



DATE: June 24, 2015

TO: President and Directors of the Harbor District Board

FROM: Harbor Division

SUBJECT: **APPROVAL OF A PERCENTAGE PROPERTY LEASE AGREEMENT WITH OC OCEAN ADVENTURE, INC. ON OCEANSIDE SMALL CRAFT HARBOR DISTRICT-OWNED PROPERTY**

SYNOPSIS

Staff recommends that the Harbor District Board of Directors approve a ten-year Percentage Lease Agreement with OC Ocean Adventure, Inc. a California Corporation dba: Oceanside Adventures for the use of dock space at Oceanside Harbor for the operation of a marina-related business, including but not limited to charter cruises, burials at sea, etc., effective June 25, 2015, through June 24, 2025, for a ten-year minimum total revenue of \$120,000 plus yet-to-be-determined Consumer Price Indexes (occurring at the beginning of year four and every three years thereafter); and authorize the Administrative Officer to execute the agreement.

BACKGROUND

On June 6, 2014, the City issued a Request for Proposals (RFP) for the leasing of a dock space in the Oceanside Harbor Marina. The subject area consists of 69.5 linear feet of dock area and is located within the Oceanside Harbor, adjacent to the Harbor Village area that hosts retail businesses and restaurants. The site address of the subject dock space is 256-1 Harbor Drive South. The RFP requested qualified parties to operate and maintain a business that would be able to attract and serve visitors to the Oceanside Harbor. The RFP outlined the ability to operate and maintain a marina-related business, including but not limited to whale and dolphin watching adventures, charter cruises, burials at sea, etc. The top three rated were interviewed and staff unanimously selected Ocean Adventures. On November 11, 2014, Harbor Manager Lawrence approved the selection of Oceanside Adventures to negotiate a lease agreement with the Harbor District. Oceanside Adventures has negotiated with Helgren's Sportfishing relative to the exclusive use provision of the Helgren's lease and Oceanside Adventures will also occupy a limited amount of Helgren's leased premises building area for the landside conduct of their proposed business.

ANALYSIS

Ocean Adventures was selected based on their overall marina experience, financial ability, and proposed improvements. As the principal owners of Dana Wharf Sportfishing and Whale Watching operating out of Dana Point Harbor, they have a long history of providing excellent service to visitors. Ocean Adventure desires to enter into a percentage lease agreement for the operation of a marina-related business, including but not limited to charter cruises, burials at sea, etc., for a ten-year minimum total revenue of \$120,000 plus yet-to-be-determined Consumer Price Indexes (occurring at the beginning of year four and every three years thereafter) commencing on June 25, 2015, and terminating on June 24, 2025.

FISCAL IMPACT

Over the ten-year term of the lease, Oceanside Adventures will pay a minimum rent amount of \$120,000, which will be deposited in Harbor Account 1751.4496S100877. Oceanside Adventures will pay the greater of minimum rent or a percentage of gross revenue.

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 Harbor District Board of Directors approve a ten-year Percentage Lease Agreement with OC Ocean Adventure, Inc. a California Corporation dba: Oceanside Adventures for the use of dock space at Oceanside Harbor for the operation of a marina-related business, including but not limited to charter cruises, burials at sea, etc., effective June 25, 2015, through June 24, 2025, for a ten-year minimum total revenue of \$120,000 plus yet-to-be-determined Consumer Price Indexes (occurring at the beginning of year four and every three years thereafter); and authorize the Administrative Officer to execute the agreement.

PREPARED BY:



Paul C. Lawrence
Harbor Manager

SUBMITTED BY:



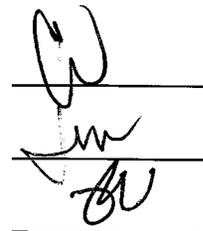
Michelle Skaggs Lawrence
Interim Administrative Officer

REVIEWED BY:

Peter A. Weiss, Assistant City Manager

Jane McPherson, Interim Financial Services Director

Douglas E. Eddow, Real Estate Manager



OCEANSIDE SMALL CRAFT HARBOR DISTRICT LEASE AGREEMENT

THIS LEASE AGREEMENT, hereinafter called "Agreement" or "Lease", is executed between the **Oceanside Small Craft Harbor District**, a municipal corporation, hereinafter called "DISTRICT", and **Ocean Adventures Inc.**, a California corporation, hereinafter called "LESSEE".

