"To enrich lives through effective and caring service"

Caring for Your Coast
Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

June 21, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND AMENDMENT TO LEASE
PARCEL 33R - MARINA DEL REY – HARBOR HOUSE RESTAURANT
(FOURTH DISTRICT)
(4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the approval of the proposed assignment of Lease No. 10665 affecting the leasehold interest in Parcel 33R and the proposed Amendment No. 6 to Lease No. 10665 for Parcel 33R are categorically exempt under the provisions of the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chair to execute the attached copies of Consent to Assignment of Lease for Parcel 33R (Consent) from Marina Investment Company, a joint venture (MIC), to The Waterfront-Marina del Rey, a Delaware limited liability company (Waterfront).

3. Approve Amendment No. 6 to Lease No. 10665 (Amendment), the final form of which is attached hereto, which defines changes in management and ownership of a limited liability company that will be considered an event of assignment under Section 22 of the Lease, and authorize the Chair to execute the Amendment upon presentation by the Director of the Department of Beaches and Harbors of the Amendment to the Executive Officer of the Board.

13837 Fiji Way • Marina del Rey • CA 90292 ● 310.305.9503 • fax 310.821.6345 ● internet: http://beaches.co.la.ca.us

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

MIC, the current lessee of Parcel 33R, is requesting the County's consent to the assignment of its leasehold interest, commonly known as the Harbor House Restaurant, to Waterfront. The Department requests that your Board's consent to the proposed assignment be conditioned on Waterfront's execution of the proposed Amendment, which, among other things, defines those changes in ownership and control of a limited liability company that will be considered events of assignment requiring the County's prior consent.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department policy provides that the County's approval or denial of any assignment will be based on one or more of the following: a) the financial condition of the assignee; b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and c) the management of the leasehold by the new lessee being in the best interest of the whole Marina.

Our review has found that:

a) The proposed assignee, Waterfront, is a Delaware limited liability company formed for the purpose of owning and operating the Parcel 33 leasehold. Waterfront is to be capitalized through members' contributions of $1,480,000 in equity and $4,750,000 in debt, both on a pro forma basis. The proposed financing for the leasehold purchase is expected to be provided by Western Financial Bank. Furthermore, Waterfront has agreed, as a condition of the assignment, to provide additional cash assets to the capitalization in the amount of $956,000, $506,000 of which is to ensure the payment of rent to the County and other leasehold obligations and $450,000 of which is to ensure correction of certain specified maintenance items on the leasehold. Such additional cash contributions are restricted to the purposes above referenced, except that the $450,000 shall become unrestricted when the specified maintenance deficiencies have been corrected to the County's satisfaction. The proposed capitalization of the assignee relative to the leasehold finances demonstrates adequate financial condition on the part of the assignee to provide for the continued operation and maintenance of the leasehold.

b) The leasehold purchase price is $5,447,000.50 if the assignment is completed on or before June 30, 2005. The sales price, as reviewed by the Department, is higher than what would be justified if based solely on the present income generated on the leasehold by the current use. However, Waterfront has advised that the price is justified by the leasehold's future development potential it believes is feasible with a lease extension and in conjunction with development of the adjacent County parking lot, Parcel NR. Waterfront was the successful respondent as to Parcel NR in the "Request for Proposals for Development of Hotel and/or Other Uses on Parcels GR, IR and NR in Marina del Rey", and your Board approved the exclusive right to negotiate with Waterfront for a ground lease and mixed-use development project. We have reminded the assignee that there is no guarantee that a lease extension for this leasehold or approvals for an overall development plan for combined Parcels 33R and NR will be granted by the County. In addition, the County has advised, and Waterfront has agreed, that the County will utilize its lower assessment of value for the leasehold as the baseline for computing its extension fee and for determining net proceeds of sale or financing in the event that an extended lease is negotiated. This is intended to maximize the payments to the County in such event.

c) The proposed property manager, EMC Development, a California limited liability company (EMC) (an affiliate of the assignee), is recognized as an experienced multi-family and mixed-use developer and manager. In addition, Waterfront has contracted with an experienced restaurant operator for the continued operation of the restaurant facilities.

The proposed Amendment expands the definition of an assignment in this lease to include limited liability companies. Section 22 of the lease currently provides that subject to certain exceptions, the lessee may not assign all or part of its interest in the lease without the prior written consent of the County, and the change in one or more general partners in a limited partnership and the sale or transfer of fifty percent or more of the stock in a corporation that owns the leasehold constitutes an event of assignment. County Counsel has indicated that since the proposed new lessee is a limited liability company, it is appropriate to amend the lease to define that the change in one or more of the managing members or the sale, assignment, or transfer of fifty percent or more of the ownership interests of a limited liability company shall be considered an event of assignment subject to County's approval. Waterfront has agreed to execute this proposed amendment, requested by the County, upon the close of its escrow.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Strategic Plan Goal, Service Excellence, in that it allows the transfer of the leasehold interest from one legal entity to another to accommodate completion of a bona fide financial transaction, while maintaining appropriate management of the leasehold.

