

STAFF REPORT*CITY OF OCEANSIDE*

DATE: June 3, 2015

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **LEASE AGREEMENT WITH CITYMARK OCEANSIDE, LLC (GF PROPERTIES, LLC) TO LEASE PROPERTY FOR A TEMPORARY PUBLIC PARKING LOT**

SYNOPSIS

Staff recommends that the City Council approve a two-year Lease Agreement with Citymark Oceanside, LLC (GF Properties, LLC) for the lease of Block 5 (portion of APN: 147-370-02) along Myers Street between Pier View Way and Civic Center Drive to provide for temporary public parking; and authorization for the City Manager to execute the agreement

BACKGROUND

Citymark Oceanside, LLC, also referred to as GF Properties, LLC ("GFP") is the owner of Blocks 18 and 19 ("Property"), and currently leases the Property to the City of Oceanside pursuant to a Lease Agreement dated July 1, 2012 ("Lease"), which the City has been occupying as a month-to-month tenancy. The Property is used by the City as public parking lots, which are also referred to as Parking Lot 32 (Block 18) and Parking Lot 33 (Block 19).

GFP has informed the City that, upon approval of its mixed-use development plans for the Property, GFP is planning to begin construction on Block 18 in June 2015 and will use Block 19 to stage construction for the Block 18 development. Subsequent thereto GFP plans to development Block 19. Accordingly GFP will need to terminate the existing Lease. GFP's termination of the Lease and development of the Property will result in the City permanently closing Parking Lot 32 (Block 18) and Parking Lot 33 (Block 19).

As a result of the termination of the Lease for the Property, the City looked for another parcel of land to provide for temporary public parking spaces as a result of no longer leasing Parking Lot 32 (Block 18) and Parking Lot 33 (Block 19). GFP, as the owner of undeveloped Block 5 (portion of APN: 147-370-02) along Myers Street between Pier View Way and Civic Center Drive, has agreed to make Block 5 available to the City to lease, construct and operate a temporary public parking lot. GFP has indicated that they do not anticipate development of Block 5 for at least two years.

ANALYSIS

In order to temporarily offset the loss of public parking spaces as a result of the downtown development construction activities, the City proposes to lease Block 5 from GFP in order to construct and operate a temporary public parking lot ("New Parking Lot"). The New Parking Lot will provide public parking spaces in the Downtown area until such time as the parking structure that is planned for the City-owned Parking Lot 23 can be constructed. The parking structure planned for Parking Lot 23 will permanently provide for additional parking spaces in the Downtown area.

The new lease agreement ("New Lease") with GFP is for two years, and possibly longer. Under the New Lease the City is not required to pay rent for Block 5. Per the New Lease, the City will be responsible for the maintenance and operating costs associated with the New Parking Lot. The construction of the New Parking Lot will be completed by the City, pursuant to a separate City Council action concurrent with this item.

The City plans to operate the New Parking Lot as a pay parking lot. The revenue collected from the New Parking Lot will be used to reimburse for the costs associated with the construction of the New Parking Lot and any revenue collected thereafter will belong to the City. The authorization to use and enforce the New Parking Lot will also be pursuant to a separate City Council action also concurrent with this item. The New Parking Lot will be identified as Lot 24B.

FISCAL IMPACT

As the parking fee revenue generated from the New Parking Lot is collected said revenue will be deposited into 1101.4182.0001. It is anticipated that parking revenue generated will reimburse the City's initial investment of \$100,000 by the 2016 peak summer season.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

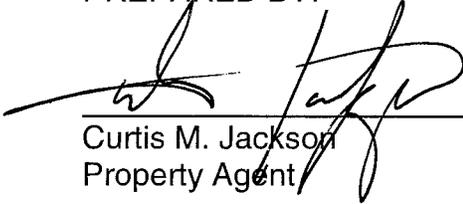
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a two-year Lease Agreement with Citymark Oceanside, LLC (GF Properties, LLC) for the lease of Block 5 (portion of APN: 147-370-02) along Myers Street between Pier View Way and Civic Center Drive to provide for temporary public parking; and authorization for the City Manager to execute the agreement.

