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DATE: June 5, 2013

TO: President and Directors of the Harbor District Board

FROM: Property Management Division

SUBJECT: **AMENDMENT 4 TO THE LEASE AGREEMENT WITH ALOHA PARTNERS, LP, FOR THE PREMISES LOCATED AT 1325 HARBOR DRIVE NORTH – MONTEREY BAY CANNERS RESTAURANT**

**SYNOPSIS**

Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 4 to the Lease with Aloha Partners, LP, for the premises located at 1325 North Harbor Drive – Monterey Bay Cannery Restaurant, extending the term of the agreement ten additional years through December 31, 2056; and authorize the Administrative Officer to execute the amendment.

**BACKGROUND**

In September 1983 the Oceanside Small Craft Harbor District ("District") entered into a Lease with Monterey Bay Cannery No. 10, predecessor in interest to Aloha Partners, LP ("Lessee"). The Lease, as amended and assigned (collectively the "Lease") is for approximately 14,007 square feet of real property to construct and operate a Monterey Bay Cannery Restaurant at 1325 North Harbor Drive ("Premises").

The term of the Lease currently expires on December 31, 2036, with Lessee having the option to extend the term ten additional years to expire on December 31, 2046 ("First Additional Term") provided Lessee constructs certain improvements to the Premises by a certain date. Lessee has requested an additional ten-year extension of the Lease term to expire on December 31, 2056 ("Second Additional Term") with the further condition that Lessee is required to construct additional improvements to the Premises by another date.

**ANALYSIS**

The proposed Amendment 4 to the Lease ("Amendment") provides Lessee with the opportunity to extend the term of the Lease for ten additional years, expiring on December 31, 2056. However, before Lessee can qualify for the Second Additional Term, Lessee must satisfy the requirements to qualify for the First Additional Term by spending a minimum of \$600,000 in improvements and replacements to the Premises

during the period beginning January 1, 2010, and ending December 31, 2014. In the event Lessee does not complete the improvements and replacement by December 31, 2014, Lessee shall not qualify for the First Additional Term, which extends the Lease to December 31, 2046.

In order for the Second Extended Term to be effective, in addition to the \$600,000 needed to be spent by Lessee prior to December 31, 2014, to qualify for the First Extended Term, Lessee shall, prior to December 31, 2036, construct an additional \$400,000 in improvements to the Premises. In the event Lessee does not complete the additional \$400,000 in improvements by December 31, 2036, Lessee shall not qualify for the Second Additional Term.

Lessee has requested the additional extension of the Lease term to put Lessee in a better position to seek more suitable financing for the significant additional capital improvements needed to remodel and update the Premises. The additional improvements to the Premises would continue to freshen up the appearance of the Premises, originally constructed in 1983, which could potentially generate more revenue for Lessee, and in turn increase the rental revenue to the District.

All other terms of the Lease remain unchanged including the payment of rent at the greater of a minimum rent or percentage of gross revenue.

#### **FISCAL IMPACT**

For Fiscal Years 2010-11 and 2011-12 Lessee paid an average of \$77,500 in percentage rent. Assuming the same annual percentage rent over the additional ten-year period, the District could receive an additional \$775,000 in revenue. Potentially, the additional improvements to the Premises should increase the percentage rent paid annually to the District. Additional revenue will continue to be deposited into Account No. 1751.4496.100350.

#### **INSURANCE REQUIREMENTS**

Lessee will be required to maintain the District's standard insurance requirements over the term of the Lease.

#### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

#### **CITY ATTORNEY'S ANALYSIS**

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

**RECOMMENDATION**

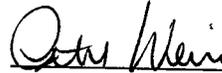
Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 4 to the Lease with Aloha Partners, LP, for the premises located at 1325 North Harbor Drive – Monterey Bay Cannery Restaurant, extending the term of the agreement ten additional years through December 31, 2056; and authorize the Administrative Officer to execute the amendment.

PREPARED BY:



\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:



\_\_\_\_\_  
Peter A. Weiss  
Administrative Officer

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

  
\_\_\_\_\_

Teri Ferro, Financial Services Director

  
\_\_\_\_\_

Frank Quan, Harbor and Beaches Coordinator

  
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## AMENDMENT NO. 4 TO LEASE

This Amendment No. 4 to Lease ("Amendment") dated June 5, 2013, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter called "DISTRICT") and ALOHA PARTNERS, LP, a California limited partnership (hereinafter called "LESSEE").

