



DATE: March 27, 2013

TO: President and Directors of the Harbor District Board

FROM: Property Management Division

SUBJECT: **APPROVAL OF A THREE-YEAR PERCENTAGE LEASE AGREEMENT WITH JIM AND RAMONA RAJNER, DBA JIMMY ROMO'S SUP SURF SHOP, FOR THE PREMISES AT 1850 HARBOR DRIVE NORTH, SUITE C**

SYNOPSIS

Staff recommends that the Harbor District approve a three-year percentage property lease agreement with Jim and Ramona Rajner, dba Jimmy Romo's SUP Surf Shop at 1850 Harbor Drive North, Suite C, located in the north basin of the Harbor, for a three-year minimum total revenue of \$18,000; and authorize the Administrative Officer to execute the agreement.

BACKGROUND

Jim and Ramona Rajner ("Rajners"), currently operate a standup paddleboard lessons business. Due to a surge in popularity of sport standup paddle boarding, CREED SUP, Inc. of San Diego offered the Rajners sole distributorship for CREED SUP boards for Southern California. The Rajners have formed a separate business, Jimmy Romo's SUP Surf Shop ("Romo's") to distribute and sell CREED SUP boards and related accessories at the subject location in the Harbor.

ANALYSIS

The Rajners (Lessee) use of subject premises is limited to interior of the building for sales and displaying of standup paddleboards and related accessories, and not outside of the building or in public access areas. Additionally, Lessee is strictly prohibited from entering or using slip-renter docks for paddleboard demonstration or lessons. Access to the marina basins shall only be by means of the public docks or launch ramps.

Lessee's proposed use of the premises as a standup paddleboard outlet will provide residents and tourists, alike, with additional opportunities to experience and enjoy the Oceanside Harbor.

During the three years of the proposed agreement, Lessee will pay a minimum percentage lease payment of \$6,000 per year, payable monthly in advance at the rate of \$500 per month. In addition to a monthly minimum rent, Lessee shall pay an amount equal to four and one-half percent of gross income, when that amount exceeds the minimum monthly payment. The lease provides for one (1) additional three (3) year extension of the term subject to Harbor Board approval.

FISCAL IMPACT

The proposed percentage lease agreement will result in revenue for the premises, over the three-year term, in the minimum amount of \$18,000 which will be deposited into account number 1751.4496. Additional revenue can be realized based on four and one half percentage of the gross sales that exceed the monthly minimum rent of \$500.

INSURANCE REQUIREMENTS

Lessee will be required to maintain the City's standard insurance requirement over the term of the agreement and name both City and District as additional insured.

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

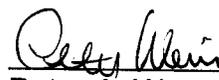
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PREPARED BY:



Julie Cook
Program Specialist

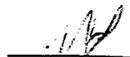
SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



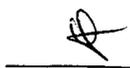
Douglas E. Eddow, Real Estate Manager



Frank Quan, Harbor and Beaches Coordinator

J.F.Q.

Teri Ferro, Financial Services Director



PERCENTAGE LEASE AGREEMENT

BY AND BETWEEN

THE OCEANSIDE SMALL CRAFT HARBOR District

AND

JIM AND RAMONA RAJNER, DBA JIMMY ROMO'S SUP SURF SHOP

ON District REAL PROPERTY

LOCATED AT

1850 HARBOR DRIVE NORTH, SUITE C

DATED

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
PERCENTAGE LEASE AGREEMENT
WITH JIM & RAMONA RAJNER, dba JIMMY ROMO'S SUP SURF SHOP,
FOR PROPERTY AT 1850 HARBOR DRIVE NORTH, SUITE C

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THIS PERCENTAGE LEASE AGREEMENT (this "Lease") dated February 14, 2013, solely for identification purposes, is entered into by and between the **Oceanside Small Craft Harbor District**, a body politic formed under the authority of the California Harbors and Navigation Code (hereinafter called "District"), and **JIM AND RAMONA RAJNER, dba Jimmy Romo's SUP SURF SHOP** (hereinafter called "Lessee"). District and Lessee are sometimes collectively referred to herein as the "Parties"

RECITALS

WHEREAS, District is the Master Tenant under that certain Lease Agreement dated May 7, 2003, by and between the City of Oceanside, a municipal corporation (hereinafter "City"), as Landlord, and the District, as Tenant, and as amended by that certain Amendment No. 1 to Lease Agreement, dated November 4, 2009 (collectively the "Harbor Master Lease"), concerning certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the Oceanside Small Craft Harbor ("Oceanside Harbor"); and

WHEREAS, Lessee desires to lease storefront/office space, located at 1850 Harbor Drive North, Suite C, Oceanside, California, from District for the sale of standup paddleboards and associated accessories; and

WHEREAS, District has determined that standup paddleboard sales is consistent with the uses allowed under the Harbor Master Lease, is beneficial to the Oceanside Harbor and in the furtherance of the public purposes of the District; and

WHEREAS, District, for the consideration hereinafter set forth, hereby leases to Lessee and Lessee hereby leases said premises from District for the term and upon the conditions, covenants and provisions hereinafter set forth.

