"To enrich lives through effective and caring service"

Los Angeles County Beaches & Harbors — Caring for Your Coast

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

May 30, 2006

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

Dear Supervisors:

APPROVAL OF THIRD AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR LEASE NOS. 6734 AND 11140 PARCELS 44U (PIER 44) AND 77W (77 DEL REY) - MARINA DEL REY (4th DISTRICT) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the recommended actions are categorically exempt under the California Environmental Quality Act pursuant to Class 1 of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the County Mayor to sign the attached Third Amendment to Option Agreement and Joint Escrow Instructions ("Amendment") for Lease Nos. 6734 (Parcel 44U) and 11140 (Parcel 77W), Marina del Rey, agreeing to an extension of the time for the closing of each option, upon payment of the stated option prices, which will include the dock replacement cost for the Parcel 44 portion, to acquire Parcel 77W and a portion of Parcel 44U.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of ground leases for Parcels 44U and 77W, each of which were originally entered into for terms of 60 years and have remaining lease terms of 17 years and 20 years, respectively. Pacific Marina Venture, LLC, a Delaware limited liability company (Lessee), is the current lessee of both parcels.

On February 24, 2003, your Board approved and authorized an option agreement ("Agreement") with the Lessee for the County to obtain purchase options whereby all of the Parcel 77W lease ("first option property") and a portion of the Parcel 44U lease ("second option property") will terminate in order that the County may utilize all or portions of these parcels for the intended Chace Park expansion and expanded boating

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and visitor-serving development. On February 17, 2004, your Board approved and authorized an amendment to the Agreement that extended its term to the earlier of June 30, 2005 or ten business days after the date Lessee and County will have negotiated and executed an agreement for the portion of Parcel 44U not subject to the Agreement. On June 14, 2005, your Board approved and authorized a second amendment to the Agreement whereby County and Lessee further amended the original Agreement, extending the term of the options. On December 13, 2005, County gave notice to Lessee of exercise of the first option with an anticipated closing date of June 12, 2006. On December 13, 2005, County also gave notice to Lessee of exercise of the second option with an anticipated closing date of May 31, 2006.

The County and Lessee desire to further amend the Agreement to (i) provide for Lessee's replacement of the docks and other waterside improvements located on the second option property, (ii) modify the dates for the closing of each option, and (iii) make certain other modifications to the Agreement, including modifying the rate at which interest accrues, as set forth in this Third Amendment. The Lessee has agreed, at no cost to the County, to extend the date by which the County may close its options under the Agreement from the current deadlines of June 12, 2006 and May 31, 2006 to December 31, 2007 for the first option and the later of December 31, 2007 or 30 days following the date of completion of anchorage replacement work for the second option. Lessee shall proceed to replace the existing anchorage facilities with new anchorage facilities based upon County-approved (by the Director of the Department of Beaches and Harbors) anchorage design, work schedule, and cost of construction.

The first option property price shall continue to be calculated in accordance with the provisions of the Agreement, except that from and after the effective date of the Amendment, the interest rate at which interest accrues on the first option property price shall no longer be at the prime rate, but instead shall be the lesser of: (i) the prime rate in effect as of each monthly adjustment date, or (ii) five percent (5%). The second option property price shall continue to be calculated in accordance with the provisions of the Agreement, except the option price of the second option shall be increased by the Director-approved cost of building the new anchorage facilities, and after the effective date of the Amendment, the interest rate at which interest accrues on the second option property price shall no longer be at the prime rate, but instead shall be the lesser of: (i) the prime rate in effect as of each monthly adjustment date, or (ii) five percent (5%).

The Department has engaged in discussions with the Lessee and with the Santa Monica Windjammers Yacht Club ("SMWYC") relating to the use of portions of the Lessee's interest in Parcel 44U that are included in the second option property and that could facilitate SMWYC's relocation from its current facilities on a site intended for Chace Park expansion. The extension of the closing periods of the options provide time needed to conclude negotiations with SMWYC and the Lessee to facilitate the

relocation, as well as the time we need to conclude planning for the expansion of Chace Park.

