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DATE: June 26, 2013

TO: Honorable Mayor and City Council Members

FROM: Property Management

SUBJECT: **PROPERTY USE AGREEMENT WITH VISIT OCEANSIDE, INC. FOR THE PREMISES LOCATED AT THE 418 NORTH FREEMAN STREET BUILDING IN THE 602 CIVIC CENTER DRIVE COMPLEX**

**SYNOPSIS**

Staff recommends that the City Council approve a property use agreement with Visit Oceanside, Inc., for minimum total revenue in the amount of \$28,800 or equivalent, for use of a portion of the 418 North Freeman Street building located at the 602 Civic Center Drive complex; and authorize the City Manager to execute the agreement.

**BACKGROUND**

The 602 Civic Center Drive complex ("Property") was acquired by the City of Oceanside in 2006 for the purpose of relocating and constructing a new Fire Station No. 1. The Property contained two structures, the 602 Civic Center Drive building ("Civic Center Building") and the 418 North Freeman Street building ("Freeman Building"). However, due to funding constraints, the relocation and construction of the new Fire Station No. 1 was put on hold.

Over the years, the buildings at the Property have been used by the City's Code Enforcement Division, the City's Parks and Recreation Division, and the Friends of the Library. The 602 Civic Center Building is currently occupied by the Code Enforcement Division and the Friends of the Library. However, the Freeman Building is no longer used by the Parks and Recreation Division.

At the City Council meeting of January 30, 2013, staff was directed to work with Visit Oceanside, Inc. ("Permittee"), to identify a City-owned facility which could possibly accommodate their need for office space. Permittee was looking for office space to increase their sales force for the purpose of generating additional hotel room night stays in the area. Permittee was interested in using a City-owned facility so that it could exchange services to increase revenue indirectly to the City in lieu of paying a monetary consideration as a property use payment.

**ANALYSIS**

A portion of the Freeman Building, consisting of approximately 800 square feet ("Premises") was identified as a suitable location for Permittee for the purpose of

entering into a Property Use Agreement (“Agreement”) with the City. The Premises could be easily partitioned to accommodate Permittee, including a separate entrance and parking area so as not to interfere with the Code Enforcement Division operation at the Property.

Inasmuch as the Freeman Building was no longer being used by the City and Permittee was interested in using the Premises, the City has the potential to generate new revenue in the form of a property use payment or indirectly receive revenue in the form of an increase in Transit Occupancy Tax (“TOT”) from additional hotel room night stays in Oceanside as a result of Permittee’s activities at the Premises. In addition to a property use payment or consideration in lieu thereof, the Permittee will be required to pay for its own utilities and its prorata share of other property related expenses (e.g., landscaping) applicable to the maintenance and operation of the overall Property.

Since Permittee, as a non-profit organization, is either required to make a property use payment for the Premises or indirectly increase TOT revenue to the City as an offset, City Council Policy 200-09 does not apply. City Council 200-09 requires non-profit organizations that receive funding from the City to submit quarterly and annual reports that demonstrate at a minimum how City funds were expended.

### **FISCAL IMPACT**

The market rate property use payment for the Premises is One and No/100 Dollars per square foot (\$1.00 PSF) which equals Eight Hundred and No/100 Dollars (\$800.00) per month and Nine Thousand and No/100 Dollars (\$9,600) per year (“Premises Payment”). In lieu of the Premises Payment, if Permittee can provide documentation to the City that through the efforts of Permittee, the number of room nights booked in group business is increased by at least 800 new room nights per year in the City of Oceanside over a baseline of 5,100 room nights (booked as group business), Permittee shall not be required to pay the Premises Payment.

The value of the 800 new room nights per year is determined by multiplying the number of new room nights booked by the average daily room rate in the City of Oceanside determined for each year of the Agreement (“ADR”), which is currently Eighty-Eight and No/100 Dollars (\$88.00), and then multiplied by the City of Oceanside’s Transient Occupancy Tax percentage of Ten Percent (10%). This amount needs to equal or exceed the annual Premises Payment in order that Permittee does not pay the Premises Payment.

In the event Permittee does not achieve said 800 new room nights per year as described above, Permittee shall pay City the difference in the value of the additional new room nights actually achieved (as determined by the formula described above) and the Premises Payment. If applicable, said payment would be deposited into account no. 1101.4351.0009.

