To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors
Caring for Your Coast

Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

25 NOVEMBER 10, 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

November 10, 2009

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:

DEPARTMENT OF BEACHES AND HARBORS:
APPROVAL OF EXTENSION OF AND MODIFICATION TO LEASE OPTION AGREEMENT TO FACILITATE REDEVELOPMENT –
PARCELS 52R AND GG (BOAT CENTRAL) – MARINA DEL REY
(FOURTH DISTRICT)
(3 VOTES)

SUBJECT

Request for approval of Extension of and Modification to Lease Option Agreement for Parcels 52R and GG ("Extension and Modification Agreement"), extending for up to a maximum of 36 months the period for Boat Central's processing of entitlements and environmental impact review regarding its proposed development of a boat storage facility.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the attached Extension and Modification Agreement with respect to Parcels 52 and GG, Marina del Rey, is exempt from the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) ("CEQA") in that said Extension and Modification Agreement is not a "project" as defined by CEQA and the State CEQA Guidelines.

2. Authorize the Chairman to execute the Extension and Modification Agreement, granting an extension for up to 36 months of the period for Boat Central's processing of entitlements and environmental impact review for its proposed project and, subject to compliance with CEQA to negotiate a new option agreement with County for your consideration with respect to the redevelopment of the parcel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On May 22, 2007, your Board granted MDR Boat Central, Ltd. ("Boat Central") an option ("Option") to facilitate redevelopment of Parcels 52R and GG. The proposed project contemplates creation of additional boat storage spaces in Marina del Rey by utilizing a vertical storage method, allowing a greater number of boats to be stored in a given square foot of land area. The proposed dry-stack boat storage building would contain approximately 47,084 square feet of space, is 70 feet high, is partially cantilevered over the water (97 feet on the west side and 45 feet on the east side), and would accommodate between 346 to 367 boats, depending on size, and 28 boat trailers. There would be additional outside storage space for 30 mast-up sailboats and no less than 131 parking spaces. The proposed project would not only accommodate the number and types of boats presently dry-stored in the Parcel 77 surface storage lot, which will be displaced when Parcel 77 is redeveloped, but would also provide significant additional capacity for boats currently in wet slips or kept outside of the Marina. In addition, the project would include a 3,070 square foot office/lobby area, a 1,600 square foot maintenance facility, a 3,265 square foot Sheriff boatwright facility with a 2,200 square foot yard area, and three dedicated public wash down spaces (one to be built on-site and two others to be built at a later date in a place to be determined by the Director). All new docks would be constructed, except for the existing Sheriff/County maintenance docks, which would be replaced no later than ten years from the start of the lease. Total development costs would not be less than $7.5 million (in 2005 dollars).

Boat Central has diligently pursued its entitlements but, due to delays beyond its control, will not be able to acquire the entitlements for this project prior to the expiration of its existing option. Among the major reasons for the delay is a delay in completing and filing the Environmental Impact Report ("EIR") for the proposed project due to the County Chief Executive Officer's investigation of the soil condition on Parcel GG, an issue not anticipated during the preliminary negotiations between Boat Central and the County. The issue has been resolved, and Boat Central is ready to proceed with processing its requests for regulatory approvals including approvals from the Department of Regional Planning and California Coastal Commission. The latter's approval will require a Local Coastal Program Amendment, for which Boat Central will file separately and for which the County will file as part of its proposed Map and Text Amendment. Staff anticipates that the Map and Text Amendment will be submitted to the California Coastal Commission for its approval in the winter of 2010.

The current Lease Option Agreement between County and Boat Central will expire on November 22, 2009. Due to recent court decisions, County will not extend the expiring option or enter into a new option agreement with Boat Central until the required CEQA review and certification of the project EIR has been completed. In the interim, the County and Boat Central will enter into the attached Extension and Modification Agreement to (a) provide Boat Central with additional time to complete the entitlement process for its project and, (b) provide Boat Central with assurances that as long as Boat Central complies with its obligations under the Extension and Modification Agreement, during such period County will not engage in negotiations for the

development or lease of the premises with other parties. County is not granting any extension of the expiring option or any new option, nor otherwise obligating itself to subsequently grant any lease option upon Boat Central's receipt of the entitlements for the project. Any new option would be subject to negotiation and approval by the Board at a later date, if at all.