Implementation Of Strategic Plan Goals

The proposed action promotes and furthers the Board-approved Strategic Plan Goals of Service Excellence, in that it provides the County additional time to plan for expansion of the adjacent Chace Park facilities and enhanced areas for expanded boating and visitor-serving development, and Fiscal Responsibility, in that it allows for more cost-effective and efficient construction of docks that will revert to the control of the County.

FISCAL IMPACT/FINANCING

The Amendment allows for an extension to the escrow period for both options so that the Lessee will have sufficient time to plan, design, obtain necessary entitlements, and construct a Director-approved dock replacement program prior to the closing. The dock replacement will be done in conjunction with the replacement of the balance of the Parcel 44U docks by the Lessee, thereby allowing the County to benefit from a more advantageous economy of scale, resulting in lower cost to the County for the replacement of the docks. The Director-approved costs for planning, designing, obtaining the necessary entitlements, and the construction of the docks are projected to cost in the range of $3.3 million to $3.7 million. Such dock replacement costs will be funded from the Marina Accumulative Capital Outlay (ACO) Fund as an addition to the purchase price of the second option property.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The waterside improvements of the second option property are in poor condition and are in need of replacement. The Amendment allows for an extension of the closing date for both options so that the Lessee can replace the existing docks prior to the closing. The County will benefit from having the Lessee replace the docks prior to the closing and having the cost of the dock replacement added to the price of the second option property, in that the dock replacement will be part of a much larger dock replacement program by the Lessee, resulting in a lower average cost per slip due to an economy of scale of building a larger project than if the County replaced the subject docks after the closing.

The Small Craft Harbor Commission was not able to consider the Director's recommendation to approve the Amendment in the form attached as the May 10, 2006 meeting was not held due to a lack of a quorum. County Counsel has approved the document as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended action is categorically exempt under the California Environmental Quality Act pursuant to Class 1 of the County's Environmental Document Reporting Procedures and Guidelines. At such time as the Lessee proceeds with replacement of the anchorage facilities, appropriate environmental documentation will be prepared as a part of the Coastal Development Permit process. The Department has no current plans to modify the existing uses of the facilities on Parcels 77W and 44U that will come under direct County ownership. At such time as a development plan is proposed, appropriate environmental documentation will be prepared.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer of the Board to send two copies of the executed Amendment to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski, Director

SW:AK:GB:ks

Attachment (1)

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

THIRD AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(County Lease No. 11140; Parcel 77W – Marina del Rey)
(County Lease No. 6734; Parcel 44U – Marina del Rey)

THIS THIRD AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("Third Amendment") is made as of May ___, 2006 (the "**Effective Amendment Date**") between **PACIFIC MARINA VENTURE, LLC**, a Delaware limited liability company ("**Lessee**"), and **COUNTY OF LOS ANGELES** ("**County**").

RECITALS

A. All capitalized terms in this Third Amendment shall have the meanings given such terms in the Agreement (defined hereinafter), except where specifically defined herein.

B. County is the lessor and Lessee is the lessee under each of the Parcel 44 Lease and the Parcel 77 Lease, pursuant to which Lessee leases from County certain land and water located in the Marina del Rey Small Craft Harbor.

C. County and Lessee entered into that certain Option Agreement and Joint Escrow Instructions made as of February 25, 2003 (the "**Original Option Agreement**"), whereby Lessee granted County rights to acquire certain real property interests as more specifically provided in the Agreement.

D. County and Lessee entered into that certain First Amendment to Option Agreement and Joint Escrow Instructions dated as of February 17, 2004 ("**First Amendment**"), whereby County and Lessee amended the Original Option Agreement to extend the term of the Options.

E. County and Lessee entered into that certain Second Amendment to Option Agreement and Joint Escrow Instructions dated as of June 14, 2005 ("**Second Amendment**"), whereby County and Lessee further amended the Original Option Agreement in certain respects. The Original Option Agreement, as amended by the First Amendment and the Second Amendment, is referred to herein as the "**Agreement**."

F. By notice to Lessee dated December 13, 2005 (the "**First Option Exercise Notice**"), County exercised the First Option and notified Lessee that the anticipated date for the Closing with respect to the First Option Property was June 12, 2006, subject to reservation by County of its right under the Agreement to specify a different date for such Closing in accordance with the terms and provisions of the Agreement.

