

STAFF REPORT



ITEM NO. 7
CITY OF OCEANSIDE

DATE: January 30, 2013

TO: Honorable Mayor and City Councilmembers
President and Directors of the Harbor District Board

FROM: Property Management Division

SUBJECT: **APPROVAL OF A TWO-YEAR PROPERTY USE AGREEMENT WITH OCEANSIDE OUTRIGGER CANOE CLUB ON OCEANSIDE SMALL CRAFT HARBOR DISTRICT-OWNED PROPERTY**

SYNOPSIS

Staff recommends that the City Council and Harbor District Board approve a two-year property use agreement with Oceanside Outrigger Canoe Club, for canoe storage on Oceanside Small Craft Harbor District-owned property, for a two-year total revenue of \$30,120; and authorization for the City Manager to execute the agreement.

BACKGROUND

The Oceanside Outrigger Canoe Club ("OOC") is a non-profit Oceanside-based club that was formed from the Pao Pao Outrigger Club and the Makana Ke Kai Canoe Club. These clubs were organized in Oceanside in the 1990's and have been a strong community presence throughout the years. OOC has over three hundred members who race competitively as well as members who paddle for exercise and recreation. The age of the members ranges from twelve to over fifty. OOC is part of the Southern California Outrigger Racing Association ("SCORA"). SCORA is the organization that governs the rules, regulations and competitions for the sport of outrigger canoe racing in the region. The OOC has members who compete at various division levels in Southern California and Hawaii.

OOC canoes are currently stored on the beach and need to be moved for public access. OOC approached the Oceanside Small Craft Harbor District looking for a storage area for their canoes, which are forty-five feet in length and weigh approximately four hundred fifty pounds.

ANALYSIS

The property use agreement is for 3,500 square feet (50' X 70') of fenced and concreted

real property directly across from the boat launch ramp and adjacent to the District's maintenance storage building and will be used for the storage of canoes and support equipment. The term of the agreement is two years with two one-year renewal options. Either party may terminate the agreement by giving the other party 30 days written notice.

FISCAL IMPACT

The agreement will generate a two-year total revenue of \$30,120 and will be deposited to the Harbor District account 1751.4496. Approval for an appropriation for FY12-13 in the amount of \$6,275 is requested. The appropriation of revenue for the remaining term of the agreement will be addressed during the regular budget process each year.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

CITY ATTORNEY'S ANALYSIS

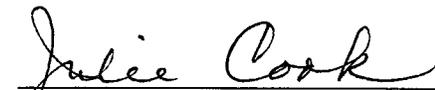
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

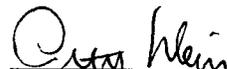
Staff recommends that the City Council and Harbor District Board approve a two-year property use agreement with Oceanside Outrigger Canoe Club, for canoe storage on Oceanside Small Craft Harbor District-owned property, for a two-year total revenue of \$30,120; and authorization for the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Julie Cook
Program Specialist



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Douglas E. Eddow, Real Property Manager



Frank Quan, Harbor and Beaches Coordinator

J.F.Q.

Teri Ferro, Financial Services Director



**OCEANSIDE SMALL CRAFT HARBOR DISTRICT PROPERTY USE AGREEMENT
WITH OCEANSIDE OUTRIGGER CANOE CLUB
FOR USE OF DISTRICT OWNED PROPERTY**

THIS PROPERTY USE AGREEMENT, hereinafter called "Agreement", is executed between the **OCEANSIDE SMALL CRAFT HARBOR DISTRICT**, hereinafter called "DISTRICT", and the **OCEANSIDE OUTRIGGER CANOE CLUB**, hereinafter called "PERMITTEE".

RECITALS

WHEREAS, DISTRICT is the lessee under a ground lease with the City of Oceanside, hereinafter called "CITY" for certain real property in the City of Oceanside, County of San Diego, State of California, commonly known as the Oceanside Harbor; and

WHEREAS, PERMITTEE is desirous of entering into an agreement with DISTRICT to use real property located at the Oceanside Harbor to store outrigger canoes;

WHEREAS, PERMITTEE's use of said real property in accordance with the terms, covenants, conditions and provisions contained hereinbelow are beneficial to overall Oceanside Harbor use.