As a condition for extension of time to complete the entitlement process, Boat Central has discussed with the Department a plan that provides a maximum of 36 months to complete the entitlement process. The entitlement schedule has been reviewed by the Department's consultants who confirmed the plan is reasonable. Once the required CEQA review and certification of the project EIR has been completed in accordance with applicable law and if the parties are able to negotiate a new option agreement, the Director will return to your Board for approval of that new option (including a form of lease agreement that would become effective upon Boat Central's exercise of such option).

In consideration for extending the date for completion of the environmental review and entitlement process, Boat Central has agreed to pay County a total amount not to exceed $75,000, payable as follows: (1) $15,000 upon signing of the Agreement, which provides for the initial extension of 24 months to November 22, 2011; (2) $25,000 for the first additional six-month extension to May 22, 2012; and (3) $35,000 for the second additional six-month extension to November 22, 2012. The progressively expensive payment schedule is intended to encourage Boat Central to complete the entitlement process in a timely manner. Additionally, it is contemplated that any new option agreement to be entered into after CEQA compliance would require the payment by Boat Central of an option fee.

Implementation of Strategic Plan Goals

The recommended action will allow Boat Central to continue its efforts towards the proactive redevelopment of the parcels, which will result in fulfillment of approved Strategic Plan Goals No. 1, "Operational Effectiveness," Strategy No. 1, "Fiscal Sustainability", and Goal No. 4, "Community and Municipal Services," Strategy No. 1, "Cultural and Recreational Enrichment", respectively.

FISCAL IMPACT/FINANCING

Operating Budget Impact

Upon your Board's approval of the Extension and Modification Agreement, the Department of Beaches and Harbors' operating budget will receive a $15,000 payment upon signing of the Extension and Modification Agreement. The $15,000 initial payment was not included in the 2009-2010 Final Adopted Budget; therefore, it will be accounted for as over-realized revenue. If applicable, the second installment payment of $25,000 will be budgeted in 2011-12 as one-time revenue, and the subsequent third payment of $35,000 will be budgeted in 2011-12 as one-time revenue.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The option for the lease of Parcels 52R and GG that commenced on May 22, 2007 and had an initial term of eighteen months with the possibility of two 6-month extensions, which have been granted by the Director, will expire on November 22, 2009. The attached Extension and Modification Agreement will grant the extension described above for pursuit by Boat Central of entitlements and completion of CEQA compliance. The extension will initially be for 24 months to November 22, 2011. Additionally, if in the reasonable judgment of the Director Boat Central has proceeded diligently, but receipt of entitlements has been delayed due to governmental delays, then Director is obligated to grant Boat Central up to two additional six-month extensions of the outside date to not later than November 22, 2012.

ENVIRONMENTAL DOCUMENTATION

Approval of the Extension and Modification Agreement does not in any way constitute an approval of the proposed project, the grant of any binding option or lease commitment, or the authorization of construction or re-construction of any improvements on the parcels. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment are under review by the Department of Regional Planning.

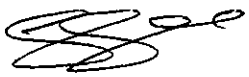
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Executive Officer of the Board to execute send two copies of the executed Extension and Modification Agreement to the Department of Beaches and Harbors.

Respectfully submitted,



for Santos H. Kreimann, Director

SHK:GJ:pw

Attachment
c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

EXTENSION OF AND MODIFICATION TO LEASE OPTION AGREEMENT
(Parcels 52R and GG)

THIS EXTENSION OF AND MODIFICATION TO LEASE OPTION AGREEMENT ("**Extension and Modification**") is made as of NOVEMBER 10, 2009 between COUNTY OF LOS ANGELES ("**County**"), and MDR BOAT CENTRAL, L.P., a California limited partnership ("**Lessee**").

RECITALS

A. County and Lessee entered into that certain Lease Option Agreement dated as of May 22, 2007 (the "**Agreement**"), pursuant to which County granted to Lessee an option to lease (the "**Option**") certain real property in Marina del Rey commonly known as Parcels 52R and GG and more particularly described on Exhibit A attached to the Agreement (the "**Premises**").