FISCAL IMPACT/FINANCING

No cost to County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On May 4, 1966, the County entered into a 60-year lease for Parcel 33R, Harbor House Restaurant. The parcel consists of approximately 94,969 square feet of land and 13,043 square feet of water area. It is improved with two restaurants, the Harbor House Restaurant and Edie's Diner, and a dock.

The current lessee, MIC, and Waterfront have entered into a Purchase and Sale Agreement for the Parcel 33R leasehold. The proposed assignee, Waterfront, is a single purpose entity created to hold and operate the leasehold interest. Waterfront is 99% owned by Edward M. Czuker, an individual, and 1% owned by EMC, with Edward M. Czuker as the primary principal. The managing member of Waterfront is EMC. The leasehold will be managed by EMC, which is experienced in managing a large portfolio of multi-family residential and mixed-use projects. Waterfront has contracted with an experienced restaurant operator for the continued operation of the restaurant facilities.

The proposed assignee, Waterfront, has agreed to assume the responsibility for the outstanding lease, maintenance, and rent obligations that may have arisen from the date of the last audit.

This recommendation was placed on the agenda of the Small Craft Harbor Commission's meeting of June 8, 2005. However, since a quorum of the Commission was not present, no official action on this recommendation was taken by the Commission. The recommendation of the Director was presented for informational purposes and public comment was taken. The two Commissioners present, Harley Searcy, Chairman, and Russ Lesser, indicated their informal support for the Director's recommendation that your Board approve and execute the Consent and the Amendment, with the understanding that their support was not to be considered an indication of any future approval or disapproval of any future request for recommendation relating to any lease extension proposal for the leasehold.

Both the Consent and Amendment have been approved as to form by County Counsel. County Counsel has advised that your Board's approval of this assignment does not in any way obligate your Board to approve either a lease extension or a project ultimately presented to you for approval on Parcels 33R and/or NR.

ENVIRONMENTAL DOCUMENTATION

The proposed assignment of the lease and lease amendment are categorically exempt under the provisions of the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Not applicable.

CONCLUSION

Please have the Chair execute three copies of the Consent and instruct the Executive Officer of the Board to acknowledge the Chair's signature. Return two executed copies of the Consent to the Department, retaining one executed copy for your files.

The Director will provide copies of Amendment No. 6 to Lease No. 10665 to the Executive Officer of the Board for execution by the Chair, after execution by Waterfront. Once executed, please send two copies of the Amendment to the Department, retaining a copy for your files.

Please return to the Department an approved copy of this letter.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski
Director

SW:PW:tm
Attachments (2)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel

CONSENT TO ASSIGNMENT OF LEASE

THE COUNTY OF LOS ANGELES (**"County"**), lessor under that certain lease No. 10665, dated May 4, 1966, as amended (**"Lease"**), applicable to that certain premises known as Parcel 33R, Marina del Rey Small Craft Harbor, described in Exhibit "A" attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, MARINA INVESTMENT COMPANY, a joint venture (**"Marina Investment"**), to THE WATERFRONT – MARINA DEL REY, LLC, a Delaware limited liability company (**"The Waterfront"**), in accordance with that certain Assignment of Lease and Deed and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the **"Assignment"**). County further agrees that upon the effective date of said Assignment, Marina Investment shall be fully relieved of, and released from, any and all obligations to County under the Lease accruing on or after the effective date of said Assignment. It is further understood and agreed that County's consent to the Assignment is subject to the following express conditions:

A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within forty-five (45) days after the date of execution on behalf of the County of this Consent to Assignment of Lease.

B. This Consent to Assignment is contingent upon The Waterfront's assumption and agreement to perform all obligations past, present and future, created by the terms, covenants and conditions of said Lease on the part of the lessee therein named to be performed, as set forth in the Acceptance of Assignment relating to the Assignment, and as otherwise required under the Lease.

C. This Consent to Assignment is contingent upon The Waterfront's execution and prompt delivery to County of Amendment No. 6 to the Lease, a copy of which is attached hereto as Exhibit "B", immediately following the close of the escrow created between Marina Investment and The Waterfront in connection with the Assignment.

D. This Consent is contingent upon County's receipt, prior to County's execution of this Consent, of evidence of cash assets of Assignee in the minimum amount of $956,000 available for use as described in the Acceptance of Assignment of Lease attached to the Assignment.

E. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon The Waterfront whether or not Marina Investment and The Waterfront have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any party thereto alleges, claims or

otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.

G. The Waterfront shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of the County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section __ of the Lease.

Dated the __ day of _____, 2005.