NOW THEREFORE, in consideration of above recitals and other valuable consideration, receipt of which is hereby acknowledged, District and Lessee do mutually agree as follows:

A G R E E M E N T

SECTION 1: USES

1.01 Premises. District hereby authorizes, in accordance with the terms, conditions, covenants, and provisions of this Lease, Lessee's exclusive use of that certain storefront/office space consisting of approximately 272 square feet of interior area, situated in the City of Oceanside, County of San Diego, State of California, commonly known as **1850 Harbor Drive North, Suite C**. Said real property is hereinafter called the "Premises."

1.02 Uses. It is expressly agreed that the Premises are leased to Lessee

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solely and exclusively for the purpose of **standup paddleboard offsite distribution and related onsite merchandise sales** and for such other related or incidental purposes as may be first approved in writing by the District's Administrative Officer and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee, including acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Premises in any manner that disrupts the quiet enjoyment of surrounding landside tenants' or boaters' use of their premises or the Oceanside Harbor.

1.03 Common Use of Certain Public Areas. In addition to the use of the Premises and subject to the provisions of Section 7 herein, Lessee shall have the non-exclusive right to use in common with other members of the public certain areas of the Oceanside Harbor, including public (non-restricted) parking spaces, sidewalks, public docks, launch ramps and restrooms ("Common Areas"). The use of the Common Areas shall be in accordance with all applicable policies, rules, regulations, ordinances and laws.

1.04 Related Discretionary Actions. By the granting of this Lease, neither District nor the City is obligating itself or any other governmental agent, board, commission, or agency with regard to any 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 that 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 hereof peaceably and quietly have, hold and enjoy the Premises.

If District for any reason cannot deliver possession of the Premises to Lessee at the commencement of the term of this Lease, or if during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City or the District, then and in either of such events, this Lease shall not be voidable nor shall District be liable to Lessee for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the Executive Director a proportionate reduction of the rate of rent for the period or periods during which Lessee is prevented from having the quiet possession of all or a portion of the Premises. In the event that such

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dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the Executive Director a **thirty (30)-day** written notice together with its justifications for such termination. The Executive Director shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

1.06 Reservation of Rights. District shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in lawful possession of the Premises; however, the District specifically retains the following rights:

a. Subsurface Rights. District 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. District reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. District has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

District will not reimburse Lessee for damages, if any, to the permanent improvements located on the Premises resulting from the District exercising the rights reserved in this Lease. District will pay the costs of the maintenance and repair of all District installations made pursuant to these reserved rights. District's use of the Premises is paramount to that of the Lessee's use.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of **three (3) years** commencing on the date the Harbor Board of Directors ("Harbor Board") approves this Lease (the "Effective Date").

2.02 Extension of Term.

Provided that the Lessee is not in default or breach of any term, condition, or covenant of this Lease, the Lessee may request an extension of the term of this Lease for the Premises, for an additional three (3) years under the terms and conditions of this Lease at the District's calculated fair market lease payment rate of similar businesses.

The Lessee may request not more than one (1) three (3)-year extension of term by providing the City's Property Management Division Manager ("Real Estate Manager") with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement. The Real Estate Manager or Real Estate Manager's designee shall notify the Lessee not later than **thirty (30) days** after receipt of such request whether

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such request will be recommended to the Harbor Board for approval, at which time the Real Estate Manager shall provide Lessee with District's calculated fair market rent value and rental amount that the District 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 term. Real Estate Manager's failure to provide the new rental amount within said timeframe shall not defeat District's ability to make adjustments to the rental rate. Recommendation by the Real Estate Manager does not constitute District approval of the extension request. The Administrative Officer, in his capacity as the District's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to Lessee not later than **thirty (30) days** from receipt of the request for extension. The Harbor Board, at its sole discretion, may approve or deny any extension of the term of this Lease. In the event the Harbor Board is unable to consider the renewal request in sufficient time as to provide Lessee with **thirty (30) days** notice of termination in the case of denial, the Lease shall be extended for a period not to exceed thirty days, to allow for such **thirty (30) day** notice of termination.

