ITEM NO. 10

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 4, 2015

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **AMENDMENT 1 TO PERCENTAGE PROPERTY LEASE AGREEMENT WITH CHARLES ANDERSON AND CHARLES DODARO, DBA BUCCANEER BEACH CLUB, FOR THE PREMISES AT 1508 SOUTH PACIFIC STREET**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Percentage Property Lease Agreement with Charles Anderson and Charles Dodaro, dba Buccaneer Beach Club, for the premises at 1508 South Pacific Street, extending the agreement from April 1, 2015 to March 31, 2018, for a three-year minimum total revenue of $26,011; and authorize the City Manager to execute the amendment.

BACKGROUND

On September 8, 2010, the City entered into a Percentage Property Lease Agreement ("Agreement") with Charles Anderson and Charles Dodaro, dba Buccaneer Beach Club ("Lessee") to provide a food concession at the premises located at 1508 South Pacific Street. The Agreement provides that Lessee may request an extension of the term for an additional three years. Lessee has requested an extension of the agreement to continue food concession operations at the leased premises.

ANALYSIS

The proposed amendment extends the term of the Agreement for three years and includes a provision for one additional three-year extension option. Monthly rent will be 12.5 percent of monthly gross income or the minimum monthly rent, whichever is greater. The minimum rent is adjusted annually based on the semi-annual Consumer Price Index, or 4 percent, whichever is greater.

FISCAL IMPACT

For the extended term, the first year of minimum rent will be no less than $8,367, second year no less than $8,670 and the third year no less than $8,974 based on the annual minimum CPI rent adjustment of 4 percent each September 1. The amendment will result in minimum total revenue over the three-year term in the amount of $26,011

and will be deposited to account no. 1101.4351.0009. Additional revenue in the form of percentage rents could be realized, the amount of which is dependent upon the amount of gross income from the sale of food and beverages from the leased premises.

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 Amendment 1 to the Percentage Property Lease Agreement with Charles Anderson and Charles Dodaro, dba Buccaneer Beach Club, for the premises at 1508 South Pacific Street, extending the agreement from April 1, 2015 to March 31, 2018, for a three-year minimum total revenue of $26,011; and authorize the City Manager to execute the amendment.

PREPARED BY:

Julie Cook
Program Specialist

SUBMITTED BY:

Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Douglas E. Eddow, Real Estate Manager

Jane McPherson, Interim Financial Services Director

AMENDMENT NO. 1 TO PERCENTAGE PROPERTY LEASE AGREEMENT

This AMENDMENT NO. 1 TO PERCENTAGE PROPERTY LEASE AGREEMENT is made this ____ day of _____2015 ("Amendment"), by and between the CITY OF OCEANSIDE, ("CITY") and CHARLES ANDERSON and CHARLES DODARO, DBA BUCCANEER BEACH CLUB, hereinafter called ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE entered into a Percentage Property Lease Agreement ("Agreement") dated September 8, 2010, for lease of real property located at Buccaneer Beach Park, in the City of Oceanside, County of San Diego, State of California, commonly known as Buccaneer Beach Club, 1508 South Pacific Street.

WHEREAS, CITY and LESSEE are desirous of extending the term of the Agreement for an additional three (3) years under the terms and conditions of the Agreement at the CITY's calculated fair market property lease payment rate.

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

AGREEMENT

1. **SECTION 2: TERM,** Subsections 2.01 and 2.02 are hereby deleted in their entirety and replaced with the following language:

2.01 Term. The term of this Agreement, having commenced on April 1, 2010, is extended for an additional three (3) years effective **April 1, 2015 and terminating March 31, 2018.**

2.02 Extension of Term. The LESSEE may request an additional extension of this Agreement for a **three (3)-year term** under the same terms and conditions of this Agreement except rent shall be at the CITY's calculated fair market rental rate of similar businesses, provided that the LESSEE is not in default or breach of any term, condition, or covenant of this Agreement.

The LESSEE may request not more than one (1) three-year extension of term by providing the CITY with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement. The City Manager shall notify the LESSEE not

later than **thirty (30) days** after receipt of such request whether such request will be recommended to the Oceanside City Council, at which time the CITY shall provide LESSEE with CITY's calculated fair market rent value and rental amount which the CITY 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 annual term. CITY's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY'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 City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the extension request in sufficient time as to provide LESSEE with **thirty (30) days** notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed **thirty (30) days**, to allow for such thirty (30) day notice of termination.

In no event shall the term of this Agreement be extended in excess of **three (3) years** beyond the expiration of the term of this Agreement without the mutual agreement of the parties and prior approval of the CITY.

2. **SECTION 3: RENT,** Subsection 3.02b **Initial Minimum Rent Amount** is hereby deleted in its entirety and replaced with the following language:

b. Minimum Rent Amount. The minimum rent amount beginning April 1, 2015 shall be Six Hundred Eighty-Two Dollars and Fifty Cents **($682.50)**, per month. Beginning September 1, 2015 the minimum annual rent amount shall be adjusted pursuant to subsections 3.02c-3.02e of Section 3: RENT, and shall be payable monthly in advance on or before the first day of each new month.

3. **SECTION 3: RENT**, Subsection 3.02c **Minimum Rent Adjustment Date** is hereby amended by deleting the words "third-year" in the first sentence.

4. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of the original Agreement and this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment.

CITY
City of Oceanside, a Municipal Corporation

Date_____

By_____
Name: Steven R. Jepsen
Title: City Manager

APPROVED AS TO FORM:

By Barbara Hamilton, ASST.
City Attorney

LESSEE
Charles Anderson & Charles Dodaro, dba Buccaneer Beach Club

Date 2/13/15

By

Date 2-13-15

By Charles A. Dodaro

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On 2/13/15 before me, Curtis Jackson, Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared Charles Anderson and Charles Dodaro
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.

CURTIS NYLES JACKSON
Commission # 1995593
Notary Public - California
San Diego County
My Comm. Expires Dec 1, 2016

Signature
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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