RECITALS

WHEREAS, DISTRICT is the lessee under a ground lease agreement with the City of Oceanside for certain premises in the City of Oceanside, County of San Diego, State of California, commonly known as the Oceanside Harbor; and

WHEREAS, LESSEE is desirous of operating a whale charter service from the Oceanside Harbor offering whale watching cruises, along with catering of related private events; and

WHEREAS, DISTRICT believes the use and operation will be beneficial to the Oceanside Harbor; and

WHEREAS, DISTRICT and LESSEE are desirous of entering into a lease agreement, which will allow LESSEE to provide its services for the benefit of Oceanside Harbor.

NOW THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

AGREEMENT

SECTION 1: USE

1.01 Premises. DISTRICT hereby grants to LESSEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the right to moor or berth a vessel (as described in Subsection 1.02 below) at that certain property situated at the Oceanside Harbor, in the City of Oceanside, County of San Diego, State of California. Said property is commonly known as the **northerly sixty-nine and one-half (69.5) feet of the westerly side of the Transient Vessel Harbor Village Long Dock**. LESSEE shall also have the right to use said Transient Vessel Harbor Village Long Dock, for the purpose of boarding and unboarding passengers, crew, food services and materials on said vessel. The property and dock are more particularly illustrated in Exhibit "A", attached hereto and by incorporated by this reference. Said property is hereinafter collectively called the "Premises".

1.02 Uses. The Premises are to be used by LESSEE solely and exclusively for the purpose of berthing a catamaran (or other vessel approved in writing by Harbor Manager). LESSEE'S catamaran or other approved vessel shall be used to provide first class whale charter vessel services offering Whale & Dolphin-watching adventures and private charters related thereto such as corporate meetings and functions and for no other purposes whatsoever.

LESSEE shall not use the Premises for any other purposes unless first approved in writing by the Harbor Manager.

1.02a Continuous Use. LESSEE covenants and agrees to use the Premises solely for the purposes specified above and to diligently pursue said purposes throughout the term hereof. In the event that LESSEE fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, the LESSEE shall be deemed in default under this Agreement. Provided however, in order for LESSEE to purchase the appropriate vessel and obtain the necessary certifications, after the execution of this Lease, LESSEE shall have no more than three (3) months until LESSEE must be actively engaged in the use for which this Lease was entered into, before Lessee may be deemed in default under this Subsection 1.02a.

1.02b Exclusive Use. LESSEE is to have exclusive use of the Premises (described in Section 1.01).

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period not to exceed ten (10) years commencing upon DISTRICT'S approval of this Lease executed by Tenant and terminating ten years thereafter, subject to the early termination provision set forth in Subsection 2.03 below. DISTRICT and LESSEE shall execute a Memorandum of Commencement Date confirming the term of this Agreement, a copy of which is attached as Exhibit "B", incorporated herein by this reference.

2.02 Renewal Option. Subject to the terms and conditions of this Agreement, including Subsection 2.03 below, LESSEE shall have the option to extend the term of this Agreement for two additional five (5) year terms, provided that the LESSEE is not in default of this Agreement and that LESSEE has fully and faithfully honored its lease obligations. Said renewal shall be under the same terms and conditions of this Agreement except the Minimum Rent Payment shall be at the DISTRICT'S calculated fair market rent payment rate for similar businesses.

2.02a Renewal Procedure. The LESSEE may request an extension of the term of this Agreement provided that written notice from the LESSEE is received by the DISTRICT no later than one hundred eighty (180) days prior to the expiration of the initial term of this Agreement. No later than sixty (60) days from the receipt of LESSEE'S written election to extend the term of this Agreement the DISTRICT's Harbor Manager shall, in writing, provide LESSEE with the DISTRICT'S calculated fair market rent payment value which the DISTRICT is willing to accept for the Premises. No later than thirty (30) days after the DISTRICT provides LESSEE with the DISTRICT'S determination of its acceptable rent payment rate LESSEE shall provide DISTRICT with its determination of acceptance or rejection of the recalculated rent payment rate. In no event shall the rent payment rate be less than that required during the preceding annual term.

2.02b Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the PREMISES by LESSEE or by LESSEE'S property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, LESSEE

shall pay the sum of: 1) the minimum monthly rent for the preceding annual term, and 2) a prorated amount of percentage rent for the extent of the holdover period. In addition to the minimum and percentage rent, LESSEE shall, in the event of any holding over beyond **90 days**, pay an increase in the minimum rent or percentage rent equal to the product of: 1) the minimum rent or percentage rent, whichever is the higher amount, and 2) **five percent (5%)** per year for each year of the term of Lease counting from the original commencement date of the Lease to the expiration or termination date of the Lease.