NOW THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

AGREEMENT

SECTION 1: USES

1.01 Premises. DISTRICT hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of that certain real property situated in the **Oceanside Small Craft Harbor District**, City of Oceanside, County of San Diego, State of California, commonly known as the fenced fifty foot by seventy foot (50" x 70') lot directly south of the harbor boat launch ramp, as more particularly illustrated in Exhibit "A", attached hereto and by this reference made part of this Agreement. Said real property is hereinafter collectively called the "PREMISES". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

All equipment installed on the PREMISES by PERMITTEE shall not be considered fixtures and shall remain the property of PERMITTEE. Within thirty (30) days from expiration or termination of this Agreement, PERMITTEE shall remove all of its equipment at PERMITTEE's sole expense without damage to the PREMISES. Any equipment remaining on the PREMISES after thirty (30) days shall become the property of DISTRICT or be disposed of

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by DISTRICT at PERMITTEE's sole cost and expense, unless DISTRICT agrees to extend the time for removal of the equipment.

1.02 Uses. It is expressly agreed that the PREMISES shall be used by PERMITTEE solely and exclusively for the purpose of storing Oceanside Outrigger Club canoes, 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.

PERMITTEE covenants and agrees to use the PREMISES for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period of approximately **two (2)** years commencing on date of City Council approval and terminating on December 30, 2014.

2.02 Renewal Option. The PERMITTEE shall have the option to extend the term of this Agreement for **two (2)** additional **one (1)** year terms under the terms and conditions of this Agreement at the DISTRICT's calculated fair market property use payment rate of similar businesses, provided that the PERMITTEE is not in default of this Agreement.

The PERMITTEE may request extensions of the term of this Agreement provided that written notice from the PERMITTEE is received by the City Manager no later than **one hundred eighty (180) days** prior to the expiration of the term of this Agreement. No later than **sixty (60) days** from the receipt of PERMITTEE's written election to extend the term of this Agreement the City Manager shall in writing provide PERMITTEE with the DISTRICT's calculated fair market property use payment value which the DISTRICT is willing to accept for the PREMISES. No later than thirty (30) days after the City Manager provides PERMITTEE with the DISTRICT's determination of its acceptable property use payment rate, PERMITTEE shall provide DISTRICT with its determination of acceptance or rejection of the recalculated property use payment rate. In no event shall the property use payment rate be less than that required during the preceding annual term.

2.03 Termination Provisions. Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least **thirty**

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(30) days prior written notice of such termination.

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

SECTION 3: Property Use Payment

3.01 Time and Place of Payment. The PERMITTEE shall make all payments monthly in advance on or before the 1st day of each month. Checks should be made payable to the Oceanside Small Craft Harbor District and mailed to: City of Oceanside, Central Cashiering, 300 N. Coast Highway, Oceanside, CA 92054. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days' written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

3.02 Property Use Payment. PERMITTEE agrees to pay DISTRICT, the sum of **one-thousand, two-hundred and fifty-five dollars (\$1,255)** per month for its use and occupation of the PREMISES in accordance with the terms, covenants, conditions and provisions of this Agreement.

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

SECTION 4: INSURANCE RISKS/SECURITY

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

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PERMITTEE at its own expense shall, upon written request by the DISTRICT, defend any such suit or action brought against the DISTRICT, its officers, agents, or employees.

4.02 Insurance. PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

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

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the DISTRICT, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days 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.

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

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

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement

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shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

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

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE 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.

i. DISTRICT, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE **sixty (60) days** prior written notice. DISTRICT'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES. PERMITTEE also agrees to obtain any additional insurance required by DISTRICT for new improvements, in order to meet the requirements of this Agreement.

4.03 Accident Reports. PERMITTEE shall, within **seventy-two (72) hours** after occurrence, report to DISTRICT any accident on the PREMISES causing any property damage or serious injury to persons. 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.