In no event shall the term of this Lease be extended in excess of three (3) years beyond the expiration of the initial term of this Lease without the mutual written agreement of the Parties and the prior approval of the Harbor Board.

2.03 Termination Provisions. No other special termination options are available except those described elsewhere in this Lease.

2.04 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 Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall pay the sum of: 1) the minimum monthly rent for the preceding annual term, and 2) a prorated amount of percentage rent for the extent of the holdover period. In addition to the minimum and percentage rent, Lessee shall, in the event of any holding over beyond **ninety (90) days**, pay an increase in the minimum rent or percentage rent equal to the product of: 1) the minimum rent or percentage rent, whichever is the higher amount, and 2) **five percent (5%)** per year for each year of the term of Lease counting from the original commencement date of the Lease to the expiration or termination date of the Lease.

2.05 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as District does not terminate this Lease, and District 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.

2.06 Quitclaim of Lessee's Interest. On termination of this Lease for any

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reason, District shall provide Lessee with and Lessee shall deliver to District 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. District may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the District 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 Lease and all Lessee's rights to the Premises.

2.07 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to District free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances that existed on the date of the execution of this Lease by District. 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 Lease, absent normal wear and tear.

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

SECTION 3: RENT

3.01 Time and Place of Payment. The Lessee shall make all minimum rental payments monthly in advance on or before the **first (1st) day** of each new month. If the Premises is delivered to Lessee on any day other than the first of the month, the first month's rent shall be prorated on a **thirty- (30) month** basis.

Percentage rent payments shall be due to District and payable by Lessee in arrears on or before the **tenth (10th) day** of the month following the month for which the percentage rent is calculated. In addition Lessee shall provide District with a percentage rent statement showing how the percentage rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization Tax Statement, provide District with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Lease.

Checks should be made payable to the Oceanside Small Craft Harbor District and delivered 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 Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay District an additional **\$25** for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

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a. **General.** The total monthly rent amount shall be equal to the Minimum Rent (as defined by Subsection 3.02b) or the Percentage Rent (as defined by Subsection 3.02c) **whichever is greater.**

b. **Minimum Rent Amount.** The minimum annual rent amount for this Lease shall be **Six Thousand Dollars (\$6,000)** which shall be payable monthly in advance at the rate of **Five Hundred Dollars (\$500)** on or before the **first (1st) day** of each new month.

c. **Percentage Rent.** The monthly percentage rent shall be **four and one half percent (4.5%)** of the Lessee's gross income (as defined in Subsection 3.02d).

The monthly Percentage Rent, less the Minimum Rent previously paid by Lessee for the same month, shall be payable to District monthly in arrears not later than **ten (10) days** following the end of each calendar month of the term of this Lease as required in Section 3.01 hereinabove.

d. **Gross Income.** Gross income as used herein shall mean all income received by Lessee from the sale of goods or services on or from the Premises or any other income received by Lessee as a result of occupancy of the Premises. Gross income shall include the amount of any manufacturer's or importer's excise tax included in the price of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing gross income. Gross income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee. Notwithstanding the provisions of Section 6.10, below, gross income shall include income received by Lessee or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said Premises. The monthly gross income shall be calculated at the end of each month of the term of this Lease. The first monthly gross income calculation shall be made one month after the commencement date of this Lease.

3.03 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

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All sales, whether onsite or offsite, retail or wholesale, shall be recorded by means of cash registers or electronic point of sales devices that display to the customer the amount of the transaction and automatically issue a receipt. All cash registers or electronic point of sales devices shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers or electronic point of sales devices provided such system is approved in writing by the Real Estate Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges whatsoever, Lessee shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

Lessee agrees to make any and all records and accounts available to District for inspection at all reasonable times, so that District can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or District's offices, at District's sole discretion, and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by District shall be deemed a default of this Lease. These records shall include, but are not limited to, Federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records. District shall have the discretion to require the installation of any additional accounting methods or controls it may deem necessary.

Lessee shall maintain all such books, records and accounts for the term of this Lease, and a minimum period of **five (5) years** thereafter. This provision shall survive the expiration or sooner termination of this Lease.

3.04 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 **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 District for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the District audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of **five percent (5%)** of the total required rent, then Lessee shall pay District the cost of the audit plus **ten percent (10%)** per year on the amount by which said rent was underpaid in addition to the unpaid rents as

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shown to be due District as compensation to District for administrative costs and loss of interest as previously described herein. Lessee agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that District will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by District shall in no event constitute a waiver by District of Lessee's default with respect to late payment, nor prevent District from exercising any of the other rights and remedies granted in this Lease.