PREPARED BY:


Curtis M. Jackson
Property Agent

SUBMITTED BY:


Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Peter A. Weiss, Assistant City Manager



Jane McPherson, Interim Financial Services Director



Scott O. Smith, City Engineer



Douglas Eddow, Real Estate Manager



 Hans Koger, Public Works Division Manager



ATTACHMENTS:

- 1) Lease Agreement
- 2) Site Map

LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

CITYMARK OCEANSIDE, LLC

FOR

"BLOCK 5" PART OF LOT 2

OCEANSIDE, CA

DATED EFFECTIVE AS OF

June 3, 2015

THIS LEASE AGREEMENT, dated effective as of June 3, 2015 ("Lease"), is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "CITY," and **CITYMARK OCEANSIDE, LLC**, a California limited liability company, hereinafter called ("Lessor").

RECITALS

WHEREAS, Lessor is the lawful owner of certain real property and improvements thereon, consisting of approximately 1.05 acres, commonly known as "Block 5" of Lot 2, which is bounded by Myers Street, Pier View Way underpass, and the NCTD Railroad, Oceanside, California and is depicted on the attached **Exhibit "A"** ("Premises").

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

AGREEMENT

SECTION 1: PROPERTY

1.01 Premises. Lessor hereby leases the Premises to CITY and CITY hereby leases the Premises from Lessor, in accordance with the terms, covenants, conditions and provisions of this Lease. The Premises is more particularly described on attached Exhibit "A" and is incorporated herein by this reference.

1.02 Uses. CITY shall have the exclusive use of the Premises for the purpose of providing interim public parking. Subject to Lessor's prior written consent (which may be granted or withheld in Lessor's sole discretion), the Premises may also be used for other related municipal or incidental purposes.

1.03 Property Condition. Lessor shall deliver the Premises in an "as is, where is" condition and CITY agrees to accept the Premises in said condition. Lessor shall have no obligation to make any improvements to the Premises during the term of the Lease.

1.04 Quiet Possession. Subject to CITY's compliance with all provisions of this Lease (including without limitation the payment of rent), (a) CITY shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises and (b) Lessor shall not unreasonably or substantially interfere with CITY's use of the Premises while CITY is in possession of the Premises.

If during the term hereof CITY is temporarily dispossessed through action or claim of a title superior to the Lessor, then this Lease shall not be voidable nor shall Lessor be liable to CITY for any loss or damage resulting therefrom. In such an event, there shall be determined and stated in writing by the Lessor a proportionate abatement of rent for the period or periods during which CITY is prevented from having the quiet possession of all or a portion of the Premises. In the event that such dispossession causes an economic burden on CITY, CITY shall have the option to terminate this Lease by submitting to the Lessor a **thirty (30) day** prior written notice together with its justifications for such termination.

1.05 Discharge of Liens, Encumbrances. In using the Premises, and in constructing, maintaining, operating and using the improvements thereon, CITY agrees it shall comply in all material respects with any and all requirements imposed by federal or state laws and statutes, and with ordinances, orders, or regulations of any governmental body having jurisdiction over CITY or the Premises. Without limiting the foregoing, CITY agrees to comply in all material respects with all applicable federal, state and local environmental laws and regulations. CITY agrees to promptly pay and discharge any and all liens arising out of any construction, alteration or repair work done, or suffered or permitted to be done, by Lessee on the Premises, and Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that the failure of Lessor to take any such action shall not relieve Lessee of any obligations or liability under this or any other paragraph hereof.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of two (2) years, commencing on June 3, 2015 ("Lease Commencement Date").

2.02 Reserved.

2.03 Termination Provisions. Notwithstanding the provisions of Section 2.01 above or any other contrary provisions in this Lease, either party shall have the right to terminate this Lease upon providing **thirty (30) days** prior written notice to the other party. No other special termination options are available, except those described elsewhere in this Lease.