2.03 Termination Provisions. Notwithstanding any other provisions contained in this Agreement, DISTRICT shall, in its sole and absolute discretion, have the right to terminate the Agreement, effectively immediately, in the event LESSEE does not satisfy the following capital investment and performance conditions.

2.03a Capital Investment – Vessel. LESSEE shall at all times provide for service at the Premises, a vessel not exceeding 69.5 feet in length, Coast Guard inspected and approved, with the ability to service a minimum of approximately forty-nine (49) passengers.

2.03b Capital Investment – Operating Fund. LESSEE shall begin operations at the Premises with adequate funding for LESSEE'S anticipated operations in Oceanside Harbor including, but not limited to, vessel improvements, insurance, fixtures, furniture, table ware, licenses, and permits.

2.03c Documentation. LESSEE shall provide all documentation and information requested by DISTRICT'S Harbor Manager in accordance with Section 4 below, which, in DISTRICT'S Harbor Manager's sole discretion, is needed to satisfy the criteria set forth in Subsections 2.03a and 2.03b above.

2.04 Licenses and Permits. LESSEE agrees to obtain and maintain, at its sole cost and expense, all applicable business licenses and permits to operate its business at the Premises during the full term of this Agreement.

SECTION 3: RENT PAYMENT

3.01 General. LESSEE shall pay to DISTRICT a rent payment equal to the Minimum Rent Payment (as defined by Subsections 3.02 through 3.04) or the Percentage Rent Payment (as defined by Subsection 3.05), whichever is higher, without setoffs or deductions. In the event the commencement date of this Agreement is after the first (1st) day of the month, the first month's Minimum Rent Payment shall be prorated based on a thirty (30) day month.

3.02 Minimum Rent Payment. The Minimum Rent Payment amount for the period beginning with the commencement of the term of this Agreement shall be TWELVE THOUSAND DOLLARS (\$12,000) per year, which shall be payable monthly in advance at the rate of ONE THOUSAND DOLLARS (\$1,000) per month.

3.03 Minimum Rent Payment Adjustment Date. The Minimum Rent Payment shall be adjusted for the first three years of the lease term at the beginning of lease year four and every three years thereafter utilizing the U.S. Department of Labor's all-item Consumer Price Index (utilizing the annual adjustment for each of the preceding three years).

3.04 Minimum Rent Payment Adjustment. The amount of Minimum Rent Payment shall be increased, but in no event decreased, every Adjustment Date during the term.

3.04a Adjustment Procedure. As CPI data is not immediately available in January for the preceding year, until the Minimum Rent Payment adjustment can be actually calculated in accordance with this Agreement, LESSEE shall continue to make payments at the then-existing rental rate. When the adjustment is calculated, the balance of the rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to DISTRICT. In no event shall the adjusted rent as established in Subsection 3.04 above be less than the rent in existence immediately prior to the adjustment date.

3.05 Percentage Rent Payment. The Percentage Rent Payment shall be the amount equal to five percent (5%) of LESSEE'S Gross Income (as defined in Section 3.07) for each month during the first two years; and seven percent (7%) per year thereafter. Review of Percentage Rent: After three years and each five years thereafter, LESSEE may give written notice to DISTRICT that it would like DISTRICT to consider downward revision of the percentage rent based upon unsatisfactory operating results of the prior five years (financial statements are to be presented by LESSEE to DISTRICT for DISTRICT review as part of DISTRICT'S consideration of LESSEE'S request); but in no event is DISTRICT required to make changes in the rates of percentage rent. The submitted financial statements are to have been certified as to accuracy by a CPA. The purpose of this provision is to make any adjustment in percentage rent that DISTRICT deems in its sole and absolute discretion to be appropriate given significant changes in market conditions for the conduct of the subject business.

3.06 Time and Place of Payment.

3.06a Minimum Rent Payment. The LESSEE shall make all Minimum Rent Payments monthly in advance on or before the tenth (10th) day of each new month. Minimum Rent Payments shall begin on the commencement date of this Agreement. Checks should be made payable to the City of Oceanside and delivered to the DISTRICT at the address set forth in Section 6.07 of this Agreement. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days' written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges.

3.06b Monthly Percentage Rent Payment. The Monthly Percentage Rent Payment, shall be payable to DISTRICT monthly in arrears not later than ten (10) days following the end of each calendar month of the term of this Agreement as required in Section 3.01 above. LESSEE shall pay Percentage Rent Payments beginning on the commencement date of the term of this Agreement. Checks should be made payable to the City of Oceanside and delivered to the DISTRICT at the address set forth in Section 6.05 of this Agreement. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges.