3.05 Extension Rent. The District shall calculate the fair market rental value of the Premises based on similar businesses, and transmit it to the Lessee as required in Section 2.02 of this Lease.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall defend, indemnify and hold harmless the City and District and their officers, agents and employees against all claims for damages to persons (including death) 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 Lease, except only for those claims arising from the sole negligence or sole willful misconduct of the City or District, their officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City and/or District, 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 District, defend any such suit or action brought against the District, its officers, agents, or employees.

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

- a. Lessee shall maintain the following minimum limits:

General Liability

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

b. All insurance companies affording coverage to the Lessee shall be required to add the City and District, its directors, officers, employees, contractors, agents and authorized volunteers, as "additional insured" under the insurance policy(s) required in accordance with this lease. Insurance coverage provided to the City and District as additional insured shall be primary insurance to the City and District, their directors, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to the

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City and District, their directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by the City, District, their directors, officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this Section.

c. All insurance companies affording coverage to the Lessee 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 District should the policy be canceled 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. Lessee 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 Lease.

f. Lessee shall provide, upon request of the District, a true and correct copy of all applicable insurance policies.

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 Lease.

h. Maintenance of insurance by the Lessee as specified in this Lease 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, District has the right to obtain the insurance. Lessee 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(s) and rate of interest. Lessee shall pay said reimbursement and interest 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 Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

j. District, at its discretion, may require the revision of amounts and

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coverage at any time during the term of this Lease by giving Lessee **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. Lessee also agrees to obtain any additional insurance required by District for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within **five (5) working days** after occurrence, report to District any accident causing 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.

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 Lease. Lessee further acknowledges that the Premises are in the condition called for by this Lease and that Lessee does not hold District responsible for any defects in the Premises.

5.02 Waste, Damage, or Destruction. Lessee shall give notice to District of any fire or other damage that occurs on the Premises within **seventy-two (72) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to District. If the Premises shall be damaged by any cause that puts the Premises into a condition that is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition that existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to District and approved in writing in order to replace in kind and scope the operation that existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including electrical, gas, plumbing, heating and cooling, replacement or repair of broken or damaged glass, painting, and janitorial services, throughout the term of this Lease and without expense to District. Lessee will perform all maintenance, 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

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applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of District as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, District shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that District finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within **ten (10) days** after written notice from District. In the event Lessee fails to perform such work, District 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 District 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 **ten (10) days** after District's written demand therefor. District shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for District elsewhere in this Lease.

5.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and Lessee may not alter the Premises without prior written approval by the Real Estate 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 proper permits and prior written approval by the Real Estate Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration or replacement of damaged or worn improvements, equipment, fixtures or furniture. District shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Utilities. Lessee 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.

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 Administrative Officer. 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 Administrative Officer.

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5.07 Encumbrance. Upon receiving prior consent by the Administrative Officer, 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 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 District; 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 Administrative Officer. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the District at the discretion of the Administrative Officer. 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 Lease.

5.08 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, 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 Lease 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 the Real Estate Manager, and any such device(s) shall conform to all City and District ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee 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 Lessee's cost.

5.10 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee,

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excepting such fixtures that 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 District's option, District property, free of all liens and claims except as otherwise provided in this Lease.

b. If District elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, District shall so notify Lessee in writing **thirty (30) days** prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by District at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay District the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by the date of the expiration or termination of this Lease. Any said items that Lessee fails to remove will be considered abandoned and become District's property free of all claims and liens, or District 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 parts 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 District 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 Lessee, 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 Lessee, 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 of the Premises shall belong to District, 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

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the taking of or damages to Lessee's then remaining leasehold interest in installations or improvements of Lessee. District shall have no liability to Lessee for any award not provided by the condemning authority.

d. Transfer. District has the right to transfer District'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 District right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon District 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 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 District:

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

To Lessee:

Jim and Ramona Rajner
400 N. Myers Street, #41
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 (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.

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6.02 District Approval. The Administrative Officer shall be the District's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the Administrative Officer delegates authority to the Real Estate Manager. The Real Estate Manager may delegate authority in connection with this Lease to the Real Estate Manager's designee(s).

6.03 Nondiscrimination. Lessee and any other person claiming under or through Lessee, shall refrain from restricting from employment or use of the Premises on the basis of race, color, creed, religion, sex, familiar status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, creed, religion, sex, familiar status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law. Lessee shall certify in writing to District that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by the City of Oceanside) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and District may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease comprises the entire integrated understanding between District 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 Lease itself.

