



DATE: June 3, 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 OCEANSIDE HARBOR FUEL DOCK AND MINI MART, INC., FOR THE PREMISES LOCATED AT 1380 NORTH PACIFIC STREET, AND A PORTION OF THE OCEANSIDE SMALL CRAFT HARBOR**

SYNOPSIS

Staff recommends that the Oceanside Small Craft Harbor District Board of Directors approve Amendment 1 to the Percentage Property Lease Agreement between the Oceanside Small Craft Harbor District and Oceanside Harbor Fuel Dock and Mini Mart, Inc., for the premises located at 1380 North Pacific Street, and a portion of the Oceanside Small Craft Harbor, extending the term of the agreement from September 1, 2015, through August 31, 2020, for a five-year total minimum revenue of \$83,548; and authorize the Administrative Officer to execute the amendment.

BACKGROUND

The Oceanside Harbor Fuel Dock and Mini Mart, Inc. ("Lessee"), entered into a Percentage Property Lease Agreement ("Agreement") dated September 7, 2005, with the Oceanside Small Craft Harbor District ("District"), for the premises located at 1380 North Pacific Street and a portion of the Oceanside Small Craft Harbor ("Premises"). Since operating, Lessee has made significant improvements to Premises, fuel upgrades, a store remodel and new decking. The Agreement terminates August 31, 2015; however, the Agreement provides for an option to extend the term for an additional five years to August 31, 2020.

Lessee desires to extend the term and also requests an additional five (5) year extension option and approval to expand sales at the Premises to include fresh fish to the public from the dock and mini-mart. Lessee will sell fresh fish directly to patrons from Lessee's fishing boat and as it becomes popular and sales increase, Lessee will make improvements to Premises.

ANALYSIS

The Amendment extends the term of the Agreement for five years, expiring August 31, 2020 and provides for a five-year extension option. The monthly rent shall remain the minimum rent or the percentage rent, whichever is greater. The minimum rent is

adjusted annually based on the semi-annual Consumer Price Index or 5 percent, whichever is greater.

FISCAL IMPACT

The Amendment will result in rental payments for the Premises, over the five-year term, in the minimum amount of \$83,548 and will be deposited into Harbor Account 1751.4496-100351. Additional revenue from percentage rents may be realized, if the gross receipt percentage rent is greater than the minimum amount.

INSURANCE REQUIREMENTS

The 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 Oceanside Small Craft Harbor District Board of Directors approve Amendment 1 to the Percentage Property Lease Agreement between the Oceanside Small Craft Harbor District and Oceanside Harbor Fuel Dock and Mini Mart, Inc., for the premises located at 1380 North Pacific Street, and a portion of the Oceanside Small Craft Harbor, extending the term of the agreement from September 1, 2015, through August 31, 2020, for a five-year total minimum revenue of \$83,548; and authorize the Administrative Officer to execute the amendment.

PREPARED BY:



Julie Cook
Program Specialist

SUBMITTED BY:



Michelle Skaggs Lawrence
Interim Administrative Officer

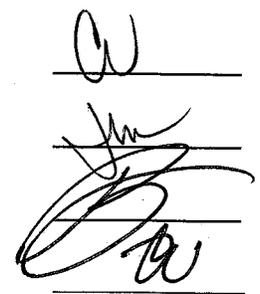
REVIEWED BY:

Peter A. Weiss, Assistant City Manager

Jane McPherson, Interim Financial Services Director

Paul Lawrence, Harbor Manager

Douglas E. Eddow, Real Estate Manager



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 OCEANSIDE HARBOR FUEL DOCK AND MINI MART, INC., hereinafter called ("LESSEE").

RECITALS

WHEREAS, DISTRICT and LESSEE entered into a Percentage Property Lease Agreement ("Agreement") dated September 7, 2005, for lease of the premises at the Oceanside Harbor in the City of Oceanside, County of San Diego, State of California, commonly known as 1380 North Pacific Street;

WHEREAS, DISTRICT and LESSEE are desirous of extending the term of the Agreement for an additional five (5) years and to provide for one (1) additional five (5) year extension 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.** Subsection 2.01. Commencement is hereby amended by adding the following language:

2.01 Term. The term of this Agreement for the PREMISES, is for an additional five (5) years effective **September 1, 2015 and terminating August 31, 2020.**

Subsection 2.02. Extension of Term is hereby deleted in its entirety and replaced with the following language:

