STAFF REPORT

ITEM NO. 5

CITY OF OCEANSIDE

DATE: May 6, 2015

TO: President and Directors of the Harbor District Board

FROM: Property Management

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE PERCENTAGE PROPERTY LEASE AGREEMENT WITH MONTE C. YEARLEY, DBA YEARLEY SAILBOATS, FOR THE PREMISES AT 1850 HARBOR DRIVE NORTH, SUITE B**

SYNOPSIS

Staff recommends that the Harbor District Board of Directors approve Amendment 1 to the Percentage Property Lease Agreement between the Oceanside Small Craft Harbor District and Monte C. Yearley, dba Yearley Sailboats, for the premises at 1850 Harbor Drive North, Suite B, and adjacent concrete slab, extending the term of the agreement retroactively from January 1, 2015, through December 31, 2015, for a minimum total revenue of $7,859, and authorize the Administrative Officer to execute the amendment.

BACKGROUND

Monte C. Yearley, dba Yearley Sailboats ("Lessee") has been conducting business at the Oceanside Harbor since 1963. The Oceanside Small Craft Harbor District ("District") last entered into a Percentage Property Lease Agreement ("Agreement") dated June 5, 2013, with Lessee for the office space at 1850 Harbor Drive North, Suite B and adjacent concrete slab. The Agreement provides for two (2) additional one-year extensions. Lessee has requested a one-year extension of the Agreement.

ANALYSIS

The Amendment extends the term of the Agreement for one year commencing retroactive to January 1, 2015 through December 31, 2015. The Agreement provides for monthly rent equal to the minimum rent or the percentage rent, whichever is higher, and the Amendment increases the minimum rent to the calculated fair market rental rate of similar businesses at the Oceanside Harbor.

FISCAL IMPACT

The Amendment will change the terms of the original Agreement, retroactively to January 1, 2015 the Harbor will begin to receive a minimum annual rent in the amount of $7,485 and five (5) percent annual administrative costs in the amount of $374, for

total annual minimum revenue to the District of $7,859 (Account No. 1751.4496-100354).

INSURANCE REQUIREMENTS

Lessee will be required to maintain the District's standard insurance requirements 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 Harbor District Board of Directors approve Amendment 1 to the Percentage Property Lease Agreement between the Oceanside Small Craft Harbor District and Monte C. Yearley, dba Yearley Sailboats, for the premises at 1850 Harbor Drive North, Suite B, and adjacent concrete slab, extending the term of the agreement retroactively from January 1, 2015, through December 31, 2015, for a minimum total revenue of $7,859, and authorize the Administrative Officer to execute the amendment.

PREPARED BY:

Julie Cook
Program Specialist

SUBMITTED BY:

Michelle Skaggs Lawrence
Interim Administrative Officer

REVIEWED BY:

Peter A. Weiss, Assistant City Manager

Douglas E. Eddow, Real Estate Manager

Paul C. Lawrence, Harbor Manager

Jane McPherson, Interim Financial Services Director

ATTACHMENTS:

1. Amendment
2. Rent Adjustment Worksheet

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 OCEANSIDE SMALL CRAFT HARBOR DISTRICT, ("DISTRICT") and MONTE C. YEARLEY, dba YEARLEY SAILBOATS, hereinafter called ("LESSEE").

RECITALS

WHEREAS, DISTRICT and LESSEE entered into a Percentage Property Lease Agreement ("Agreement') dated June 5, 2013, for lease of the premises at the Oceanside Harbor in the City of Oceanside, County of San Diego, State of California, commonly known as 1850 Harbor Drive North, Suite B and concrete display slab.

WHEREAS, DISTRICT and LESSEE are desirous of extending the term of the Agreement for an additional one (1) year under the terms and conditions of the Agreement at the DISTRICT'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, 2.01.1 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 January 1, 2013 is extended for one (1) year retroactive to **January 1, 2015 and terminating December 31, 2015.**

2.02 Extension of Term. The LESSEE may request an extension of the term of this Agreement for **one (1) additional one-year term** under the terms and conditions of this Agreement at the DISTRICT'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) one-year extension of term by providing the DISTRICT with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement. The DISTRICT's Administrative Officer shall notify the LESSEE not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the Harbor Board for approval, at which

time the DISTRICT shall provide LESSEE with DISTRICT's calculated fair market rent value and rental amount which 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 annual term. DISTRICT'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 Administrative Officer does not constitute DISTRICT approval of the extension request. The Administrative Officer in his capacity as the DISTRICT's authorized representative, shall, in his or her 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 the extension of the term of this Agreement. In the event the Harbor Board 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-day notice of termination.

In no event shall the term of this Agreement be extended in excess of **one (1) year** beyond the expiration of the term of this Agreement without the mutual agreement of the parties and prior approval of the Harbor Board.

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

b. Minimum Rent Amount. The minimum annual rent amount retroactive for the term of this Agreement shall be **Seven Thousand Four Hundred Eighty-five Dollars and Eight Cents ($7,485.08)** which shall be payable monthly in advance at the rate of **Six Hundred Twenty-three Dollars and Seventy-six Cents ($623.76)** without demand or invoice, on or before the first day of each new month.

3. All other terms, conditions, covenants and provisions of this 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 THEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment.

DISTRICT
THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date_____

By_____
Name: Michelle Skaggs-Lawrence
Title: Interim Administrative Officer

APPROVED AS TO FORM:

By_____
Harbor District Attorney

LESSEE
MONTE C. YEARLEY, dba
YEARLEY SAILBOATS

Date 14 April 2015

By_____
Name: Monte C. Yearley

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)SS.

On 4/14/15 (Date) before me, Curtis Jackson, Notary Public (Name and Title of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared Monte C. Yearley (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.

CURTIS MYLES JACKSON
Commission # 1996593
Notary Public - California
San Diego County
My Comm. Expires Dec 1, 2016

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 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

Yearly Sailboats - Fair Market Value Rent Determination
January 1, 2015 to December 31, 2015

Current	***Monthly***	***Annual***
Minimum	$ 613.33	$ 7,359.96
Admin. Fee	$ 30.67	$ 368.04

Tenant has paid same amount from January 1, 2013 thru December 31, 2014

Proposed		
Minimum	$623.76	$7,485.08
Admin.	$31.19	$374.25
	$654.94	**$7,859.33**

Proposed minimum was calculated by using 1st Half of 2013 = 0.9% & 1st Half of 2014 = 2.4% (two-year average). Difference was **1.7%**. Future rent increase's will be evaluated at lease end and each applicable extension.