECORDED IN BOOK 751 OF DEEDS, PAGE 282, RECORDS OF SAID COUNTY;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF CLEVELAND STREET, 420 FEET TO THE PROLONGATION OF THE CENTERLINE OF MISSION AVENUE (FORMERLY SECOND STREET) 100.00 FEET WIDE, AS DESCRIBED IN EASEMENT DATED NOVEMBER 11, 1988, TO CITY OF OCEANSIDE, RECORDED DECEMBER 28, 1988 AS INSTRUMENT NO. 88-653383 OF OFFICIAL RECORDS OF THE RECORDS OF SAID COUNTY AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHEASTERLY CONTINUING ALONG SAID NORTHEASTERLY LINE OF CLEVELAND STREET, 340 FEET TO INTERSECTION WITH THE NORTHWESTERLY LINE OF FIRST STREET (80 FEET WIDE) AS SHOWN ON SAID MAP NO. 310;

THENCE SOUTHWESTERLY ALONG THE SOUTHWESTERLY PROLONGATION OF SAID NORTHWESTERLY LINE OF FIRST STREET, 225 FEET TO INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT NORTHEASTERLY, 25 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF SAID RAILWAY COMPANY'S WESTERN REGION, SAN DIEGO SUBDIVISION, MAIN TRACK;

THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, 340 FEET TO INTERSECTION WITH SAID CENTERLINE OF MISSION AVENUE;

THENCE NORTHEASTERLY ALONG SAID CENTERLINE OF MISSION AVENUE, 225 FEET TO POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS CONTAINED IN THE ABOVE-DESCRIBED LAND, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GO UPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS. SANTA FE MAY, HOWEVER, AND HEREBY RESERVES THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LAND BY MEANS OF WELLS, SHAFTS, TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN NO WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED IN A DEED RECORDED FEBRUARY 18, 1992 AS INSTRUMENT NO. 1992-0085418 OF OFFICIAL RECORDS.

APN: 147-350-19-00