The City will also realize an additional small savings of approximately \$1,000 annually in the cost to operate and maintain the Property. This small savings is a result of having

Permittee pay for their utilities and prorata share of other property related expenses (e.g., landscaping).

Since Permittee is not getting any direct payments from the City, Permittee shall not be required to comply with City Council Policy 200-09. This policy requires non-profit organizations to submit quarterly and annual financial reports, which include information such as how City funds were expended.

**INSURANCE REQUIREMENTS**

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

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

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

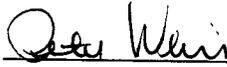
**RECOMMENDATION**

Staff recommends that the City Council approve a property use agreement with Visit Oceanside, Inc., for minimum total revenue in the amount of \$28,800 or equivalent, for use of a portion of the 418 North Freeman Street building located at the 602 Civic Center Drive complex; and authorize the City Manager to execute the agreement.

PREPARED BY:

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

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

  
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Teri Ferro, Financial Services Director

  
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Michele Lund, Treasury Manager

  
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**PROPERTY USE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**VISIT OCEANSIDE, INC.**

**CITY OWNED REAL PROPERTY**

**LOCATED AT**

**602 CIVIC CENTER DRIVE – CODE ENFORCEMENT COMPLEX  
418 N. FREEMAN STREET BUILDING  
OCEANSIDE, CA 92054**

**DATED**

**JUNE 26, 2013**

## PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT, hereinafter called "Agreement", is executed between the CITY OF OCEANSIDE, a California Charter City, hereinafter called "City", and VISIT OCEANSIDE, INC., a California non-profit corporation, hereinafter called "Permittee".

### RECITALS

WHEREAS, City is the owner of that certain real property described herein below, more commonly known as the "602 Civic Center Drive – Code Enforcement Complex";

WHEREAS, situated at the 602 Civic Center Drive – Code Enforcement Complex is the 418 Freeman Street Building; and

WHEREAS, Permittee is desirous of using a portion of the 418 Freeman Street Building as office space in support of Permittee's Welcome Center operation in the City of Oceanside.

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

### AGREEMENT

#### SECTION 1: USES

**1.01 Premises.** City hereby authorizes Permittee, in accordance with the conditions, terms and provisions of this Agreement, the exclusive use of a portion of the 418 Freeman Street Building ("Building") situated at the 602 Civic Center Drive – Code Enforcement Complex ("Complex"), City of Oceanside, County of San Diego, State of California, which portion of the Building shall consist of approximately 800 square feet located in the western most portion of the first floor of the Building ("Premises"). In addition, the City also authorizes Permittee, as part of the Premises, the use of four (4) parking spaces at the Complex located to the east of the Building ("Parking Spaces"). The, Complex, Building, Premises (including the Parking Spaces) are more particularly described and depicted on Exhibits "A" and "B", attached hereto and by this reference made part of this Agreement. In return for this permission, Permittee hereby agrees to act in accordance with and abide by the terms, conditions and provisions of this

Agreement.

**1.02 Uses.** It is expressly agreed that the Premises shall be used by Permittee solely and exclusively for offices in support of Permittee's Welcome Center and/or Visit Oceanside operation in the City of Oceanside and such other related or incidental purposes as may be first approved in writing by City, 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 three (3) years commencing on June 1, 2013 ("Commencement Date") and terminating on May 31, 2016. In no event shall the term of this Agreement be extended without the mutual written agreement of the parties and approval of the Oceanside City Council.

**2.02 Holdover.** Any holding over by Permittee after expiration or termination shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises by Permittee or by Permittee's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement, shall continue in full force and effect.

**2.03 Abandonment by Permittee.** In the event Permittee breaches the Agreement and abandons the Premises, this Agreement shall continue in effect for so long as City does not terminate this Agreement, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

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

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

**2.06 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 operations under this Agreement.

**2.07 Termination Provision.** Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least two hundred seventy (270) days prior written notice of such termination.