2.02 Extension of Term. The LESSEE may request an extension of the term of this Agreement for the PREMISES for **one (1) additional five (5)-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) five-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 designee 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 District Staff does not constitute DISTRICT approval of the extension request. The District's Administrative Officer in his or her 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 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 **five (5) years** 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**, Subsections 3.02b **Minimum Rent Amount**, 3.02c **Minimum Rent Adjustment Date**, 3.02d **Minimum Rent Adjustment Computation** are hereby deleted in their entirety and replaced with the following language:

b. Minimum Rent Amount. The Minimum Annual Rent amount for the term of this Agreement shall be **Fifteen Thousand One Hundred Twenty Dollars (\$15,120)** which shall be payable monthly in advance at the rate of **One Thousand Two Hundred Sixty Dollars (\$1,260) per month**.

c. Minimum Rent Adjustment Date. The Minimum Rent Adjustment Date shall be each one (1)-year anniversary of the date of commencement as defined in Section 2.01 of this Agreement. The Minimum Annual Rent amount, and the corresponding prorated monthly payments, under this Agreement shall be adjusted on each Minimum Rent Adjustment Date as set forth below.

Adjustment Index. The index will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by Lease of DISTRICT and

LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.02d.

Regardless of the index publication dates, the Minimum Rent Adjustment Dates shall be on the dates defined by Subsection 3.02c above. Until the minimum rent adjustment can be actually calculated in accordance with this Agreement, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to DISTRICT within thirty **(30) days** of written notice by the DISTRICT. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

d. Minimum Rent Adjustment Computation. The Annual Minimum Rent adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Minimum Annual Rent: The Minimum Annual Rent at the commencement of this Lease as listed in Subsection 3.02.b above.

Existing Minimum Annual Rent: The existing Minimum Annual Rent shall be the Minimum Annual Rent amount in effect on the date preceding the Minimum Rental Adjustment Date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **twelve (12) month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

First Adjustment: Initial Minimum Annual Rent + (Initial Minimum Annual Rent x the percent change in the CPI) = New Minimum Annual Rent.

For example: $\$100 + (\$100 \times 5\%) = \$105$

Subsequent Adjustments: Existing Minimum Annual Rent + (Existing Minimum Annual Rent x the percent change in the CPI) = New Minimum Annual Rent.

For example: $\$105 + (\$105 \times 5\%) = \$110.25$

However, in no event shall the adjusted rent increase be less than **five percent (5%)** nor more than **ten percent (10%)** per year.

4. **SECTION 3: RENT** Subsection 3.02e **Percentage Rent** will have the following;

additional item added

(11) 6% of gross income from the sale of fresh fish.

5. 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 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 *Robert J. Hamilton, ASST.*
Harbor Board Attorney

LESSEE
OCEANSIDE HARBOR FUEL DOCK AND MINI MART, INC.
a California corporation

Date 5/18/15

By *[Signature]*
Name ENOFRIO DAMATO
Title PRESIDENT

Date 5/18/15

By *[Signature]*
Name Mabuba Damato
Title Secretary

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

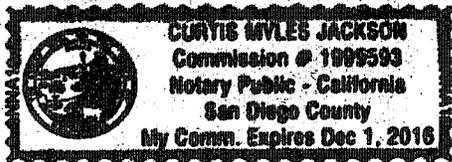
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)
On 5/18/15 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Onofrio Damato and Mabuba Damato
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 [Handwritten 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: _____ Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____

Amendment 1 - Effective September 1, 2015
Oceanside Harbor Fuel Dock - Percentage Lease Agreement
Percentage Lease Agreement - Effective Sep. 1, 2005
Annual Minimum Rent Adjustment - Effective Sep. 1, 2015

9/1/2005 \$ 14,400

<u>Adjust Year</u>	<u>Existing Min Annual Rent</u>	<u>SD CPI 14Half 1</u>	<u>SD CPI 15 Half 1</u>	<u>Percent Change</u>	<u>*CPI Adjustment</u>	<u>New Min Annual Rent</u>	
9/1/2015	\$ 14,400				\$ -	\$ 14,400	N/A
9/1/2015	\$ 14,400	N/A	N/A	5%	\$ 720.00	\$ 15,120	Annual
						\$ 1,260	Monthly

*Note: CPI Increase not available, 5% min. used
 Computation at 5% minimum per Amend 1 of Property Use Agreement

5 Year's Annual @ 5% min.

9/1/2015	15,120.00	New Initial Min Rent
9/1/2016	15,876.00	
9/1/2017	16,669.80	
9/1/2018	17,503.29	
9/1/2019	18,378.45	
	\$ 83,547.54	