G. By notice to Lessee dated December 13, 2005 (the "**Second Option Exercise Notice**" and collectively with the First Option Exercise Notice, the "**Exercise Notices**"), County exercised the Second Option and notified Lessee that the anticipated date for the Closing with respect to the Second Option Property was May 31, 2006, subject to reservation by County of its right under the Agreement to specify a different date for such Closing in accordance with the terms and provisions of the Agreement.

H. County and Lessee desire to further amend the Agreement to (i) provide for Lessee's replacement of the docks and other waterside improvements located on the Second Option Property, (ii) modify the dates for the Closing of each Option, and (iii) make certain other modifications to the Agreement as set forth in this Third Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and County hereby agree as follows:

1. Replacement of Anchorage Improvements. Section 4 of the Second Amendment is hereby terminated. For purposes hereof, "**Anchorage Facilities**" shall mean the docks and related anchorage and waterside improvements located on the Second Option Property. Following the Effective Amendment Date, Lessee shall proceed to replace the existing Anchorage Facilities with new Anchorage Facilities in accordance with the terms and provisions of this Section 1 (the "**Anchorage Facilities Replacement Work**").

1.1 Work Schedule. Within forty-five (45) days after the Effective Amendment Date, Lessee shall submit to the Director ("Director") of the Department of Beaches & Harbors (the "Department") for Director's approval, a schedule for the design, permitting and construction of the Anchorage Facilities Replacement Work. Upon approval by Director, such schedule shall be referred to herein as the "**Work Schedule.**" The Work Schedule shall provide for the prompt design and filing and processing of permit applications for the Anchorage Facilities Replacement Work as soon as reasonably possible after the Amendment Effective Date, and upon receipt of all required governmental approvals, the diligent commencement and completion by Lessee of the construction of the Anchorage Facilities Replacement Work. The demolition of the existing Anchorage Facilities and the construction of the Anchorage Facilities Replacement Work shall be performed on a phased basis approved by Director in the Work Schedule. The date(s) for the completion of the Anchorage Facilities Replacement Work set forth in the approved Work Schedule shall be subject to Force Majeure Delay set forth in Section 4 below.

The Department, on behalf of County in its proprietary capacity as fee owner of the Second Option Property (as opposed to the County's governmental capacity), agrees to cooperate with and assist Lessee in Lessee's efforts to obtain the required governmental approvals for the Anchorage Facilities Replacement Work, including cooperation in connection with efforts by Lessee to obtain such governmental approvals on an expedited basis. Notwithstanding any contrary provision hereof, nothing in this Third Amendment modifies or limits the exercise by County of its governmental functions or decisions, as distinct from its proprietary functions pursuant to this Third Amendment.

1.2 Requirements for Work. The number and size of the slips, configuration and other specifications for the new docks and related improvements to be constructed as part of the Anchorage Facilities Replacement Work shall be as specified by Director (subject to compliance with applicable governmental requirements). Lessee shall prepare and submit to Director for Director's approval all plans and specifications for the Anchorage Facilities Replacement Work in accordance with the plan submittal schedule approved as part of the Work Schedule. Director shall also have the right to approve the development budget and construction contract for the Anchorage Facilities Replacement Work, which approval shall not be unreasonably withheld. The construction contract shall include provisions acceptable to Director for the assignment of Lessee's interest in such construction contract to County at County's election in the event of a default by Lessee in the performance of the Anchorage Facilities Replacement Work. Without limitation of the foregoing, the Anchorage Facilities Replacement Work shall be performed in compliance with all other terms and

provisions of the Parcel 44 Lease applicable to the construction of improvements or alterations to Parcel 44.