2.04 Holdover. Any holding over by CITY after expiration or termination shall not be considered as a renewal or extension of this Lease. Any occupancy of the Premises by CITY after the expiration or termination of this Lease shall constitute a month-to-month tenancy. All other terms and conditions of this Lease shall continue in full force and effect during any holdover period.

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

2.06 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Rent. CITY shall pay Lessor as rental for the use of the Premises the sum of One and No/100 (\$1.00) Dollars per year, payable in advance.

SECTION 4: INDEMNITY AND INSURANCE

4.01 Indemnity.

a. **CITY Indemnification.** CITY shall indemnify and hold harmless Lessor and its managers, members, officers, agents and employees against all claims for damages to persons or property in any way arising out of or in connection with (1) the conduct, acts or omissions of the CITY, its employees or invitees in connection with the Premises under this Lease and (2) the business activities of CITY on or near the Premises, except that CITY shall not indemnify Lessor for those claims arising from the sole gross negligence or sole willful misconduct of the Lessor, its managers, members, officers, agents, or employees. CITY's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the Lessor, its managers, members, officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

b. **Lessor Indemnification.** Lessor shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising in any way out of or in connection with the conduct of the Lessor or its employees in connection with the Premises, except that Lessor shall not indemnify CITY for those claims arising from the sole gross negligence or sole willful misconduct of CITY, its officers, agents, or employees. Lessor's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

c. **Survival.** The obligations of CITY and Lessors under this Section 4.01 shall survive the expiration or earlier termination of this Lease.

4.02 Insurance. CITY shall, at its sole cost and expense, obtain and keep in force at all times during the term the following insurance:

a. **Insurance Coverage.**

(1) **Commercial General Liability Insurance (Occurrence Form).** A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate, providing coverage for, among other things, contractual liability, premises, products/completed operations and personal and advertising injury coverage and, if necessary, CITY shall provide for restoration of the aggregate limit, and provide that the policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of CITY's indemnity obligations under this Lease.

(2) **Automobile Liability Insurance.** Business automobile liability insurance having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and insuring CITY against liability for

claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles.

(3) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by CITY in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

(4) Property Insurance. "All risk" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of CITY's personal property, fixtures, equipment and alterations (collectively "CITY's Property") and coverage for the full replacement cost thereof including business interruption of Lessee.

b. **General.**

(1) Insurance Companies. Insurance required to be maintained by CITY hereunder shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A – VIII" (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

(2) Certificate of Insurance. CITY shall deliver to Lessor certificates of insurance for all insurance required to be maintained by CITY in the form of the ACORD standard certificate of insurance (or in a form acceptable to Lessor in its sole discretion). CITY shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days prior written notice to the parties named as additional insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Lessor). If CITY fails to maintain any insurance required in this Lease, CITY shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(3) Additional Insureds. Lessor, Lessor's lender, if any, and any property management company of Lessor for the Premises shall be named as additional insureds on a form approved by Lessor under all of the policies required by Section 4.02.a above. The policies required under Section 4.02a(1) above shall provide for severability of interest.

(4) Primary Coverage. All insurance to be maintained by CITY shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in

"following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by CITY shall not limit CITY's liability under this Lease.

(5) Waiver of Subrogation. CITY waives any right to recover against Lessor for claims for damages to CITY's Property whether or not covered by insurance. This provision is intended to waive fully, and for the benefit of Lessor, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by CITY pursuant to this Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(6) Notification of Incidents. CITY shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises or the Property which could give rise to a claim under any of the insurance policies required under Section 4.02.

- c. **Self-Insurance**. Notwithstanding anything herein to the contrary, CITY may self-insure any of its insurance coverage obligations hereunder as long as CITY's tangible net worth is in excess of Five Million Dollars (\$5,000,000), as evidenced by annual financial statements prepared under generally accepted accounting principles, provided to Lessor by CITY's accountants. At any time that CITY's tangible net worth falls below the above-required amount, CITY shall promptly obtain the necessary insurance policies required hereunder. It is understood that if CITY elects to self-insure as herein provided, Lessor shall have the same benefits and protections as if CITY carried insurance with third-party insurance companies satisfying the requirements of this Lease.