SECTION 5: GENERAL PROVISIONS

5.01 Maintenance. With respect to PERMITTEE's operations at or on the PREMISES, PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to DISTRICT and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, DISTRICT shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by DISTRICT in having such necessary maintenance

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

5.02 Enclosure. PERMITTEE shall not affix, drill or hang anything to enclosures. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its expense within 24 hours of written notice thereof by DISTRICT, or DISTRICT may thereupon remove the item at PERMITTEE's cost. PERMITTEE shall be responsible for any damage or repair caused to enclosure.

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

5.04 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 DISTRICT:

**City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054**

To PERMITTEE:

**Oceanside Outrigger Canoe Club
2530 Vista Way #F-173**

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Oceanside, CA 92054

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.

5.05 DISTRICT Approval. The City Manager shall be the DISTRICT's authorized representative in the interpretation and enforcement of all services 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 PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Real Property Manager, of the Property Management Division.

5.06 Entire Agreement. This Agreement comprises the entire integrated understanding between DISTRICT and PERMITTEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

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

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

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.

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5.07 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.

5.08 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE's duties be delegated, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. A consent by DISTRICT to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

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

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

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

PERMITTEE has previously been notified by DISTRICT of PERMITTEE's default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

PERMITTEE shall be adjudicated a bankruptcy, or

PERMITTEE shall make a general assignment for the benefit of creditors.

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

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5.10 Other Regulations. All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicative rules and regulations and ordinances of the DISTRICT of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

SECTION 6: SPECIAL PROVISIONS

6.01 Boat Launch Ramp Clean-up. As additional consideration, PERMITTEE will be responsible to pressure wash and/or as directed by DISTRICT to clean bird excrement off of boat launch docks and reattach any loose bumpers. Harbor maintenance staff will provide initial clean-up procedures and form check list to PERMITTEE. PERMITTEE will provide documented check list report to DISTRICT maintenance supervisor upon each cleaning. Launch docks will be cleaned monthly from May through September and bi-monthly from October through April.

6.02 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement, shall be provided by PERMITTEE from or at the demised PREMISES.

6.03 Standards of Operation. PERMITTEE agrees that it shall operate and manage the services and facilities offered upon or from the PREMISES in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

6.04 Hazardous Substance. No goods, merchandise or material shall be kept, stored or sold in or on the PREMISES which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the PREMISES if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said PREMISES, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised PREMISES or other premises and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the PREMISES, PERMITTEE may, at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the PREMISES which will in any way injure the PREMISES or improvements thereon, or adjacent properties or improvements thereon, or persons on or near the PREMISES; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about

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the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the DISTRICT.

6.05 Continued Occupancy. PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the PREMISES for the purposes hereinabove specified, except while PREMISES are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, DISTRICT shall be promptly notified by PERMITTEE.

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SECTION 7: SIGNATURES

7.01 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 PERMITTEE and the DISTRICT.

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

DISTRICT

The Oceanside Small Craft Harbor District

Date _____

By _____
Administrative Officer

APPROVED AS TO FORM:

By *Arthur Hamilton, ASSP.*
Harbor Attorney

PERMITTEE

Date *1/18/13*

By *[Signature]*
President *TIMOTHY E MEDCALFE*

Date *1-18-13*

By *[Signature]*
Treasurer *Thomas A. Dean*

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

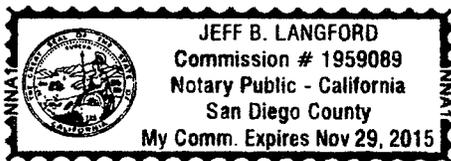
County of San Diego

On Jan 18, 2013 before me, Jeff B. Langford, Notary Public

personally appeared Timothy E. Metcalfe &

Thomas A. Dean

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



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

WITNESS my hand and official seal.