1.3 Approved Costs. For purposes hereof, "**Approved Costs**" means all actual documented third party out-of-pocket costs and expenses incurred by Lessee for the design, permitting, demolition and construction of the Anchorage Facilities Replacement Work, as approved by Director. Approved Costs may include overhead and profit paid to Lessee's third party contractor (in the amount approved by Director) and a project management fee not to exceed three percent (3%) of hard construction costs, but Approved Costs shall not include any other development, management, supervisory or other overhead fees or expenses incurred by, or paid or imputed to, Lessee or its affiliates. Approved Costs shall also include interest on all other Approved Costs at a rate of interest equal to Lessee's construction loan interest rate (as reasonably approved by Director) from the date of the disbursement by Lessee of the particular Approved Cost until the date of the Closing for the Second Option Property, but in the case of a breach by Lessee in the performance of the Anchorage Facilities Replacement Work in accordance with the Work Schedule, the Approved Costs shall not accrue interest during any period that such breach remains uncured by Lessee (including, without limitation, any period after the date on which County elects to assume the completion of the construction of the Anchorage Facilities Replacement Work in accordance with Section 4 below). All Approved Costs shall be subject to approval by Director prior to the commencement of construction of the Anchorage Facilities Replacement Work. At the Closing for the Second Option Property, the Second Option Property Price shall be adjusted as provided in Section 3.2 below to compensate Lessee for the performance of the Anchorage Facilities Replacement Work.

2. Closing Date. The anticipated Closing Dates set forth in the Exercise Notices are hereby superseded by the provisions of this Third Amendment. Notwithstanding any contrary provision of the Agreement or the Exercise Notices, County shall hereafter have the right to select the date for Closing of a particular Option (a "**Closing Date**") by written notice to Lessee not later than sixty (60) days prior to the Closing Date selected by County in such written notice. County shall continue to have the right to close the Options on either a separate or concurrent basis, at County's election. If County fails to notify Lessee in writing of an earlier Closing Date for the First Option, then the Closing Date for the First Option Property shall be December 31, 2007. Notwithstanding the foregoing provisions of this Section 2, but subject to the provisions of Section 4 below, once Lessee has commenced the construction of the Anchorage Facilities Replacement Work in accordance with the Work Schedule, County shall not have the right to select a Closing Date for the Second Option Property that is earlier than the date of the completion of the Anchorage Facilities Replacement Work. Subject to the provisions of Section 4 below, if County fails to notify Lessee in writing of an earlier Closing Date for the Second Option Property as provided above, the Closing Date for the Second Option Property shall be the later of (a) December 31, 2007, or (b) thirty (30) days following the date of the completion of the Anchorage Facilities Replacement Work.

3. Option Property Prices.

3.1 First Option Property Price. The First Option Property Price shall continue to be calculated in accordance with the provisions of Section 2.4.1 of the Agreement, except that (a) from and after the Effective Amendment Date the interest rate at which interest accrues on the First Option Property Price during the period from the Effective Amendment Date through the Closing Date shall not be the Prime Rate as

provided in Section 2.4.1 of the Agreement, but instead shall be the lesser of the following annual interest rates, adjusted on a monthly basis as of the first day of each calendar month: (i) the Prime Rate in effect as of each monthly adjustment date, or (ii) five percent (5%) per annum.

3.2 Second Option Property Price. The Second Option Property Price shall continue to be calculated in accordance with the provisions of Section 2.5.1 of the Agreement, except that (a) from and after the Effective Amendment Date the interest rate at which interest accrues on the Second Option Property Price during the period from the Effective Amendment Date through the Closing Date shall not be the Prime Rate as provided in Section 2.5.1 of the Agreement, but instead shall be the lesser of the following annual interest rates, adjusted on a monthly basis as of the first day of each calendar month: (i) the Prime Rate in effect as of each monthly adjustment date, or (ii) five percent (5%) per annum; (b) in the event of a default by Lessee under this Third Amendment after the commencement of construction of the Anchorage Facilities Replacement Work, no interest shall accrue on the Second Option Price during the period from the date of the breach until the date of Lessee's cure thereof (including, without limitation, any period after the date on which County elects to assume the completion of the construction of the Anchorage Facilities Replacement Work in accordance with Section 4 below due to a default by Lessee); and (c) the Second Option Price (after calculation as provided above) shall be further increased by the Approved Costs incurred by Lessee for the Anchorage Facilities Replacement Work (subject to the provisions of Section 4 below).

