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Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

24 JULY 13, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

July 13, 2010

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:

**APPROVAL OF AMENDMENT NO. 9 TO LEASE NO. 6001
TO UPDATE INSURANCE PROVISIONS – FOGHORN INN
(Parcel 22 at 4140 Via Marina)
MARINA DEL REY
(4th DISTRICT – 4 VOTES)**

SUBJECT

Request for approval of a lease amendment for Parcel 22R (Foghorn Inn) that maintains existing percentage and minimum rental rates and updates the insurance provisions.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment No. 9 to Lease No. 6001 is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 9 to Lease No. 6001, maintaining existing percentage and minimum rental rates and updating the insurance provisions for a ten-year period ending May 31, 2017.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey ground leases generally provide for the periodic review of leasehold rents and

liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from uses of the leasehold.

The Parcel 22R lease (Foghorn Inn) requires adjustment of rents and insurance provisions on June 1, 1997 and every tenth anniversary thereafter. Based upon comparable rates at other Marina leaseholds, the Department of Beaches and Harbors has negotiated with the lessee to keep rates of all percentage rent categories unchanged as the current rates are at market. Additionally, there will be no change to the minimum rent, or "square foot rental", provision as there is already an adjustment mechanism in place. The next minimum rent adjustment will be made on June 1, 2012 to an amount equaling 75% of the average annual rent payable to the County over the prior three years.

Amendment No. 9 incorporates changes to the indemnity clause, insurance requirements and miscellaneous insurance provisions to conform to the Chief Executive Office's Risk Management Branch's new and more stringent requirements.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rental rates at Parcel 22R comparable to other Marina del Rey parcels and incorporates new insurance provisions in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability".

FISCAL IMPACT/FINANCING

There will be no fiscal impact from your Board's approval of Amendment No. 9.

Operation Budget Impact

There will be no operating budget impact as a result of this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as the Foghorn Inn, Parcel 22 is improved with a 23-room hotel, a dry cleaner, a fast food/liquor store, and The Cheesecake Factory Restaurant and occupies approximately 1.8 acres of land in Marina del Rey. It does not have a water area. The 60-year ground lease between the County and lessee was executed in 1962.

Amendment No. 9 has been approved as to form by County Counsel. At its meeting of February 10, 2010, the Small Craft Harbor Commission unanimously approved the Director's recommendation that your Board approve and execute the Amendment.

ENVIRONMENTAL DOCUMENTATION

The Proposed Amendment No. 9 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

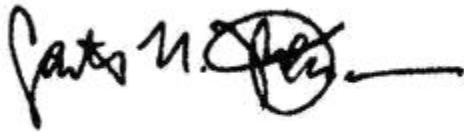
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 9.

CONCLUSION

Please have the Chair of the Board sign all three copies of Amendment No. 9 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line extending to the right.

SANTOS H. KREIMANN
Director

SHK:KS:GJ:PW:rn

Enclosures

c: Chief Executive Office
County Counsel
Executive Officer, Board Supervisions

AMENDMENT NO. 9 TO LEASE NO. 6001

Parcel No. 22R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE is made and entered into this 13TH day of July, 2009 (the "Effective Date"),

BY AND BETWEEN

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

AND

MARINA PROPERTIES COMPANY, a
partnership, hereinafter referred to as
"Lessee."

WITNESSETH:

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 6001 under the terms of which County leased 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, now commonly known as Parcel 22R, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of June 1, 1997, and as of June 1st of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental, all categories of percentage rentals, and liability insurance requirements (collectively the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and in the event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, the parties hereto have determined that there shall be no adjustment to the square foot rental or any category of percentage rental and have reached

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agreement with respect to the liability insurance requirements for the remaining part of the ten (10) year period commencing on June 1, 2007 (the "2007 Rental Adjustment Date");

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

1. **Insurance.** Commencing as of the Effective Date, Sections 25 through 28 of said Lease are deleted in their entirety and the following substituted therefor:

25. **INDEMNITY CLAUSE.**

Lessee shall indemnify, defend and hold the County, its Special Districts, elected and appointed officers, employees and agents harmless from and against all liability, including, but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Lessee, its members, agents and invitees, operations and use of the Premises.