### RECITALS

WHEREAS, DISTRICT and LESSEE are parties to the Lease dated September 13, 1983 ("Agreement"), between DISTRICT AND LESSEE's predecessor-in-interest, Monterey Bay Cannery No. 10, a California limited partnership ("Monterey"); which Agreement was amended per Amendment to Lease dated August 3, 1984 ("First Amendment"); which Agreement as amended was assigned from Monterey to Aloha Partners, a California general partnership ("Aloha GP") per Assignment of Lease dated October 1, 1984; which Agreement as amended was further amended by Amendment No. 2 to Lease dated September 8, 1987; which Agreement as amended was assigned from Aloha GP to LESSEE per Assignment of Lease dated December 18, 1998; which Agreement as amended was further amended by Amendment No. 3 to Lease dated January 5, 2011 (collectively the Agreement, the First Amendment, the Second Amendment and the Third Amendment are hereinafter referred to as the "Lease");

WHEREAS, LESSEE is agreeable to providing additional improvements and replacements to the leased premises in consideration for an additional extension of the term of the Lease;

WHEREAS, DISTRICT and LESSEE are desirous of extending the termination date of the Lease for an additional ten (10) years from December 31, 2046 to December 31, 2056.

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

### AGREEMENT

1. Section 2. TERM. shall be deleted in its entirety and replaced with the following:

"The term of this Lease shall be as follows:

(a) The initial term of this lease shall commence on September 13, 1983 and terminate on December 31, 2036 subject to the provisions of Section 52.

(b) The term of the Lease may be extended for a period of ten (10) years commencing on January 1, 2037 and expiring on December 31, 2046 (the "First Extended Term"), subject to the provisions of Section 52.

(c) Lessee shall have the option to extend the term of this Lease for an additional period of ten (10) years (i.e. commencing on January 1, 2047 and expiring on December 31, 2056) beyond the expiration of the First Extended Term of this Lease (the "Second Extended Term"), subject to the provisions of Section 52.

2. Section 52 shall be revised to read as follows:

**"LEASE TERM EXTENSIONS/IMPROVEMENTS.**

Lessee shall be entitled to extend the initial term of this Lease for two (2) successive extension periods of ten (10) years, First Extended Term and Second Extended Term, each subject to the following provisions in this Section 52:

(a) In order for the First Extended Term to be effective, Lessee and/or its subtenant shall during the period beginning January 1, 2010 and ending December 31, 2014, spend a minimum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) in improvements and replacements to the premises. Said improvements and replacements that qualify towards the required expenditures in order for Lessee to exercise the First Extended Term and the Second Extended Lease Term are more particularly set forth on Exhibit "D-3" ("Qualified Improvements"), attached hereto and incorporated herein by this reference. All Qualified Improvements made shall be subject to supportive documentation substantiating the improvements made and the cost associated therewith. In the event that said Qualified Improvements in the minimum amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) are not completed as set forth herein prior to December 31, 2014, the Lessee shall not qualify for the First Extended Term and the term of the Lease shall not be extended and the Lease shall terminate on December 31, 2036. In the event that said Qualified Improvements have been completed as set forth herein prior to December 31, 2014, the Lessee shall qualify for the First Extended Term and the term of the Lease shall be extended ten (10) years to terminate on December 31, 2046.

(b) In addition to the Six Hundred Thousand and No/100 Dollars (\$600,000.00) required to be spent by Lessee in Qualified Improvements to qualify for the First Extended Term, in order for the Second Extended Term to be effective, Lessee and/or its subtenant shall prior to December 31, 2036, spend a minimum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) in additional Qualified Improvements to the premises. All additional Qualified Improvements made shall be subject to supportive documentation substantiating the improvements made and the cost associated therewith. In the event that said additional Qualified Improvements in the additional minimum amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00) are not completed as set forth herein prior to December 31, 2036, the Lessee shall not qualify for the Second Extended Term and the term of the Lease shall not be extended and the Lease shall terminate on December 31, 2046. In the event that said additional Qualified Improvements have been completed as set forth herein prior to December 31, 2036, the Lessee shall qualify for the Second Extended Term and the term of the Lease shall be extended ten (10) years to terminate on December 31, 2056. "



3. Section 14. ADJUSTMENT OF ANNUAL RENTAL. shall be deleted in its entirety and replaced with the following:

“Beginning on the January 1<sup>st</sup> date following the tenth year of the premises opening for business, and every ten years thereafter, the minimum annual guaranteed rental will be automatically adjusted to equal ninety percent (90%) of the average annual rental paid by Lessee to Lessor for the preceding three years of the term hereof, but in no event will the minimum annual guaranteed rental be reduced below Twenty-Two Thousand Dollars (\$22,000).

The percentage rentals in effect as of May 1, 2013 shall remain constant for the term of this lease as extended, including the First Extended Term and the Second Extended Term.”

4. All other terms, conditions, covenants and provisions of the Lease shall remain in full force and effect.

IN WITNESS THEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment No. 4 to Lease.