4. Lessee Default in the Performance of the Anchorage Facilities Replacement Work. If Lessee defaults in the performance of its obligations with respect to the Anchorage Facilities Replacement Work, then in addition to any other rights and/or remedies that County may have at law or in equity, County shall have the right (but not the obligation) to perform Lessee's obligations at Lessee's cost and expense. Without limitation of the foregoing, County shall have the right to receive an assignment of Lessee's rights and interests under any construction or other contract pertaining to the performance of the Anchorage Facilities Replacement Work and to complete all or portions of the Anchorage Facilities Replacement Work at Lessee's cost and expense. County shall also have the right (but not the obligation) to accelerate the Closing Date for the Second Option Property to a date prior to the completion of the Anchorage Facilities Replacement Work. If in the case of a Lessee default County elects to consummate the Closing for the Second Option Property prior to the completion of the Anchorage Facilities Replacement Work, then County shall be entitled to a credit against the Second Option Price (as calculated in accordance with Section 3.2 above to include the Approved Costs incurred by Lessee) in an amount equal to (a) all damages, losses, costs and expenses incurred by County in connection with Lessee's default and the enforcement of County's rights hereunder, and (b) the amount, if any, by which the estimated cost to complete the remaining unfinished Anchorage Facilities Replacement Work exceeds the budgeted Approved Costs that as of the Closing have not yet been incurred for the performance of the Anchorage Facilities Replacement Work.

For purposes hereof, a "**default**" by Lessee shall (i) Lessee breaches its obligation to comply with the dates set forth in the Work Schedule and does not cure such breach within thirty (30) days after written notice from County, or (ii) Lessee breaches any other obligation of Lessee under this Third Amendment and fails to cure such breach within thirty (30) days after written notice from County; provided, however, that if the nature of the breach under this clause (ii) is such that more than thirty (30) days are reasonably required for such cure, then Lessee shall not be in default pursuant to this clause (ii) if Lessee commences cure of the

breach within the foregoing thirty (30) day period and diligently prosecutes such cure to completion.

Notwithstanding any contrary provision of this Section 4, Lessee shall not be in default if Lessee is prevented from performing its obligations hereunder due to the following (a "**Force Majeure Delay**"): (I) fire, earthquake, flood, tornado or other act of God; (II) civil disturbance, war, organized labor dispute or freight embargo; (III) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of construction; (IV) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County acting in its governmental capacity, Lessee or any person or entity affiliated with Lessee; (V) delays in the receipt of governmental approvals for the Anchorage Facilities Replacement Work beyond the expected periods for such receipt set forth in the approved Work Schedule, except to the extent such delays are the result of Lessee's failure to timely submit permit applications or related follow-up materials or to otherwise diligently process the receipt of such approvals, (VI) delays required to comply with wildlife protection laws, or (VII) other unforeseeable event beyond the control of Lessee. As a condition to clause (IV) above constituting a Force Majeure Delay, Lessee shall, at County's request, diligently work with the County to pursue the removal of any such restraining order or injunction and exhaust all commercially reasonable efforts to appeal such restraining order or injunction. No Force Majeure Delay shall commence until the date that Lessee has provided County with written notice of the occurrence of the event or condition giving rise to such delay; provided, however, that if such notice is given within five (5) business days after the commencement of the event or condition giving rise to the delay, then the commencement of the Force Majeure Delay shall be retroactive to the commencement of the event or condition giving rise to the delay.

5. Opening of Escrow. Notwithstanding any contrary provision of the Agreement, the parties shall not be required to open Escrow for an Option until thirty (30) days prior to the Closing Date for such Option, or such later date as acceptable to the parties.

6. Director's Approval. Any approval hereunder required of the Director shall not be unreasonably withheld or delayed.

7. No Other Modifications. All other terms of the Agreement shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the date first written above.

LESSEE:

PACIFIC MARINA VENTURE, LLC

By: Michael Pashaie
Name: MICHAEL PASHAIE
Title: Managing member

By: _____
Name: _____
Title: _____

COUNTY:

COUNTY OF LOS ANGELES

By: _____
Mayor

ATTEST:

SACHI HAMAI, Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____