### **SECTION 3: CONSIDERATION**

**3.01 Premises Property Use Payment.** The Premises Property Use Payment ("Premises Payment") for the term of the Agreement is One and No/100 Dollars per square foot (\$1.00 psf) or Nine Thousand Six Hundred and No/100 Dollars (\$9,600.00) per year. In lieu of paying said amount to the City, if Permittee can provide documentation to the City that through the efforts of Permittee, the number of room nights booked in group business is increased by at least 800 new room nights per year in the City of Oceanside over a baseline of 5,100 room nights (booked as group business), Permittee shall not be required to pay the Premises Payment. Said 800 new room nights per year when multiplied by the average daily room rate in the City of Oceanside as of the Commencement Date of the Agreement for the first year of the Agreement and each one year anniversary date thereafter for subsequent years of the Agreement ("ADR") multiplied by the City of Oceanside's Transient Occupancy Tax percentage of Ten Percent (10%) equals or exceeds the annual Premises Payment.

In the event Permittee does not achieve said 800 new room nights per year as described above, Permittee shall pay City the difference between the Premises Payment and the value of the additional new room nights achieved as determined by the formula described above. Said additional new room nights per year shall constitute valuable consideration received from Permittee in lieu of Premises Payment for Permittee's use of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement. The first year of the Agreement shall be defined as the 365 day period beginning on Commencement Date and then annually thereafter.

**3.03 Utilities.** Notwithstanding anything to contrary above, as additional consideration, Permittee agrees to pay for all utilities, including, but not limited to electricity, gas, water, sewer, trash, telephone services and telecommunication data services associated with the Premises in addition to any service and installation charges in connection with the Permittee's use, occupation and operation of the Premises ("Utilities"). Permittee shall remit payment in accordance with Subsection 3.06 below.

**3.04 Other Services.** Also as additional consideration, Permittee agrees to pay for its prorata share for other services related to the Complex and the Building ("Other

Services"). Permittee's prorate share is defined as 7.88% (800 sf/10,148 sf) as it relates to the Complex and 48.87% (800 sf/1,637 sf) as it relates to the Building. These Other Services include, but are not limited to, landscaping at the Complex, the maintenance of the Complex parking lot, and security services. Permittee shall remit payment in accordance with Subsection 3.06 below.

**3.05 Allocations of Utilities and Other Services.** Permittee acknowledges that the Premises are part of the Building that may be used and occupied by another permittee and that the Building is part of the Complex that is occupied by other parties. Accordingly, in the event the Premises and/or the Building is not separately metered or costs associated therewith are not separately charged to the Premises, Permittee shall pay its prorata share of the cost of such Utilities and Other Services, as defined above, to the City in accordance with Subsection 3.06 below.

**3.06 Time and Place of Payment.** With respect to payment of Utilities and Other Services not directly charged to the Premises, City shall pay for said Utilities and Other Services and invoice Permittee on a monthly basis in arrears. Permittee shall make all payments within twenty (20) days upon receipt of the invoices from the City for Permittee's prorata share of the Utilities and Other Services incurred by the City for the prior month or a Premises Payment, if applicable. Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Subsection 6.07 of this Agreement. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Permittee. Permittee assumes all risk of loss and responsibility for late payment charges.

**3.07 Additional New Room Nights Report.** In consideration for the Premises Rent as set forth above, Permittee shall provide the City with a written annual report indicating the actual number of room nights booked as group business in said year, and the number of new room nights booked in excess of the baseline amount of 5,100 room nights (booked as group business). Permittee shall also provide the actual value of the new room nights achieved per year when multiplied by the current average daily room rate in the City of Oceanside ("ADR"). Further, Permittee shall provide a calculation of the difference of the actual new room nights achieved and the projected 800 new room nights per year figure, if applicable, to determine any differences between the value of the actual new room nights achieved in said year and the Premises Rent.

**3.08 Delinquent Payments.** If Permittee fails to make a payment when due, Permittee will 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 from the date the payment is due, 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 City for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

**3.09 Security Deposit.** Permittee shall not be initially required to pay a security deposit under this Agreement to the City. In the event the City determines, in its discretion, that a reasonable security deposit is required in order to protect City's interest in this Agreement, Permittee shall pay a security deposit equal to two (2) months Premises Property Use Payments, immediately upon demand.