B. According to Section 2 of the Agreement, the latest date for the exercise of the Option (referenced in such Section 2 as the "**Outside Date**") was November 22, 2008, without taking into consideration any potential extensions pursuant to Sections 6.1 or 6.2 of the Agreement.

C. Pursuant to Director of Beaches and Harbors' ("**Director**") authority under Section 6.1 of the Agreement, Director has previously extended the Outside Date to November 22, 2009.

D. Since entering into the Agreement, Lessee has been diligently pursuing entitlements in accordance with the terms and conditions of the Agreement, for the development work to be performed on the Premises in accordance with the form of Lease Agreement attached to the Agreement as Exhibit B (the "**Lease**") (for the purposes of this Extension and Modification, "**Project**" means the development work); however, Lessee requires additional time to obtain its entitlements for the Project.

E. County and Lessee desire to extend and modify the terms of the Option Agreement to allow Lessee an additional extension of time to obtain its entitlements and to negotiate a new option agreement with County to be entered into, only after compliance with the California Environmental Quality Act (California Resources Code Sections 21000 *et seq.*) ("**CEQA**") in accordance with the terms and conditions set forth in this Extension and Modification.

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

1. **Capitalized Terms**. All capitalized terms used in this Extension and Modification and not otherwise defined herein shall have the meanings given such terms in the Agreement.

76103 SUPPLEMENT 1

2. **Exclusive Negotiation**. Section 1 of the Agreement is hereby amended and restated in its entirety to read as follows:

"1. **Negotiation of New Option Agreement**. During the extension of the Agreement Term, as set forth in section 2, below, the parties agree to negotiate in good faith a new option agreement for an option ("**New Option**") to enter into a lease for the Premises on substantially similar terms to the Lease attached to the Agreement as Exhibit B ("**New Option Agreement**"). The parties agree that the Lease represents their good faith negotiation of the economic terms and conditions upon which both parties desire to pursue development of the Project on the Premises, as currently proposed. However, both parties acknowledge and agree that the County is required to comply with all applicable CEQA requirements prior to undertaking any binding commitment to grant Lessee an option for a Lease or to approve the Project. No New Option will be granted by County unless and until: (i) County certifies and issues the required CEQA findings with respect to the Project based on a final environmental impact report, or other applicable CEQA documentation, including consideration of environmental impacts, the feasibility of mitigation measures, and the consideration of project alternatives (including no development); and (ii) County issues a statement of overriding considerations, if applicable. The parties agree that each party's duty to negotiate a New Option in good faith shall not be interpreted or construed to create any obligation or commitment to agree upon the New Option, an Option Agreement or any particular terms, conditions or provisions thereof or of any Lease, and that no past, current or future summary of terms, term sheets, drafts or forms of option agreement, drafts or forms of lease (including the Lease), or other oral or written indications of agreement, understanding or assent to the New Option or any particular terms, conditions or provisions thereof, even if such terms, conditions and provisions would otherwise constitute the essential terms of a binding option, shall be binding upon either party or create any obligation or liability on the part of either party, except for the full execution and delivery by both parties of a legally binding New Option Agreement that has been approved by the Board of Supervisors of County. Each party reserves the right to decline to enter into any New Option Agreement or other binding agreement with respect to the Project or the grant of a New Option. No unilateral modification or withdrawal by any party of any negotiated terms, conditions or provisions of the New Option prior to the full execution and delivery of such Option Agreement shall constitute the failure of a party to negotiate in good faith or otherwise create any liability hereunder."

3. **Further Extension of Outside Date**. Section 2 of the Agreement is hereby amended and restated in its entirety to read as follows:

"2. **Agreement Term**. This Agreement shall be extended for the period (the "**Agreement Term**") commencing on the date of the County's approval of the Extension and Modification and expiring on that date (the "**Extension Expiration Date**") which is the earlier of (a) forty-five (45) days following the Entitlement Receipt Date (as defined in Section 3 of this

Agreement), or (b) November 22, 2011 (the date set forth in this clause (b) is referred to as the "**Outside Date**")."

4. **Exercise of Option**. The first and second paragraphs of Section 3 of the Agreement are deleted in their entirety.