COUNTY OF LOS ANGELES

By: _____
Its: _____

ATTEST:
VIOLET VARONA-LUKENS,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
RAYMOND G. FORTNER, JR.,
County Counsel

ORIGINAL SIGNED

By: _____
Deputy

EXHIBIT A

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 33R

Parcels 490 to 493 inclusive, and 537 to 541 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Excepting therefrom that portion thereof which lies within the following described boundaries:

Beginning at a point in the southerly line of said Parcel 541 distant North 85°59'32" East thereon 145.00 feet from the southwesterly corner of said last mentioned parcel; thence North 4°00'28" West to the northwesterly line of said last mentioned parcel; thence northeasterly and easterly along said northwesterly line and the northerly line of said last mentioned parcel to the center line of that certain 20 foot easement for fire access, storm drain and harbor utilities purposes, in said Parcels 537 and 540, as said center line is shown on said map; thence northerly along said center line to the northwesterly line of said Parcel 537; thence northeasterly along said last mentioned northwesterly line to the northeasterly corner of said last mentioned parcel; thence southerly along the easterly lines of said Parcels 537, 540 and 541 to the southeasterly corner of said Parcel 541; thence westerly along the southerly line of said last mentioned parcel to the point of beginning.

Also reserving and excepting therefrom unto the County of Los Angeles, easements for sanitary sewer, storm drain, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

DESCRIPTION APPROVED
NOV 19 1964
JOHN A. LAMBIE
County Engineer
BY Elyse Fukutake DEPUTY

EXHIBIT B

AMENDMENT NO. 6 TO LEASE NO. 10665
PARCEL NO. 33R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE is made and entered into this ___ day of _____, 2005 (**"Effective Date"**).

BY AND BETWEEN

COUNTY OF LOS ANGELES,
hereinafter referred to as **"County"**,

THE WATERFRONT – MARINA DEL REY, LLC,
a Delaware limited liability company,
hereinafter referred to as **"Lessee"**

WITNESSETH

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 10655 under the terms of which County leases to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 33R, which leasehold premises (the **"Premises"**) is more particularly described on Exhibit "A" attached hereto and incorporated herein (the lease and all amendments thereto are collectively referred to herein as the **"Lease"**); and

WHEREAS, Section 22(C) of the Lease provides that subject to enumerated exceptions, Lessee may not assign all or any part of its interest in the Lease without the prior written consent of the County, and that for purposes of said Section 22(C), the change in one or more general partners in a limited partnership and the sale, assignment or transfer of fifty percent (50%) or more of the stock in a corporation which owns, or is the general partner in a partnership which owns, the leasehold constitutes an event of assignment; and

WHEREAS, in consideration of the County's approval of the transfer of the Lease to Lessee, the parties desire to amend Section 22(C) of the Lease to define what changes in management and ownership of a limited liability company shall be considered an event of assignment under said Section.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, and restrictions contained herein, the parties, and each of them, agree as follows:

1. **SUBLEASES, ASSIGNMENTS, AND SUCCESSORS**. Commencing as of the Effective Date, Section 22(C) of the Lease is amended by adding subsection (3) immediately after subsection (2) to read as follows:

"(3) The change in one or more of the managing members in a limited liability company which owns the leasehold, except by death of a managing member and his or her replacement by a vote of the remaining members, or the sale, assignment, or transfer of fifty percent (50%) or more of the ownership interest in a limited liability company which owns, or is the general partner in a partnership which owns, the leasehold."

2. Except as herein specifically amended, all terms, conditions, and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.

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IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 6 to Lease No. 10665 to be subscribed by the Chair of said Board and attested by its Executive Officer, and the Lessee has executed the same.

THE WATERFRONT-MARINA DEL REY, LLC,
a Delaware limited liability company

By: EMC Development, A Limited Liability Company,
a California limited liability company,
Managing Member

By: _____
Edward M. Czuker, President

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
County Counsel

By: _____
Deputy

EXHIBIT A

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Lease Parcel No. 33R

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DESCRIPTION APPROVED
NOV 19 1964
JOHN A. LAMBIE
County Engineer
BY Edgar Fukutake DEPUTY

AMENDMENT NO. 6 TO LEASE NO. 10665
PARCEL NO. 33R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE is made and entered into this ___ day of _____, 2005 (**"Effective Date"**).

BY AND BETWEEN

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hereinafter referred to as **"County"**,

THE WATERFRONT – MARINA DEL REY, LLC,
a Delaware limited liability company,
hereinafter referred to as **"Lessee"**

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WHEREAS, in consideration of the County's approval of the transfer of the Lease to Lessee, the parties desire to amend Section 22(C) of the Lease to define what changes in management and ownership of a limited liability company shall be considered an event of assignment under said Section.

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2. Except as herein specifically amended, all terms, conditions, and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.

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THE WATERFRONT-MARINA DEL REY, LLC,
a Delaware limited liability company

By: EMC Development, A Limited Liability Company,
a California limited liability company,
Managing Member

By: _____
Edward M. Czuker, President

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
County Counsel

ORIGINAL SIGNED

By: _____
Deputy

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DESCRIPTION APPROVED
NOV 19 1964
JOHN A. LAMBIE
County Engineer
BY [signature] DEPUTY