**SECTION 4: RECORDS**

**4.01 Inspection of Records.** Permittee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Permittee's compliance with this Agreement. These records and accounts will be made available by Permittee at the Premises and will be complete and accurate. Permittee's failure to keep and maintain such records and make such available for inspection by City shall be deemed a default of this Agreement. Such Agreement and such financial reports and information shall be deemed to be public records. Permittee shall maintain all such records and accounts for a minimum period of five (5) years.

**SECTION 5: INSURANCE RISKS/SECURITY**

**5.01 Indemnity.** Permittee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the 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 City, its officers, agents, or employees. Permittee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Permittee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

**5.02 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**

<b>Combined Single Limit Per Occurrence</b>	<b>\$1,000,000</b>
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<b>General Aggregate</b>	<b>\$2,000,000</b>
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- b. All insurance companies affording coverage to the Permittee shall be

required to add 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 City, 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 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's 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 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, City has the right to obtain the insurance. Permittee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; names of the insurer(s); and rate of interest. Said reimbursement and interest shall be paid by Permittee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by 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. City, 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. City'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 City for new improvements, in order to meet the requirements of this Agreement.

**5.03 Accident Reports.** Permittee shall, within seventy (72) hours after occurrence, report to City 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 6: GENERAL PROVISIONS**

**6.01 Acceptance of Premises.** Permittee accepts the Premises in an "AS IS", "WHERE IS" condition, subject to all faults and conditions without warranty as to quality, character, performance or condition and with full knowledge of the physical condition of the Premises.

**6.02 Maintenance by Permittee.** With respect to Permittee's use and/or operations at or on the Premises, Permittee shall make any and all repairs and replacements necessary to maintain and preserve the Premises except as to those items set forth in Subsection 6.03 Maintenance by City. Permittee shall further maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws.

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

**6.03 Maintenance by City.** City will keep the roof, foundation and the structural columns of the Building in good repair. City shall also maintain and repair the Parking Spaces area. City shall not, however, be liable to Permittee unless Permittee has given City prior written notice of the necessity for such repairs and any damage arising therefrom shall not have been caused, in whole or in part by the negligent or willful act or omission of Permittee, its employees, agents or invitees, or by the failure of

Permittee to perform any of its obligations under this Agreement, or caused by any risk which Permittee is required to insure pursuant to Section 5.

**6.04 Fixtures and Equipment.** All fixtures and equipment provided by Permittee shall remain the property of the Permittee. Permittee shall be responsible for removing said fixtures and equipment upon termination or expiration of this Agreement.

**6.05 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 City. 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 City, or City may thereupon remove the item at Permittee's cost.

**6.06 Taxes.** Permittee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Permittee or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Permittee or levied by reason of the business or other Permittee activities related to the Premises, including any licenses or permits.

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

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

**To CITY:**

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

**To PERMITTEE:**

Visit Oceanside, Inc.  
921 N. Coast Highway  
Oceanside, CA 92054

Attention: Leslee Gaul

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

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

**6.08 City Approval.** The City Manager shall be the City'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 Estate Manager of the Property Management Division.

**6.09 Entire Agreement.** This Agreement comprises the entire integrated understanding between City 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 City.

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.

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

**6.11 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 City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. The consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

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

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

City may also terminate this Agreement upon written notice to Permittee in the event that:

- Permittee has previously been notified by City 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, City may immediately enter and take possession of the Premises. Further, City shall also have any other available legal and/or equitable remedies permitted by law.

**6.13 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 City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

**6.14 Nondiscrimination.** Permittee agrees not to discriminate in any manner against any person or persons on account of sex, race, color, religion, ancestry, national origin,

disability, medical condition, marital status, sexual orientation, or age in Permittee's use of the Premises.

**6.15 Equal Opportunity.** Permittee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. Permittee shall certify in writing to City that Permittee is in compliance and throughout the term of this Agreement 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 City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

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

**6.16 Waiver.** Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any payments is not a waiver of any default preceding the payment. City and Permittee specifically agree that the property constituting the Premises is city-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**6.17 Dispute Resolution and Attorney's Fees.** In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable

professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

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

**6.19 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.

## **SECTION 7: SPECIAL PROVISIONS**

**7.01 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.

**7.02 Permittee's Employees.** Permittee shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. Permittee shall maintain a staff in adequate size and number, to City's reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

**7.03 Hazardous Substances.** 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 or other

Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Permittee 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 welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

**7.04 Continued Occupancy.** Permittee covenants and agrees to, and it is the intent of this Agreement that the Permittee shall, continuously and uninterrupted 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, City shall be promptly notified by Permittee.

