



DATE: October 1, 2014

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

FROM: Property Management Division

SUBJECT: **APPROVAL OF AMENDMENT NO. 6 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 6 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 an additional 20 years through December 31, 2066, and providing for a five-year fixed rent adjustment retroactive from 2014 through 2018 to assist in funding improvements to the property; and authorize the Administrative Officer to execute the amendment following the City Attorney's approval as to form.

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, 2046. Marina Del Mar has requested a 20-year extension of the Lease term.

When the Property was originally ground leased to Marina Del Mar, 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 6 to the Lease ("Amendment") extends the term of the Lease for 20 additional years, expiring on December 31, 2066. Marina Del Mar requested a 20-year extension in order to assist in facilitating their pursuit in obtaining long-term

mortgage financing. Typically, lenders are reluctant to provide 30-year mortgages on leased property where the lease term is less than 40 years. Marina Del Mar also requested a five-year fixed rent adjustment retroactive from 2014 to 2018 to assist in funding improvements to the property. The amendment requires them to spend a minimum of \$500,000 in exterior renovations over those five years and a minimum of another \$500,000 in exterior renovations within the following 12 years such as façade and structural improvements that the District would like to see.

Additionally, 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 this 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

The base rental rates have been restructured as a result of the 20-year extension. From January 1, 2014 to December 31, 2018, rent will remain at the adjusted rate of \$142,157 per year. Beginning January 1, 2019 through December 31, 2045, rent will resume as per the rent schedule. During the remaining term from January 1, 2046 to December 31, 2066, the rent shall be pursuant to the Lease except that the guaranteed minimum rent amount would increase annually based on the Semi-Annual Consumer Price Index for "All Urban Consumers for San Diego, CA" (CPI) but no less than one percent (1%) and no greater than three percent (3%) per year.

Rent revenue will continue to be placed into Harbor District Account No. 1751.4496-100345.

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.

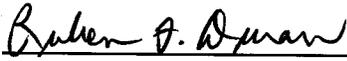
HARBOR DISTRICT ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the Oceanside Small Craft Harbor District approve Amendment 6 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 an additional 20 years through December 31, 2066, and providing for a five-year fixed rent adjustment retroactive from 2014 through 2018 to assist in funding improvements to the property; and authorize the Administrative Officer to execute the amendment following the City Attorney's approval as to form.

PREPARED BY:



Ruben F. Duran
Senior Property Agent

SUBMITTED BY:



Steven R. Jepsen
Administrative Officer

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager

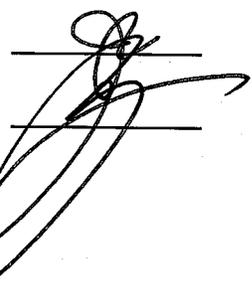
Douglas E. Eddow, Real Estate Manager

James Riley, Financial Services Director

Paul C. Lawrence, Harbor Manager







SIXTH AMENDMENT TO LEASE AGREEMENT

This Sixth Amendment to Lease Agreement ("Sixth Amendment") is made and entered into on Sept. 18, 2014, between the Oceanside Small Craft Harbor District ("District") and the Marina Del Mar Homeowners' Association, Inc., a California corporation ("Lessee"). This Sixth Amendment shall not be in effect until approved by the Harbor District Board of Directors.

R E C I T A L S

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 ("Third Amendment"); Fourth Amendment to Lease dated December 5, 1994; and Fifth Amendment to lease dated December 8, 2010 (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, 2046, and Lessee has requested an extension of the term of the Lease for a period of twenty (20) additional years expiring on December 31, 2066; and

WHEREAS, District and Lessee are desirous of entering into this Sixth Amendment for the purpose of extending the term of the Lease, providing for a rent adjustment and requiring improvements to the Property by Lessee.

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

A G R E E M E N T

1. Section 2 Term. Is hereby amended to reflect that the term of this Lease is extended to expire on December 31, 2066, providing for a remaining term of approximately fifty-two (52) years as of the date of this Sixth Amendment."
2. Section 7. Rents. Is hereby amended as follows:

a. For the Period Retroactive to January 1, 2014 through December 31, 2018 – Lessee agrees to pay a fixed rent of \$142,157 per year in twelve (12) equal monthly installments of \$11,846.42 on the first day of each month.

b. For the Period January 1, 2019 to December 31, 2045 – Lessee agrees to resume annual rent payments pursuant to the terms and conditions of Sections 7 and 8 of the Lease, as amended by the Third Amendment.

c. For the Period January 1, 2046 to December 31, 2066 – Lessee shall pay annual rent pursuant to the terms and conditions of Sections 7 and 8 of the Lease, as amended by the Third Amendment; provided, however: (i) for the purpose of determining the “Minimum Guarantee Rent” described in subsection 7(a) (and as shown in the schedule attached as Exhibit “A” to the Third Amendment), the “Base Rental Amount,” the Gross Rents from Unit Rental Program” amount, and the “Gross Sales from Sale of Units” amount, which three amounts comprise the “Projected Rent,” shall be increased each year pursuant to the annual increase in the Semi-Annual Consumer Price Index for “All Urban Consumers for San Diego of CA” (“CPI”), with minimum increase of one percent (1%) and a maximum increase of three percent (3%); and (ii) the “Base Rental Amount” payable pursuant to Subsection 7(b) of the Lease (as amended by Third Amendment) shall be increased each year pursuant to the annual increase in the CPI with minimum increase of one percent (1%) and a maximum increase of three percent (3%).

3. Section 9. Room Taxes. Is hereby revised to reflect that Lessee shall not be required to employ a “resident manager of the premises” but may employ third party “off-site” managers of the premises in lieu thereof.

4. Lessee and District acknowledge that as a condition to the extension of the term and revised rent structure described in Items 1 and 2 above, Lessee is required to spend a minimum of \$500,000 in exterior renovations over the next five (5) years and a minimum of another \$500,000 in exterior renovations within the next twelve (12) years. Said exterior renovations shall be in accordance with the description of the exterior improvements and associated estimated costs, together with the architectural renderings as set forth on Exhibit “A” attached hereto and incorporated herein by this reference.

5. 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 Sixth 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.

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6. 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 Sixth Amendment, the terms of this Sixth 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 Sixth Amendment to Lease Agreement.

“District”

OCEANSIDE SMALL CRAFT HARBOR DISTRICT
a municipal corporation

APPROVED AS TO FORM:

By: _____
Steven R. Jepsen

By: _____
John Mullen

Title: Harbor District Board of Directors
Administrative Officer

Title: Harbor District Board of Directors
Attorney

“Lessee”

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

By: Jodi D. Doucette

By: _____

Name: President, HOA

Name: _____

Title: 9/12/14

Title: _____

NOTARY ACKNOWLEDGEMENT OF LESSEE’S SIGNATURES MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego

On 9/12/14 before me, Virginia L. Newton, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Jodi L. Doucette
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.



Place Notary Seal Above

Signature: Virginia L. Newton
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Sixth Amendment to Lease Agreement

Document Date: 9/18/2014 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jodi L. Doucette

Signer's Name: _____

Corporate Officer — Title(s): President

Corporate Officer — Title(s): _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer Is Representing: _____