5. **Extension Fees**. In consideration of County's agreement to extend the Outside Date as set forth in this Extension and Modification, and as a condition to such extension, Lessee shall pay to County the sum of Fifteen Thousand Dollars ($15,000.00) ("**Extension Fee**") within ten (10) days' after the parties' mutual execution of this Extension and Modification. Should the Outside Date be further extended pursuant to Section 6.1 of the Agreement, as amended by this Extension and Modification, Lessee shall pay to County one or more additional Extension Fees as follows: (a) Twenty-Five Thousand Dollars ($25,000.00) for an extension of six months beyond the Outside Date; and (b) an additional Thirty-Five Thousand Dollars ($35,000) for a subsequent extension of six months from the Outside Date as previously extended. All Extension Fees for extensions pursuant to Section 6.1 shall be paid within ten (10) days' after the Director's grant of the extension of the Outside Date. All Extension Fees shall be cumulative, such that the total potential Extension Fees under this Extension and Modification shall be Seventy-Five Thousand Dollars ($75,000), should all extensions for the indicated time periods be granted. The Extension Fee is in addition to the Option Fee previously paid by Lessee under Section 4 of the Agreement. Each portion of the Extension Fee shall become non-refundable upon payment.

6. **Entitlements and Plan Preparation During Option Term**. The heading to Section 5 and Sections 5.1 and 5.2 of the Agreement are hereby amended and restated in their entirety to read as follows:

"5. **Entitlements and Plan Preparation.**

5.1 **Entitlement Processing**. During the Agreement Term, Lessee, at Lessee's sole cost and expense, shall use its diligent efforts to continue to pursue the issuance of all Entitlements required for the Project as soon as reasonably possible. Such efforts shall include, without limitation, (a) Lessee's timely submittal to applicable governmental authorities of all applications, materials, information, plans and specifications and other submissions and responses required in connection with the processing and issuance of the Entitlements; (b) attendance by Lessee and its consultants at regular and special meetings and hearings with or before applicable governmental authorities regarding the processing and issuance of the Entitlements; (c) the expenditure by Lessee of such funds, including, without limitation, application fees, travel costs, architectural and design fees, and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes; and (d) the taking by or on behalf of Lessee of such other actions as are necessary or appropriate to timely, continuously and diligently process the issuance of the Entitlements for the Project as soon as reasonably possible after the date of this Extension and Modification. Lessee shall keep the Department of Beaches and Harbors ("**Department**") fully informed as to the status of the Entitlements processing and the Department shall have the right to attend any meetings with governmental authorities pertaining thereto. For purposes of this

Agreement, "**Entitlements**" means all discretionary planning, zoning and other entitlements and approvals, including environmental clearance, required to be obtained from governmental authorities (including, without limitation, County and the California Coastal Commission) for the Project. Notwithstanding the foregoing definition, the County shall not condition the entry into a New Option Agreement on Lessee's receipt of Entitlements, other than environmental clearance as provided in Section 1 of the Agreement (as modified by the Extension and Modification).

5.2. **County Cooperation**. During the Agreement Term, the Department, on behalf of County, in its proprietary capacity as fee owner of the Premises, agrees to continue to cooperate with Lessee's efforts to obtain the Entitlements, at no cost to the Department or County. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required. Lessee shall reimburse County for the Actual Costs (as defined below) incurred by the Department or County in connection with such joinder or other cooperative efforts. Notwithstanding the foregoing, (a) Lessee and County acknowledge that County has entered into this Agreement in its proprietary capacity as owner of fee title to the Premises, and not in its regulatory capacity; (b) neither County's duty to cooperate nor actual cooperation with Lessee's Entitlement efforts shall constitute County's approval of or commitment to, or any obligation to approve or commit to, the Project, either in County's proprietary or regulatory capacity; (c) County, in its proprietary capacity, reserves the right, in its sole discretion, to approve all applications and other materials submitted to or filed with governmental authorities in connection with the processing of the Entitlements, and may permit or join in the filing of applications while reserving its approval rights with respect to such applications and the subsequent processing thereof; (d) approvals given by County under this Agreement are in County's proprietary capacity only and do not constitute the issuance by, or commitment by County to issue, any Entitlements in its regulatory capacity, and in no way waive, relieve or release Lessee from the requirement of obtaining all such Entitlements; and (e) neither this Agreement nor any acts or omissions by or on behalf of County, Department or Director hereunder in any way modify, limit or restrict the exercise by County of its regulatory functions or decisions, as distinct from its proprietary functions as fee owner of the Premises pursuant to this Agreement. County reserves all rights to consider, analyze and approve or disapprove the Project, the Entitlements and the Project. Lessee agrees that it shall have no claim against County, in either its proprietary or regulatory capacity, and hereby waives, and releases County from and against any claim, liability or cause of action, pertaining or relating to any failure of, or delay by, County to process, issue or approve the Project, the Entitlements or any Plans and Specifications (as defined in Section 5.3 below)."