**7.05 Subordination of Agreement.** Notwithstanding any language to the contrary that is contained in this Agreement, Permittee acknowledges that this Agreement is subordinate and subject to the terms and conditions of that certain Lease/Purchase Agreement dated February 1, 2013, between the Oceanside Public Financing Authority ("Lessor") and the City ("Lessee"). Under the Lease/Purchase Agreement the Lessor, in addition to other rights pursuant to said agreement holds a leasehold interest in the Property of which the Premises is a part, which affords Lessor certain remedies in the event of default by Lessee, including but not limited to, repossessing the Property and re-releasing the Property, thereby terminating any interest in the Property and Premises that Permittee may have under this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**SECTION 8: SIGNATURES**

**8.01 Signature Page.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Permittee and the City.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

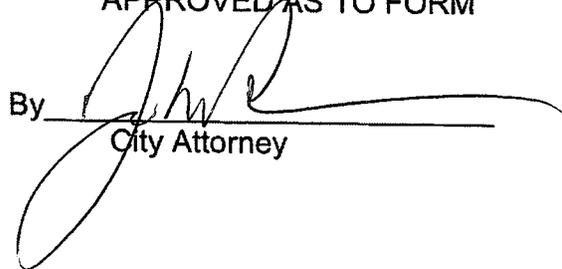
**CITY**

THE CITY OF OCEANSIDE

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

APPROVED AS TO FORM

By  \_\_\_\_\_  
City Attorney

**PERMITTEE**

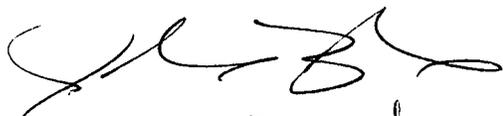
VISIT OCEANSIDE, INC.  
a California non-profit corporation

By  \_\_\_\_\_

Name Leslie Gaul

Title CEO + President

Date 6-17-13



Joshua Brandon

Chairman of the Board

6/17/13

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

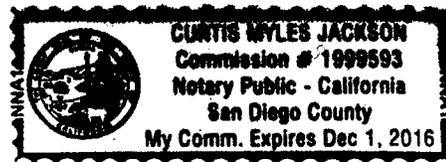
State of California )  
County of San Diego )ss.

On 6/17/13 before me, Curtis Jackson, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Lestee Gaul and Joshua Brandon  
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 or Conservator
- Other: \_\_\_\_\_