26. **INSURANCE REQUIREMENTS.**

Without limiting Lessee's indemnification of County and during the term of this Lease, Lessee shall provide and maintain the following insurance specified in this Lease. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Lessee's own expense.

A. General Liability insurance (written on ISO policy form CG00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$5 million
Products/Completed Operations Aggregate	\$5 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$2 million

B. Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each

accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto". If and when valet parking services are provided at the Premises, Lessee shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$3 million for this location.

- C. Workers' Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible. If Lessee's employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Lessee is responsible.

In all cases, the above insurance shall also include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

- D. Commercial Property Insurance. Such insurance:
 - (1) Shall cover damage to Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30 or its equivalent), including earthquake (if Lessee deems it reasonable), Ordinance or Law Coverage and Business Interruption equal to two (2) years' annual rent;
 - (2) Shall be written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less; and
 - (3) Upon the occurrence of any loss, the proceeds of such insurance shall be held by County in trust for the named insureds as their interests appear. In the event of such loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment and improvements to the full satisfaction of the County. Said obligation to rebuild or replace is not dependent upon the existence of insurance. County shall

reimburse Lessee for said rebuilding or replacement out of and to the full extent of the proceeds of said insurance as payments are required for said purposes. Any surplus proceeds after said rebuilding or replacement shall be distributed to the named insureds as their interests may appear.

- E. Liquor Liability insurance if and when the manufacture, distribution or service of alcoholic beverages occurs in the Premises, Lessee also shall provide Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with limits of not less than \$5 million per occurrence and \$10 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Lease, or replacement coverage shall be maintained until such time.

27. MISCELLANEOUS INSURANCE PROVISIONS.

- A. Waiver of Subrogation: Lessee shall obtain appropriate endorsements upon all insurance policies waiving subrogation by the insurer(s) against County.
- B. Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to County prior to the Effective Date. Such certificates or other evidence shall:
 - (1) Specifically identify this Lease.
 - (2) Clearly evidence all coverages required in this Lease.
 - (3) Contain the express condition that insurer will use its best efforts to give written notice by mail to County at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
 - (4) Identify any deductibles or self-insured retentions exceeding \$25,000.
- C. Review of Insurance Requirements: Throughout the term of this Lease and upon notice to Lessee, County may review and adjust at any time the types and limits of insurance required under this Lease to a commercially reasonable level. Insurance is to be provided by insurers acceptable to the

County with an A.M. Best rating of not less than A:VII, unless otherwise approved by County.

- D. Failure to Maintain Coverage: Failure by Lessee to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of this Lease.
- E. Notification of Incidents, Claims, or Suits: Lessee shall report to County any accident or incident relating to services performed under this Lease that involves injury or property damage, which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or County. Such report shall be made in writing within 72 hours of Lessee's knowledge of such occurrence.
- F. Compensation for County Costs: In the event that Lessee fails to comply with any of the indemnification or insurance requirements of this Lease, and such failure to comply results in any costs to County, Lessee shall pay full compensation for all reasonable costs incurred by County.

28. [INTENTIONALLY OMITTED.]

- 2. **Miscellaneous.** 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 reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Executive Officer thereof, and the Lessee, or its duly authorized representative, has executed the same.

LESSEE:
MARINA PROPERTIES COMPANY, a partnership

By: Charles E. McTigue
Its: PARTNER

COUNTY OF LOS ANGELES

By: Gloria Molina
Chair, Board of Supervisors

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

By: [Signature]
Deputy



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: [Signature]
Deputy

APPROVED AS TO FORM:
ANDREA SHERIDAN ORDIN
County Counsel

By: [Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS

24 JUL 13 2010

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[Signature]
SACHI A. HAMAI
EXECUTIVE OFFICER

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