3.07 Gross Income. Gross income as used herein shall mean all income received by LESSEE from the sale of goods and/or services and all items incidental or related thereto on or from the Premises or any other income received by LESSEE as a result of occupancy of the Premises with the sole exception of sales from the vessel's galley. Gross income shall include the amount of any manufacturer's or importer's excise tax included in the price of any property or

material sold, even though the manufacturer or importer is also the retailer thereof. It is immaterial whether the amount of such excise tax is stated as a separate charge. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer. LESSEE shall not deduct possessory interest taxes or other property taxes in computing gross income. Gross income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. Gross income shall include income received by LESSEE or by any lessee or licensee, or their agents, and all gross income received by any lessee, licensee, or other party as a result of occupancy of said Premises or the operation. The monthly gross income shall be calculated at the end of each month of the term of this Agreement. The gross income calculation for the initial month shall be made one month after the commencement date of this Agreement.

3.08 Delinquent Payment. If LESSEE fails to pay the payment when due, LESSEE shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)]. Said additional five percent (5%) is hereby mutually agreed by the parties to be appropriate to compensate DISTRICT for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 4: RECORDS

4.01 Inspection of Records. LESSEE shall maintain accurate financial books and records for the operation of its business provided at, or from, the PREMISES. Said books and records shall be maintained on an accrual basis in accordance with normal business standards and good accounting practice. LESSEE agrees to make any and all records and accounts available to DISTRICT for inspection at all reasonable times, so that DISTRICT can determine LESSEE's compliance with this Lease. These records and accounts will be made available by LESSEE at the PREMISES or DISTRICT's offices, at DISTRICT's sole discretion, and will be complete and accurate showing all income and receipts from LESSEE's use of the PREMISES. LESSEE's failure to keep and maintain such records and make them available for inspection by DISTRICT shall be deemed a default of this Lease. These records include but are not limited to federal quarterly and annual income tax statements, the California State Board of Equalization income statements, and all other generally accepted business books, documents, and records. LESSEE shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE shall indemnify and hold harmless the DISTRICT and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the LESSEE or its employees, agents, or others in connection with its use and occupation of the Premises. LESSEE'S indemnification shall exclude those claims arising from the sole negligence or sole willful misconduct of the DISTRICT, its officers, agents, or

employees. LESSEE'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the DISTRICT, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, LESSEE at its own expense shall, upon written request by the DISTRICT, defend any such suit or action brought against the DISTRICT, its officers, agents, or employees.

5.02 Insurance. Prior to operating at the Premises and at all times thereafter during the term of this Agreement, LESSEE shall take out and maintain the following insurance at its sole expense:

5.02a LESSEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000*

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of LESSEE under this agreement.

5.02b All insurance companies affording coverage to the LESSEE shall be required to add the DISTRICT and the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

5.02c All insurance companies affording coverage to the LESSEE shall be insurance organizations acceptable to the DISTRICT, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

5.02d All insurance companies affording coverage shall provide thirty (30) days written notice to the DISTRICT should the policy be canceled 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.

5.02e LESSEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the DISTRICT, concurrently with the submittal of this Agreement.

5.02f LESSEE shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the LESSEE to provide such a substitution and extend the policy expiration date shall be considered default by LESSEE and may subject the LESSEE to a termination of this Agreement.

5.02g Maintenance of insurance by the LESSEE as specified in this Agreement shall in no way be interpreted as relieving the LESSEE of any responsibility whatever and the LESSEE may carry, at its own expense, such additional insurance as it deems necessary.

5.02h If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, DISTRICT has the right to obtain the insurance. LESSEE shall reimburse DISTRICT for the premiums paid with interest at the maximum allowable legal rate then in effect in California. DISTRICT 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 LESSEE on the first (1st) day of the month following the notice of payment by DISTRICT.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by LESSEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed default under this Agreement.

5.02i DISTRICT, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving LESSEE sixty (60) days prior written notice. DISTRICT'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by DISTRICT for new improvements, in order to meet the requirements of this Agreement.

5.03 Accident Reports. LESSEE shall, within seventy-two (72) hours after occurrence, report to DISTRICT 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 Maintenance. With respect to LESSEE'S operations at or on the Premises, LESSEE shall perform all vessel maintenance and make all repairs and replacements necessary to maintain all vessels which are moored or berthed at the Premises. All maintenance, repairs and replacements related to LESSEE'S vessel by LESSEE shall be in a decent, safe, healthy, and sanitary condition satisfactory to DISTRICT and in compliance with all applicable laws.