6.06 Interpretation of the Agreement. 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 Superior Court of San Diego County, North County Branch. The Lease does not limit any other rights or remedies available to District.

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.

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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 that are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

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

6.07 Agreement Modification. This Lease 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 District 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 District Manager in order to constitute a valid and binding waiver. District 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. District's acceptance of any rents is not a waiver of any default preceding the rent payment. District and Lessee specifically agree that the property constituting the Premises is owned by the City of Oceanside and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the Real Estate Manager or District staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but District 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 Harbor Board directs the Real Estate Manager to take action or require the cure of any default after such default is brought to the attention of the Harbor Board by the Real Estate Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by District against Lessee to enforce payment of rent due, or to enforce any of the terms and conditions hereof, or in case District shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided District effects a recovery, Lessee shall pay District all costs expended in any action, together with a reasonable attorney's fee to be fixed by the court. 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.

6.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the

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Lessee's duties be delegated, without the express written consent of District. Any attempt to assign or delegate this Lease without the express written consent of District shall be void and of no force or effect. A consent by District to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 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 (any covenant or agreement shall be construed and considered as a condition); or should Lessee 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 **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **ten (10) days** after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **thirty (30) days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), District shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate District for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event District consents to an encumbrance of the Lease for security purposes in accordance with Section 5.07 of this Lease, it is understood and agreed that District shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within **five (5) days**, if the default is for the failure to submit rent as required, or within **fifteen (15) days** following the expiration of the period within which Lessee may cure such default, provided, however, District shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, District shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Section 5.10 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy

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proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, District shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with District and has been consented to by resolution of the Harbor Board, or to said beneficiary's successors in interest consented to by resolution of the Harbor Board, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to District all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

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

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

6.15 Drafting Ambiguities. Each party to this Lease and its counsel have reviewed and revised this Lease. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

SECTION 7: SPECIAL PROVISIONS

7.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.02 Hours of Operation. The Lessee agrees to post hours and days of operation in a conspicuous location on the Premises and to conform with the published hours and days of operation as established, unless otherwise approved in writing by the District.

7.03 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from District to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and

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welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the District. Lessee shall maintain a staff in adequate size and number, to District's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.04 Merchandise and Equipment. District retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the District. Display of merchandise inside the Premises shall be done in a neat and orderly manner. Lessee hereby acknowledges and agrees that the display of paddleboards, merchandise, and brochures or catalogues, outside of Premises, and personal seating on sidewalks, grassy and hardscape areas or other Common Areas is strictly prohibited under this Lease.

7.05 Dock Access. Lessee is strictly prohibited from entering and using slip-renter docks or riprap to access the marina basins of the Oceanside Harbor for the demonstration or testing of goods, or providing instructions or lessons. Access to the marina basins shall only be by means of the public docks or launch ramps.

7.06 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, 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 Lessee.

7.07 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by Lessee or (subject to the provisions of Section 6.10, above) by Lessee's sublessee(s), assignee(s), concessionaire(s), permittee(s) or licensee(s).

7.08 Exclusivity. Except for the rights granted to Lessee pursuant to this Lease, Lessee shall not have the exclusive right to provide **standup paddleboard sales or related services** at or near the Oceanside Harbor. Lessee is aware that other concessions currently exist, and/or in the future may exist, and operate in close proximity to the Premises, which may offer like services. District reserves the right to permit any and all services it deems to be in the best interest of the public.

Lessee is also aware that District arranges or permits special events from time to time and these events may restrict access to the Premises. Lessee agrees that such activities are not a violation of the rights granted to Lessee by this Lease.

7.09 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises that are in any way explosive or hazardous;

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and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises that will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises that will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about 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 burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the District.

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[Signatures on following Page]

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SECTION 8: SIGNATURES

8.01 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 Lessee 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 Lease to be executed by setting hereunto their signatures as of, but not necessarily on, the Effective Date hereof.

"District"

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date: _____

By: _____
Administrative Officer

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: 
City Attorney

"Lessee"

**JIM AND RAMONA RAJNER, dba
JIMMY ROMO'S SUP SURF SHOP**

Date: 3-19-03

By: 
Jim Rajner

Date: 3-19-03

By: 
Ramona Rajner

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)

County of San Diego)^{SS.}

On 3/19/13 before me, Curtis Jackson, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Jim Rainer and Ramona Rainer,
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

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 of Conservator
- Other: _____

Signer Is Representing: _____

