ITEM NO. 10

STAFF REPORT

CITY OF OCEANSIDE

DATE: December 8, 2010

TO: Honorable President and Members of the Harbor Board of Directors

FROM: Economic & Community Development Department

SUBJECT: **APPROVAL OF AMENDMENT 5 TO THE LEASE AGREEMENT WITH MARINA DEL MAR HOMEOWNERS' ASSOCIATION, INC., FOR THE PREMISES LOCATED AT 1202 NORTH PACIFIC STREET**

SYNOPSIS

Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 5 to the Lease Agreement with Marina Del Mar Homeowners' Association, Inc., for the premises located at 1202 North Pacific Street, extending the term of the agreement one additional year through December 31, 2046; and authorize the Administrative Officer to execute the amendment.

BACKGROUND

In 1973 the Oceanside Small Craft Harbor District ("District") entered into a Lease Agreement for the ground lease of approximately 1.86 acres of land ("Property") with Marina Del Mar Homeowners Association, Inc.'s predecessor in interest Holiday Resorts International, Inc. ("Marina Del Mar"). The ground lease was for the use of real property to construct a 78 condominium unit building. The term of the Lease Agreement, as amended and assigned to Marina Del Mar (collectively the "Lease"), currently expires on December 31, 2045. Marina Del Mar has requested a one-year extension of the Lease term.

When the Property was originally ground leased to Marina Del Mar for the construction of a 78 residential condominium unit building in 1973, California law did not include the Property within the 1963 definition of "tide and submerged lands", which prohibited residential uses within said lands. However, in 1979 the California law on the subject was amended to change the definition of "tide and submerged lands" to include the Property within said definition. On July 9, 2010, a letter was received from the California State Lands Commission ("CSLC") confirming the status of the Property as within "tide and submerged lands".

ANALYSIS

The proposed Amendment No. 5 to the Lease ("Amendment") extends the term of the Lease for only one additional year, expiring on December 31, 2046. Marina Del Mar

requested a one year extension in order to provide time for Marina Del Mar to negotiate the terms of a longer extension at fair market rent and/or other valuable consideration before the remaining term falls below 35 years. Marina Del Mar's one-year extension request also proposed that all other terms of the Lease remain unchanged.

The possibility exists that if the term of the Lease falls below 35 years before there is a subsequent extension, the Property could be subject to a possessory interest tax reassessment by the San Diego County Assessor. Marina Del Mar has indicated that they cannot afford to pay an increase in the possessory interest tax and would only pursue an extension before the remaining term of the Lease falls below 35 years. Marina Del Mar has indicated that they are currently not in a position to propose a new rental rate and/or other valuable consideration in exchange for a longer extension before the term of the Lease falls below 35 years (January 1, 2011).

If the possessory interest tax assessment levied on the Property increases because the remaining term of the Lease falls below 35 years before the Lease is extended, the District would benefit from the increase. However, if Marina Del Mar is not desirous of negotiating an extension once the term of the Lease fall below 35 years, the District would have more financial options by providing a one-year extension and negotiate a longer extension in exchange for an increase in fair market rent and/or other valuable consideration. Agreeing to a one-year extension at this time and negotiating the terms for a longer extension still gives the District the option a year from now to let the Lease term fall below 35 years before it renegotiates an extension.

Additionally, in light of the possible issue regarding the status of the Property within the definition of "tide or submerged lands" as determined by CSLC, staff has included language in the Amendment addressing said concern. Language in the Amendment places any and all liability on Marina Del Mar, which may arise from any claim and/or action by CSLC or other regulatory agency, as a result of an extension of the Lease. Language indemnifying the District should CSLC or other regulatory agency take any action against the District is also included in the Amendment.

FISCAL IMPACT

No immediate revenue to the District as a result of the one-year extension. During the last year of the term (January 1, 2046 through December 31, 2046) Marina Del Mar will pay rent in accordance with the current rent payment terms of the Lease.

INSURANCE REQUIREMENTS

Lessee will be required to maintain the District's standard insurance requirement over the term of the Lease.

COMMISSION OR COMMITTEE REPORT

Does not apply.

HARBOR DISTRICT ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the Harbor District approve Amendment 5 to the Lease Agreement with Marina Del Mar Homeowners' Association, Inc., for the premises located at 1202 North Pacific Street extending the term of the agreement one additional year through December 31, 2046; and authorize the Administrative Officer to execute the amendment.

PREPARED BY:

Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:

Peter A. Weiss
Administrative Officer

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Teri Ferro, Financial Services Director

Frank Quan, Harbor and Beaches Coordinator

FIFTH AMENDMENT
TO LEASE AGREEMENT

This Fifth Amendment to Lease Agreement ("Fifth Amendment") is made and entered into on December 8, 2010, between the Oceanside Small Craft Harbor District "(District") and the Marina Del Mar Homeowners' Association, Inc., a California corporation ("Lessee"). This Fifth Amendment shall not be in effect until approved by the Oceanside City Council.

RECITALS

WHEREAS, District and Lessee's predecessor in interest Holiday Resorts International, Inc., a Nevada corporation ("Holiday Resorts") entered into that certain Lease Agreement dated April 17, 1973, which has been amended by Amendment to Lease dated January 4, 1974; Second Amendment to Lease dated March 15, 1974; Third Amendment to Lease dated December 9, 1989; and Fourth Amendment to Lease dated December 5, 1994 (hereinafter collectively referred to as the "Lease"), for the lease of real property generally described as Parcel "E" and a portion of Parking Lot 10 of Miscellaneous Map No. 448 filed in the Office of the County Recorder of San Diego County, State of California being more particularly described in said Lease ("Property");

WHEREAS, on July 25, 1975, Holiday Resorts assigned the Lease to Lessee by Assignment of Ground Lease;

WHEREAS, said Lease expires on December 31, 2045, and Lessee has requested an extension of the term of the Lease for a period of one (1) additional year expiring on December 31, 2046; and

WHEREAS, District and Lessee are desirous of entering into this Fifth Amendment for the purpose of extending the term of the Lease.

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

AGREEMENT

1. Section 2 of the Lease is hereby deleted in its entirety and replaced with the following:

   "2. <u>Term</u>

   The term of this Lease is hereby extended to a term which shall expire on December 31, 2046, providing for a remaining term of approximately thirty-six (36) years as of the date of this Fifth Amendment."

2. Inasmuch as the Property may be subject to the sovereign title interest of the State of California as tide and submerged lands as determined by the California State Lands Commission ("CSLC"), by entering into this Fifth Amendment, Lessee hereby agrees to defend, indemnify and hold harmless the District, the City of Oceanside and their officers, agents and employees against any and all claims arising out or resulting from any determination by the CSLC regarding the validity of the Lease.

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

IN WITNESS WHEREOF, as of the date first above written, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Fifth Amendment to Lease Agreement.

"District"

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
a municipal corporation

By:_____
Peter Weiss

Title: Harbor District Board of Directors
Administrative Officer

APPROVED AS TO FORM:

By:_____
John Mullen

Title: Harbor District Board of Directors
Attorney

"Lessee"

MARINA DEL MAR HOMEOWNERS' ASSOCIATION, INC.
a California corporation

By:_____

Name: _____

Title: _____

By:_____

Name: _____

Title: _____

NOTARY ACNOWLEDGEMENT OF LESSEE'S SIGNATURES MUST BE ATTACHED