LESSEE shall not be responsible for capital improvements, maintenance, or repairs to the dock portion of the Premises; provided, however, that LESSEE shall keep the Premises, including the dock, safe and free from debris and other hazards. LESSEE shall inspect the dock portion of the Premises daily and report to the DISTRICT any safety hazard observed as a result of such inspection. Notwithstanding the foregoing, LESSEE shall be responsible to repair any damage to the dock caused by or resulting from LESSEE'S operations at the Premises.

The rights reserved in this section shall not create any obligations on DISTRICT or increase obligations elsewhere in this Agreement imposed on DISTRICT.

6.02 Utilities. LESSEE agrees to order, obtain, and pay for water service and installation charges in connection with the development, occupation and operation of the Premises. LESSEE shall pay its prorata share of electricity as determined by DISTRICT'S Harbor Manager, in its sole and absolute discretion. LESSEE shall pay within fifteen (15) days of a receipt of an invoice from the DISTRICT. At any time during the term of the Agreement, DISTRICT reserves the right to estimate the annual cost of electricity used by LESSEE and

invoice LESSEE monthly in advance one-twelfth (1/12) of said amount. LESSEE shall pay said estimated monthly amount in accordance with the provisions related to the Minimum Rent Payment. Any difference in payments at the end of the annual period, shall either be credited to LESSEE, if more, or LESSEE shall immediately pay any difference, if less, upon receipt of an invoice from DISTRICT. DISTRICT further reserves the right to separately meter the Premises, at LESSEE'S sole cost and expense, if DISTRICT, in its sole and absolute discretion, feels that LESSEE is using an unreasonable amount of electricity as compared to the other tenants utilizing electricity from the same meter.

6.03 Sign. LESSEE 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 DISTRICT. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours of written notice thereof by DISTRICT, or DISTRICT may thereupon remove the item at LESSEE'S cost.

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

6.04a Possessory Interest. LESSEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes when due.

6.05 Administrative Costs. LESSEE shall pay DISTRICT'S administrative costs in an amount equal to five percent (5%) of the Minimum Rent Payment. LESSEE shall make all administrative cost payments monthly in advance on or before the first day of each new month. The administrative cost payments shall begin on the commencement date of this Agreement. Checks should be made payable to the City of Oceanside and delivered to the DISTRICT at the address set forth in Section 6.07 of this Agreement. The place and time of payment may be changed at any time by DISTRICT upon thirty (30) days' written notice to LESSEE. LESSEE assumes all risk of loss and responsibility for late payment charges.

6.06 Ownership of Improvements and Personal Property.

6.06a Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE, excepting such fixtures which may be removed without causing damage to the Premises, shall at expiration or termination of the Agreement, be deemed to be part of the Premises and shall become, at DISTRICT'S option, DISTRICT'S property, free of all liens and claims except as otherwise provided in this Agreement.

6.06b If DISTRICT elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, DISTRICT shall so notify LESSEE in writing thirty (30) days prior to expiration or termination of this Agreement, and LESSEE shall remove all such improvements, structures and installations as directed by DISTRICT at LESSEE'S sole cost and expense on or before Agreement expiration or termination. If LESSEE fails to remove any

improvements, structures, and installations as directed, LESSEE agrees to pay DISTRICT the full cost of any removal.

6.06c LESSEE owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Agreement. Any said items which LESSEE fails to remove will be considered abandoned and become DISTRICT'S property free of all claims and liens, or DISTRICT may, at its option, remove said items at LESSEE'S expense.

6.06d If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all such damage.

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 DISTRICT:

City of Oceanside
Attention: Harbor District Property Management
1540 Harbor Drive North
Oceanside, CA 92054

To LESSEE:

Ocean Adventures Oceanside, California
Attention: Michael Hansen, Donna Kalez & Douglas Lambert
34675 Golden Lantern
Dana Point, CA 92629

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 if 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 DISTRICT Approval. The City Manager shall be the DISTRICT'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement unless otherwise noted. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing LESSEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Harbor Manager and the Property Management Section of the City.

6.09 Entire Agreement. This Agreement comprises the entire integrated understanding between DISTRICT and LESSEE 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.

6.10 Interpretation. 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 DISTRICT.

6.11 Compliance. The LESSEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

6.12 Invalidity. 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.

6.13 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.14 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.

6.15 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the LESSEE'S duties be delegated, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment, transfer, or delegation shall not be deemed to be consent to any subsequent assignment, transfer or delegation.

6.16 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. However, in no event shall the party give less than thirty (30) days notice of termination of this Agreement.