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

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

**EXHIBITS**

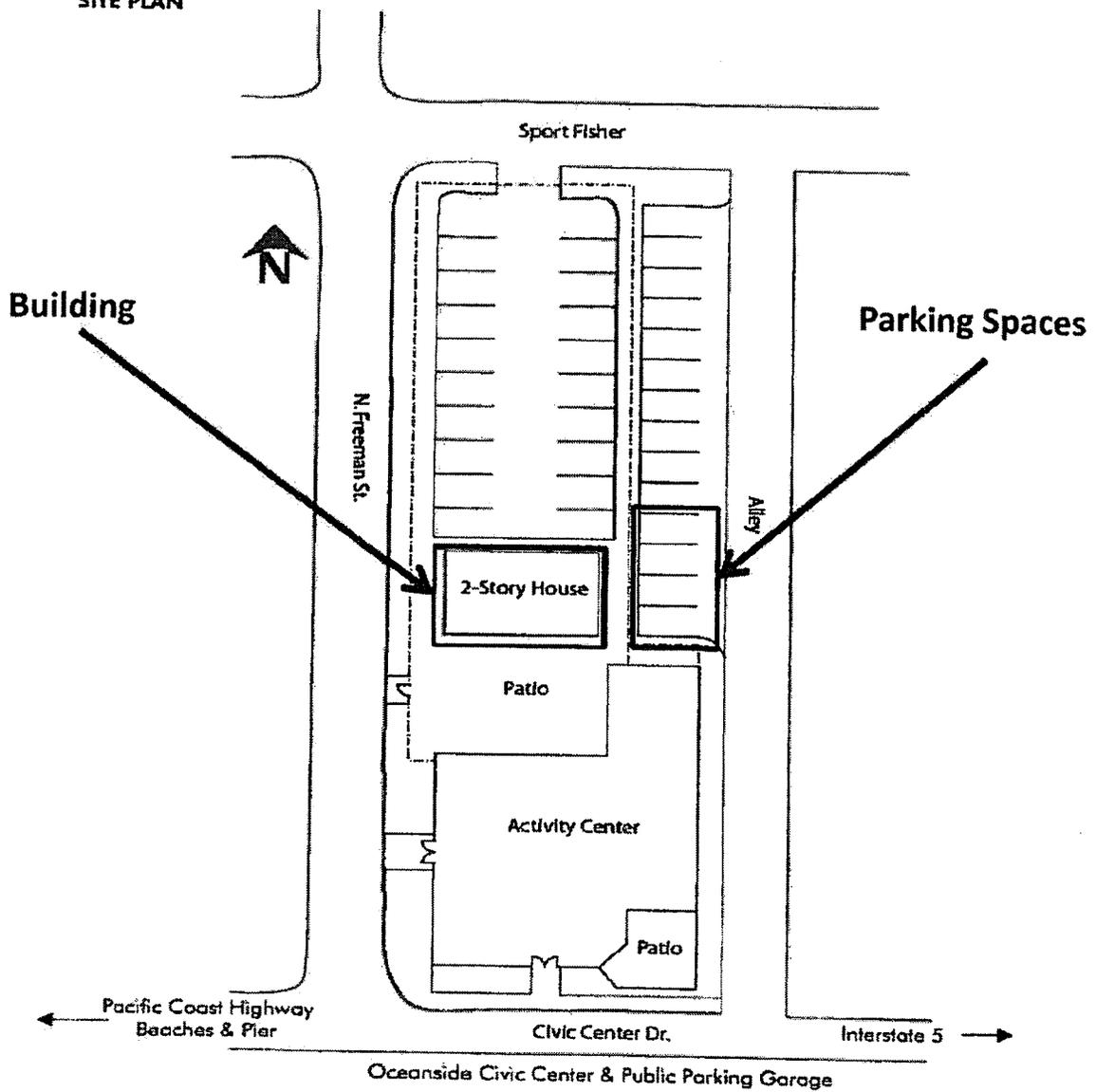
Exhibit "A" Description of Complex, Building and Parking Spaces

Exhibit "B" Depiction of Building and Premises

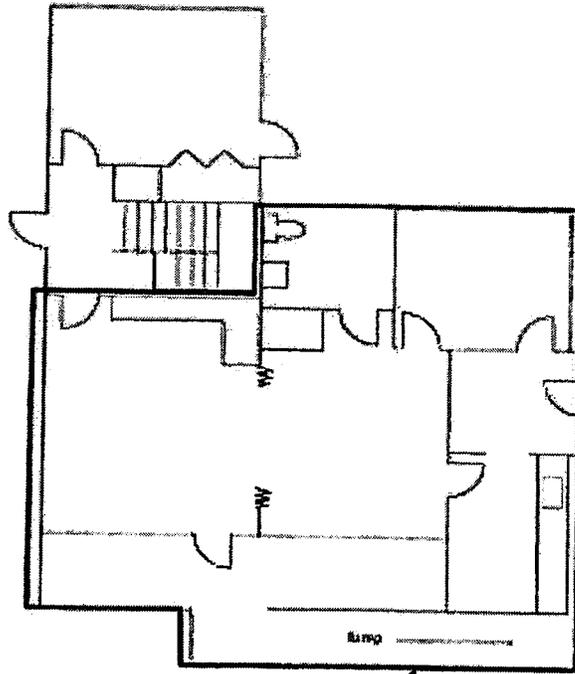
# EXHIBIT "A" COMPLEX

602 CIVIC CENTER DRIVE  
Downtown Oceanside

SITE PLAN



**EXHIBIT "B"**  
**BUILDING/ PREMISES**



First Floor

Premises