SECTION 5: MAINTENANCE OF PROPERTY

5.01 CITY's Maintenance. CITY agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, throughout the term of this Lease. CITY will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition to the reasonable satisfaction of Lessor.

5.02 Operational and Management Costs and Expenses. During the Lease term, CITY shall be solely responsible for all operational and management costs and expenses incurred by CITY for the Premises.

SECTION 6: UTILITIES AND TAXES

6.01 Utilities CITY agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Premises.

6.02 Real Property Taxes. Lessor shall be responsible for payment of all taxes,

assessments, and fees assessed or levied upon the Premises, including the land, any buildings, structures, machines, equipment or other improvements or property of any nature whatsoever erected, installed, or maintained by CITY, other than trade fixtures and other items that can be removed from the Premises without material damage thereto. CITY shall be responsible for the payment of all fees and taxes relating to CITY's Property (as defined in Section 4.02.a(4)), including without limitation all personal property maintained on the Premises by or on behalf of CITY, including without limitation all machines, equipment and appliances that can be removed from the Premises without material damage thereto.

SECTION 7: IMPROVEMENTS/ALTERATIONS AND PERSONAL PROPERTY

7.01 Improvements/Alterations. CITY shall have the right to construct, at CITY's sole cost, improvements to the Premises, which are appropriate for the permitted parking use set forth in this Lease. Provided however, Lessor shall have the right to approve plans and specifications for such improvements, which approval shall be at Lessor's sole discretion.

7.02 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Property now existing or constructed on the Premises by CITY, excepting such fixtures which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at Lessor's option, Lessor's property, free of all liens and claims except as otherwise provided in this Lease.

b. If Lessor elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, Lessor shall so notify CITY in writing **thirty (30) days** prior to expiration or termination of this Lease, and CITY shall remove all such improvements, structures and installations as directed by Lessor at CITY's sole cost and expense within a reasonable period after the Lease expiration or termination.

SECTION 8: DAMAGE AND/OR DESTRUCTION

8.01 CITY's Obligations. In the event the Premises and/or improvements are damaged and/or destroyed to any extent for any reason whatsoever, CITY in its sole discretion shall have the right to either repair said damage and/or destruction or elect not to repair the damage or destroyed portion of the Premises and/or improvements. The foregoing notwithstanding, CITY shall promptly make a claim under its insurance policies to cover the repair costs associated with any damage and/or destruction to the Premises. Any insurance proceeds CITY receives, or is entitled to receive, in connection with any damage or destruction to the Premises shall be used by CITY to promptly repair the Premises, provided that in the event CITY elects not to repair said damage and/or destruction, CITY shall promptly tender all insurance proceeds to Lessor. If any such damage and/or destruction materially affects CITY's ability to conduct its operation in the Premises, either party shall have the right to terminate the Lease by giving at least **thirty (30) days** written notice to the other party, and in such event, all insurance proceeds

received by CITY (or which CITY is entitled to receive) shall be promptly tendered to Lessor. Upon Lessor's request, CITY shall assign to Lessor its rights to any claim to be made by CITY against its insurance policies as contemplated under this Section 8.01.

SECTION 9: CONDEMNATION

9.01 Eminent Domain. If the entire Premises are taken through condemnation proceeding or under threat of condemnation by any governmental entity (other than CITY or any subdivision or instrumentality of the CITY), then this Lease shall automatically terminate, CITY shall vacate the Premises and Lessor shall return to CITY a prorated portion of the annual rent paid by CITY, determined based on the number of days the Lease was in effect. If less than the entire Premises is taken through such a proceeding or under such a threat, Lessor shall have the right to terminate this Lease by written notice delivered to CITY, in which event Lessor shall return to CITY a prorated portion of the annual rent paid, again determined based on the number of days the Lease was in effect. If Lessor elects not to terminate this Lease in the event of such a proceeding or threat, CITY shall be relieved from a prorated portion of CITY's obligations under this Lease as to rent for the Premises, determined by the proportion of the amount of the Premises which has been so taken and which is not available to CITY for parking uses relative to the amount of the Premises which is still available for such use.