“DISTRICT”

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

APPROVED AS TO FORM:

By \_\_\_\_\_  
Administrative Officer

By *Robert Hamilton, ASST.*  
Harbor District Attorney

“LESSEE”

ALOHA PARTNERS, LP

By: Pelican Development Company  
Its: General Partner

By: *Douglas L. Salisbury*  
Douglas L. Salisbury  
Its: President

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

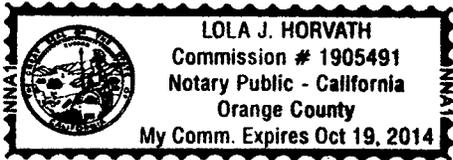
County of Orange



On May 22, 2013 before me, Lola J. Horvath  
Date Here Insert Name and Title of the Officer

personally appeared Douglas L. Salisbury  
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 Lola J. Horvath  
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: Amendment No. 4 to Lease

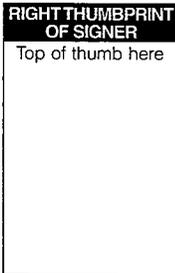
Document Date: \_\_\_\_\_ Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

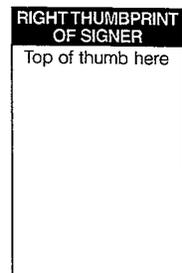
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE ("Assignment") is dated as of June 5 , 2013 and is entered into by and between Aloha Restaurants, Inc., a California corporation ("Assignor"), and Waterfront Enterprises, Inc., a California corporation ("Assignee"), with reference to the following facts:

RECITALS:

A. Assignor and Assignee have entered into that certain Agreement Relating to the Purchase and Sale of Lease, FF&E, and Liquor License dated as of March 1, 2013 (the "Purchase Agreement").

B. Assignor is the Lessee under that certain Lease and amendments thereto described on Schedule 1 hereto (herein, the "Lease") which Assignor has agreed to assign to Assignee pursuant to the terms of the Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

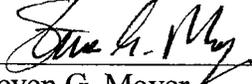
1. Assignment. Assignor hereby assigns, conveys, transfers and sets over unto Assignee, its successors and assigns, any and all right, title and interest of Assignor, as Lessee or otherwise, in, to and under the Lease for the remaining term and all extensions thereof, together with any and all rights and appurtenances thereto in any way belonging to Assignor, its successors and assigns. Except as otherwise provided in the Purchase Agreement, all assignments made by Assignor pursuant to this Assignment are made without any express or implied warranty or representation.

2. Acceptance and Assumption. Assignee hereby accepts said assignment and does hereby agree to perform all of the terms, covenants, and conditions of the Lease on the part of the Lessee therein required to be performed on or after the date of this Assignment and Assignor shall hereinafter be fully released from all liability related to the Lease. Assignee shall indemnify, defend and hold Assignor harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever (including, without limitation, attorneys' fees) arising out of or relating to, directly or indirectly, in whole or in part, the Lease, accruing on or after the date of this Assignment. Assignor shall indemnify, defend and hold Assignee harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of every kind and nature whatsoever (including, without limitation, attorneys' fees) arising out of or relating to, directly or indirectly, in whole or in part, the Lease, accruing prior to the date of this Assignment.

3. Miscellaneous. Assignor and Assignee each agrees to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment. If either party brings any action or suit against the other arising from or interpreting

this Agreement, the prevailing party in such action or suit shall, in addition to such other relief as may be granted, be entitled to recover its costs of suit and actual attorneys' fees, whether or not the same proceeds to final judgment. This Assignment shall be governed by and construed in accordance with the laws of the State of California, and shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date and year first above written.

Assignor: Aloha Restaurants, Inc.  
a California corporation  
By:   
Steven G. Moyer  
Its: President

Assignee: Waterfront Enterprises, Inc.,  
a California corporation  
By:   
David A. Salisbury  
Its: President

IN WITNESS WHEREOF, the OCEANSIDE SMALL CRAFT HARBOR DISTRICT hereby consents to the above Assignment of Lease effective the 5<sup>th</sup> day of June , 2013.

OCEANSIDE SMALL CRAFT HARBOR DISTRICT

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Secretary

Approved as to Form: ✓  
By:   
Harbor District Attorney

Schedule 1 to Assignment of Lease

1. Lease dated October 1, 1984, by and between Aloha Partners, a California general partnership, whose interest was subsequently assigned to Aloha Partners, LP, a California limited partnership (“Lessor”) and Monterey Bay Cannery No. 10, a California general partnership, whose interest was subsequently assigned to Aloha Restaurants, Inc., a California corporation, doing business as Monterey Bay Cannery Restaurant (“Lessee”).
2. Short Form – Memorandum dated October 1, 1984 recorded in Official Records of San Diego County, CA on March 4, 1985 as document #85-071066.
3. Amendment No. 1 to Lease between Lessor and Lessee, dated September 8, 1987.
4. Amendment No. 2 to Lease between Lessor and Lessee, dated November 30, 2009.