DISTRICT may also terminate this Agreement upon written notice to LESSEE in the event that:

- LESSEE has previously been notified by DISTRICT of LESSEE'S default under this Agreement and LESSEE, after beginning to cure the default, fails to diligently pursue the

cure of the default to completion, or

- LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- LESSEE shall be adjudicated a bankruptcy, or
- LESSEE shall make a general assignment for the benefit of creditors.

Upon termination, DISTRICT may immediately enter and take possession of the Premises.

6.17 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 applicable 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. It is the responsibility of LESSEE to obtain and maintain all permits and licenses which are now, or in the future may be required to operate from the Premises at no cost to the DISTRICT.

SECTION 7: SPECIAL PROVISIONS

7.01 Ancillary Uses and Services. LESSEE shall provide no additional uses or services, other than those provided for under Section 1.02 of this Agreement, from or at the demised Premises. It is the intent of the parties that food services, if any in LESSEE'S operation be prepared off the Premises and delivered to the Premises. However, it is further understood that, it may be necessary for LESSEE to prepare a limited amount of food services on the vessel.

7.02 Standards of Operation. LESSEE 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.

7.03 LESSEE'S Employees. LESSEE shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by LESSEE on the Premises. LESSEE shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all applicable rules, regulations and requirements. LESSEE shall comply with the terms and conditions of this Agreement. LESSEE shall maintain a staff in adequate size and number, which shall comply with maritime regulations and any regulation established by the City of Oceanside, set out in their ordinances or codes, to effectively operate, maintain and/or administer all services and facilities offered at the Premises.

7.04 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 LESSEE causes an increase in the rate of insurance on the Premises, LESSEE may, at its option, pay such increase and LESSEE 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 LESSEE 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 DISTRICT.

7.05 Merchandise and Equipment. DISTRICT retains the right to require the LESSEE to discontinue the sale or use of those items that are of a quality unacceptable to the DISTRICT.

7.06 Continued Occupancy. LESSEE covenants and agrees to, and it is the intent of this Agreement that the LESSEE shall, continuously and uninterruptedly 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, DISTRICT shall be promptly notified by LESSEE.

7.07 Controlled Prices. LESSEE shall at all times, for the DISTRICT's inspection, maintain a pricing list or schedule of the prices and charges for LESSEE's general goods or services, or combinations thereof.

7.08 Operational Compliance. LESSEE hereby agrees to comply with all rules and regulations promulgated by the DISTRICT, the State of California or the federal government with respect to the operation of a vessel, the kind of which LESSEE intends to operate or any safety rule or regulation. Any violation shall be deemed a breach of this Agreement and DISTRICT shall have the right to immediately terminate this Agreement; and that in the event of such termination, LESSEE shall have no further rights hereunder and shall vacate the Premises and shall have no further right to claim thereto. DISTRICT shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises, without any notice required by this Agreement. DISTRICT shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from LESSEE in the amount necessary to compensate the LESSEE for all the detriment proximately cause by the LESSEE'S failure to perform his obligations under the Agreement.

7.08a Use of Premises by DISTRICT. LESSEE acknowledges that the paramount use of the Premises is for public services and civic activities. The DISTRICT reserves the right to schedule and use the Premises for community events and other DISTRICT sponsored activities. DISTRICT agrees to coordinate such use of the Premises with LESSEE so as not to conflict with LESSEE'S use and activities.

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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 LESSEE and the DISTRICT.

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 Agreement to be executed by setting hereunto their signatures on the day and year respectively written above.

DISTRICT

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

By _____
Michelle Lawrence

Title: interim Administrative Officer

APPROVED AS TO FORM:

By *Antonia Hamilton, ASST.*
HDB Attorney

LESSEE

Ocean Adventures, INC. a California corporation

By *Michael Hansen*
Name *MB*
Title *President*

Donna Kalez
Secretary

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) 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 ORANGE)

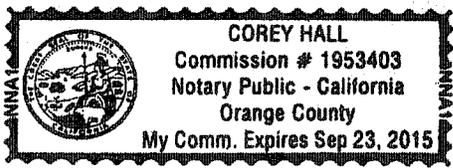
On May 18th 2015 before me, Corey Hall (NOTARY PUBLIC)
Date Here Insert Name and Title of the Officer

personally appeared Donna Kalez, Michael Hansen
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 Corey Hall
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: _____