7. **Further Delays in Receipt of Entitlements**. County desires to grant Director the authority to further extend the Outside Date in accordance with the terms and provisions of Section 6.1 of the Agreement, as such Section 6.1 is hereby amended and restated in its entirety to read as follows:

"6.1 **Delay in Receipt of Entitlements**. If Lessee, despite its best efforts, is unable to cause the Entitlement Receipt Date to occur on or before

November 22, 2011 as a result of continued delays beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Lessee's applications for the Entitlements, including, without limitation, delays in connection with the preparation and adoption by the County of the Comprehensive Amendment to the Marina Del Rey Coastal Plan (an "**Extraordinary Governmental Delay**"), then as long as Lessee has on a continuous basis diligently pursued receipt of the Entitlements, as determined by the Director in its reasonable judgment, the Director shall grant Lessee one or more further extensions of the Outside Date. Any such extension shall be limited to the period of the Extraordinary Governmental Delay and in no event shall the Outside Date be extended pursuant to this Section 6.1 beyond November 22, 2012. If Director shall determine not to grant Lessee an extension as provided above, then Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director."

Any extension of the Outside Date pursuant to Section 6.1 of the Agreement, as amended above, beyond November 22, 2011 shall be subject to the terms, conditions and limitations set forth in Section 6.3 of the Agreement. No term or provision of this Extension and Modification shall be interpreted or construed in a manner that permits any extension of the Outside Date beyond November 22, 2012. All references in Section 6.3 of the Agreement to the "Outside Expiration Date" shall mean and refer to the "Outside Date" as extended pursuant to Section 2 of this Extension and Modification or hereafter further extended pursuant to Sections 6.1 (as amended in this Extension and Modification) or 6.2 of the Agreement.

8. **Option References.** Except as otherwise provided in this Extension and Modification, any remaining references to "Option" or "exercise of Option" are hereby deleted and any reference to the "Option Expiration Date" shall mean the "Extension Expiration Date" as defined in Section 2 of this Extension and Modification.

9. **County Costs**. Lessee shall promptly following written demand from County reimburse County for the Actual Costs (as defined in the Lease) incurred by County in the review, negotiation, preparation and documentation of the matters that are the subject of this Extension and Modification.

10. **Exclusivity.** County agrees that during the Agreement Term it shall not enter into negotiations with respect to the Premises, the Project or any other development of the Premises with any other person or entity, without the prior written consent of the Lessee. Except as otherwise agreed to, County shall only negotiate regarding the Premises, the Project or any other development of the Premises with the Lessee during the Agreement Term.

11. **Entire Agreement**. This Extension and Modification sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

12. **Attorneys' Fees**. In the event of any action, proceeding or arbitration arising out of or in connection with this Extension and Modification, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services to the extent that County is represented by the County Counsel and is the prevailing party.

13. **No Other Modifications**. All other terms and conditions of the Agreement continue in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned have executed this Extension and Modification as of the date first written above.

LESSEE:

MDR BOAT CENTRAL L.P., a California limited partnership

By: MDR Boat Central, LLC, a California limited liability company

By: Pacific Marina Developments, Inc., a California corporation, Its Manager

By: _____
Thomas J. Hogan, President

COUNTY:

THE COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

ATTEST:

SACHI A. HAMAI, Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

76103 SUPPLEMENT 1

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SACHI A. HAMAI, Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
OF LOS ANGELES

#25 NOV 10 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

76103
SUPPLEMENT 1

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By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____ /LH
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

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SUPPLEMENT