SECTION 10: DEFAULT BY LESSEE

10.01 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein or should CITY fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **ten (10) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **thirty (30) days** (or such longer period as shall be reasonably required to cure such default, provided that CITY has commenced the cure within such thirty-day period and is diligently proceeding to cure the default as expediently as possible) after written notice thereof if default is in the performance of any other covenant, condition and agreements, Lessor shall have the right to terminate this Lease; and that in the event of such termination, CITY shall have no further rights hereunder and CITY shall thereupon forthwith remove itself from the Premises and shall have no further right or claim thereto. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from CITY in the amount necessary to compensate Lessor for damages it sustains arising from any breach of this Lease by CITY or which in the ordinary course of things would be likely to result therefrom.

SECTION 11: GENERAL PROVISIONS

11.01 Notices. All notices, demands, requests, consents or other communications which this Lease 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:

THE CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

To Lessor:

CITYMARK OCEANSIDE, LLC

c/o GF Properties Group, LLC
175 Mercado Street, Suite 240
Durango, CO 81301
Attention: Brian Mulvany

With a copy to:

Maynes Bradford Shipp & Sheftel, LLP
1331 17th Street, Suite 410
Denver, CO 80202
Attention: Sherri Way

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 (3) 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.

11.02 CITY Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

11.03 Entire Agreement. This Lease comprises the entire integrated understanding between CITY and Lessor concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements, except as to those provisions that survive per the terms of the prior Public Use Lease and under the Prior Lease as set forth in Section 2.02 above. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

11.04 Interpretation of the Lease. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California.

11.05 Invalid Provisions. Should any provision herein be found or deemed to be invalid, the Lease 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 Lease are severable.

11.06 Binding Effect. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns except as otherwise provided in this Lease.

11.07 No Third Party Obligation. This Lease shall not be deemed to confer any rights upon, nor obligate either of the parties to this Lease, to any person or entity not a party to this Lease.

11.08 Lease Modification. This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

11.09 Dispute Resolution, 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 Lease 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.

11.10 Assignment and Subletting. CITY may not assign its interest under this Lease or sublease all or a portion of the Premises with the prior written consent of the Lessor. No permitted assignment shall relieve CITY of its obligations and liabilities under this Lease.

11.11 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.

SECTION 12: SIGNATURES

12.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessor and the CITY. By execution and delivery of this Lease by CITY, CITY hereby represents and warrants that there is no present impediment to enforceability of this Lease against CITY, and to the extent permitted by applicable law CITY waives any governmental immunity it may have under local law that would limit or otherwise adversely affect Lessor's ability to enforce the terms of this Lease against CITY, provided that this waiver shall not be construed as a waiver of the protections afforded to CITY under the state governmental immunity act.

[SIGNATURE PAGE TO FOLLOW]

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 Lease to be executed on the day and year respectively written hereinbelow.

"CITY"

THE CITY OF OCEANSIDE

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
Michelle Skaggs Lawrence
Interim City Manager

By: *Antonia Hamilton* ASST
for John Mullen
City Attorney

"Lessor"

CITYMARK OCEANSIDE, LLC

By: *Brian M. Mulvany*
BRIAN M. MULVANY
Title: Its Authorized Representative

Dated: May 26, 2015

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

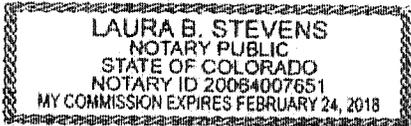
ACKNOWLEDGMENT

STATE OF Colorado)
COUNTY OF Jefferson) ss.

On May 26, 2015, before me personally appeared Brian M. Mulvany Authorized Representative of CITYMARK OCEANSIDE, LLC, a California limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SEAL



Laura B Stevens
Notary Public
My Commission Expires: 2-24-2018

TEMPORARY PAY PARKING LOTS