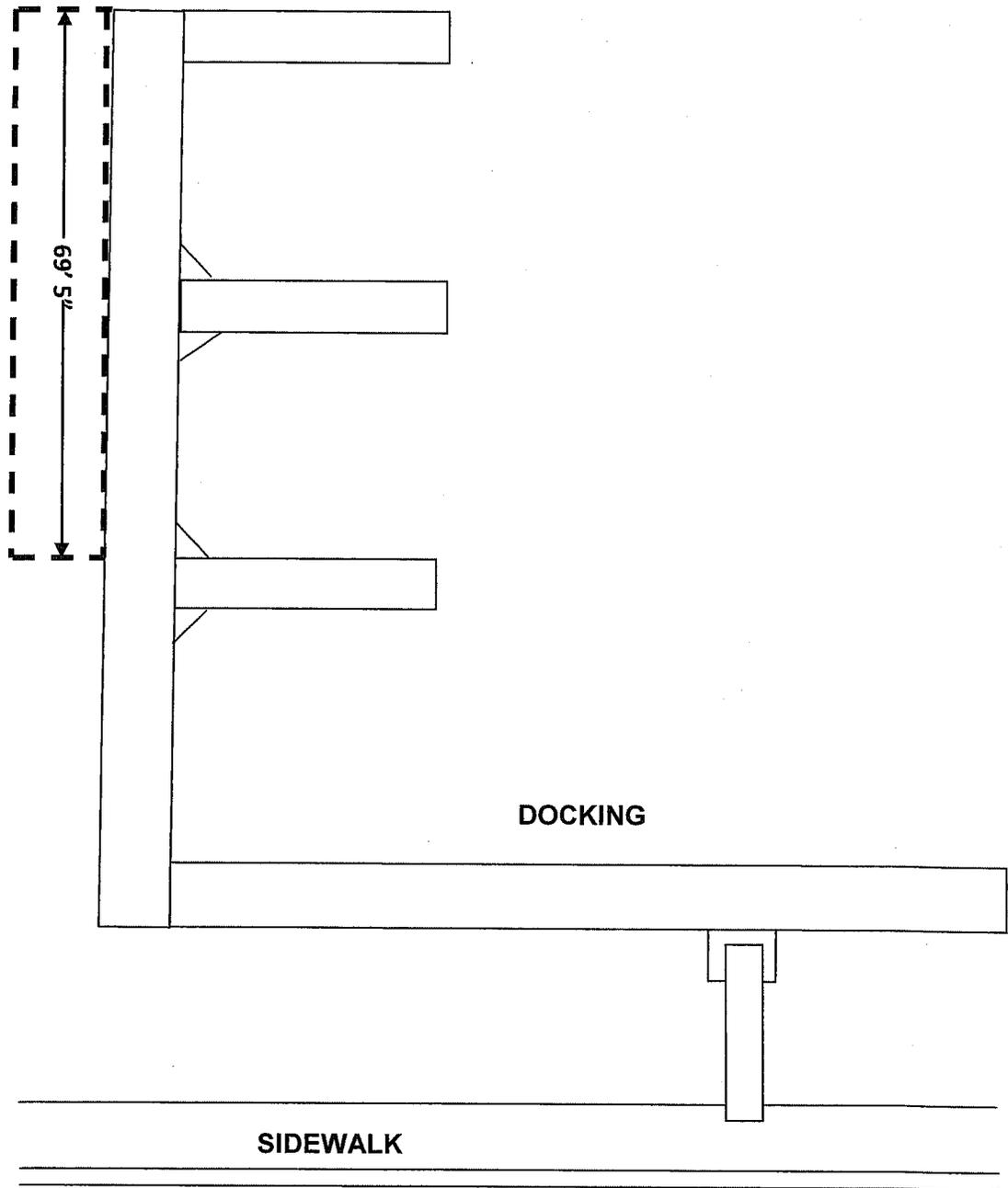
Capacity(ies) Claimed by Signer(s)

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: _____

EXHIBITS

Exhibit "A". A sketch of the Premises.

OCEANSIDE SMALL CRAFT HARBOR DISTRICT



256-1 Harbor Drive South, Oceanside

-- Northerly 69.5 feet of the westerly side of the Transient Vessel Harbor Village Long Dock,
Oceanside Harbor, City of Oceanside, San Diego County, California

Not to Scale

EXHIBIT "B"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____ 2015 is executed between the City of Oceanside, a municipal corporation ("CITY") and OC Ocean Adventure, Inc. ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE have entered into that certain Percentage Property Lease Agreement ("Lease") dated _____ 2015, for premises at 256-1 Harbor Drive South (the former Azure Seas Dock), in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease the parties are to execute a memorandum to confirm the commencement date of the Lease.