Signature: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

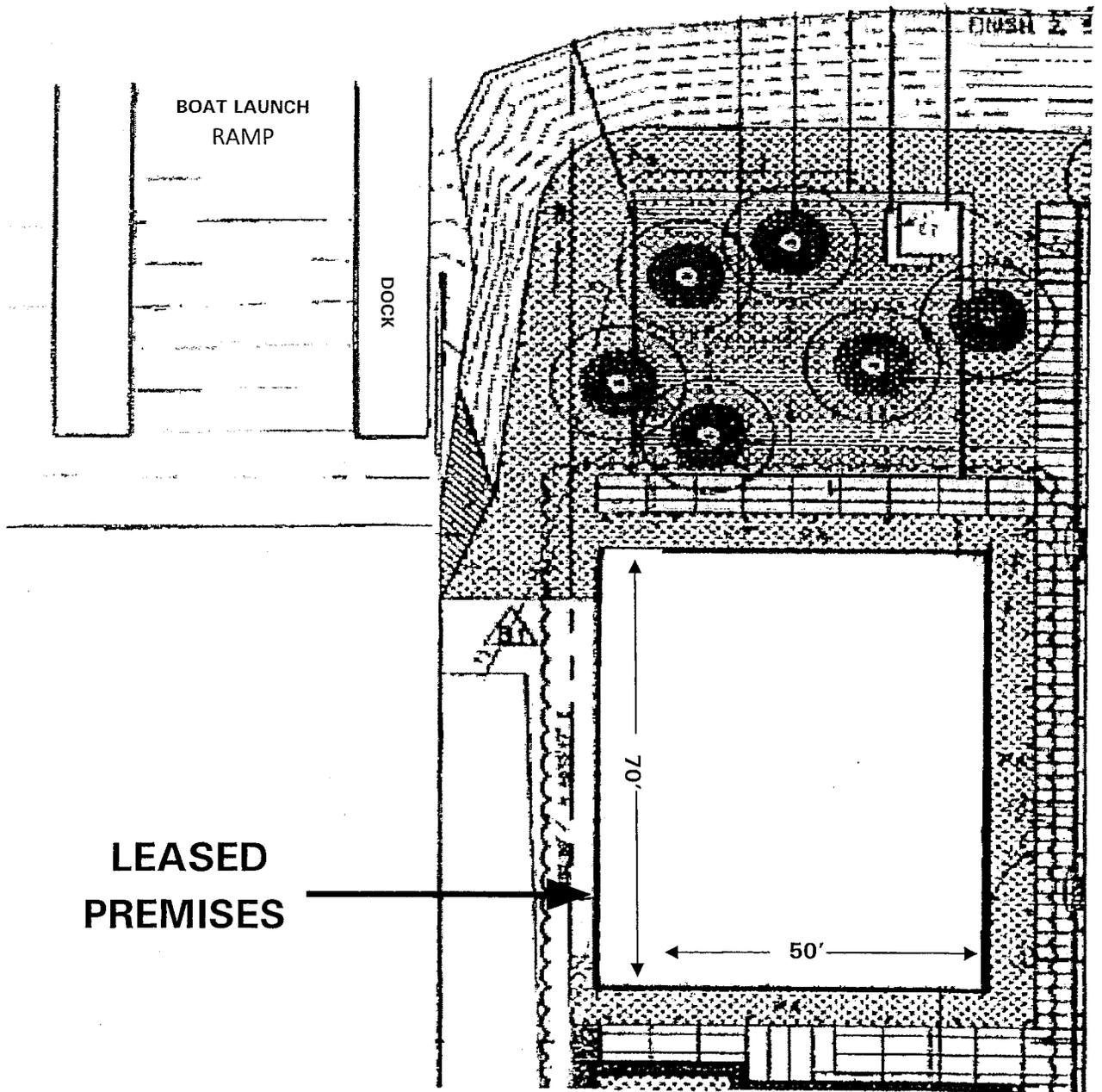
Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

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EXHIBITS

Exhibit "A". A sketch of the PREMISES attached hereto and incorporated herein by reference.



OCEANSIDE HARBOR DISTRICT

SKETCH OF PREMISES FOR

USE AGREEMENT WITH

OCEANSIDE OUTRIGGER CANOE CLUB