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

1. The CITY and LESSEE agree that the commencement date of the Lease is _____ and the termination date is _____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"
City of Oceanside,
a municipal corporation

By: _____

Name: _____

Title: _____

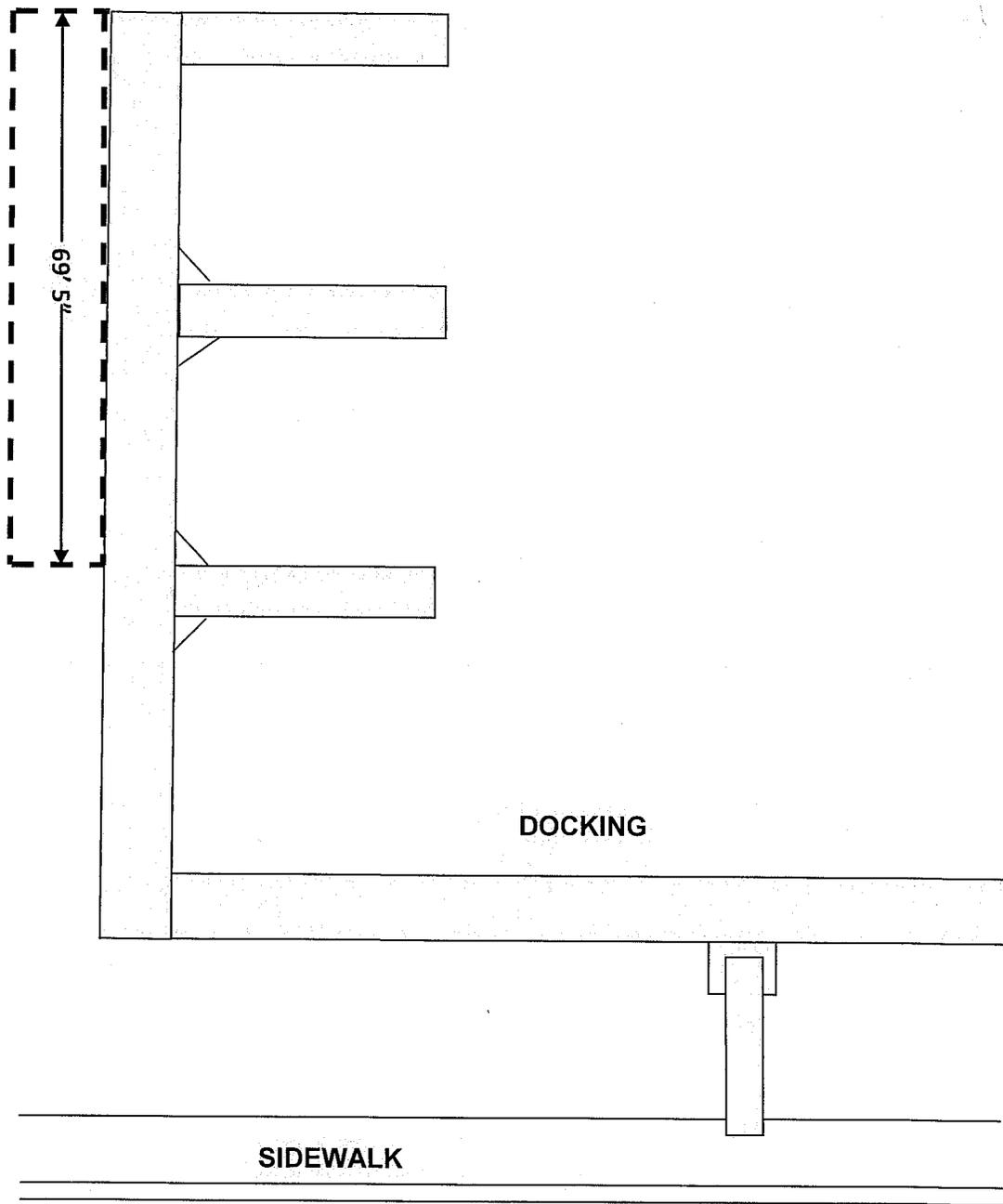
"LESSEE"
OC Ocean Adventure, Inc.,
Doing business as Oceanside Adventures

By: _____

Name: _____

Title: _____

OCEANSIDE SMALL CRAFT HARBOR DISTRICT



256-1 Harbor Drive South, Oceanside

-- Northerly 69.5 feet of the westerly side of the Transient Vessel Harbor Village Long Dock,
Oceanside Harbor, City of Oceanside, San Diego County, California

Not to Scale