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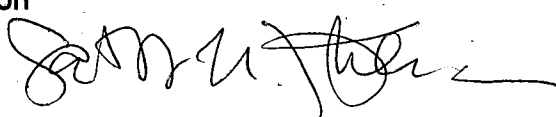


**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

March 5, 2009

TO: Small Craft Harbor Commission

FROM: Santos H. Kreimann, Director 

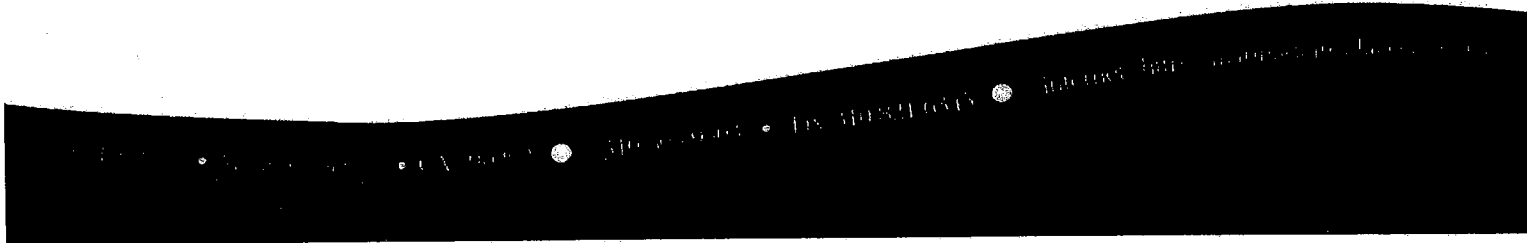
SUBJECT: **ITEM 5b – APPROVAL OF AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE NO. 74729 – PARCEL 15U (ESPRIT II) - MARINA DEL REY**

Item 5b on your agenda pertains to an amendment to the Parcel 15U lease (Esprit II) that extends the outside completion date within which the lessee has to complete construction of 585 new apartment units and a new 225-slip marina.

Attached is a copy of the Board letter that explains the details of the proposed lease amendment. A copy of the proposed lease amendment is attached as an exhibit to the Board Letter.

Your Commission's endorsement of the Director's recommendation to the Board of Supervisors to approve the proposed amendment as contained in the attached letter is requested.

SHK:GB  
Attachment (1)



March 24, 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:

**APPROVAL OF AMENDMENT NO. 1 TO  
AMENDED AND RESTATED LEASE NO. 74729  
ESPRIT II (Parcel 15U at 4240-4250 Via Marina) - MARINA DEL REY  
(FOURTH DISTRICT)  
(4 VOTES)**

**SUBJECT**

Request for approval of Amendment No. 1 to Amended and Restated Lease Agreement for Parcel 15U extending the outside completion date for the redevelopment of the landside and waterside improvements under the lease.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the Regional Planning Commission, acting on behalf of the County, has previously considered and certified a final environmental impact report for the proposed redevelopment project contemplated by Amended and Restated Lease No. 74729 with respect to Parcel 15U (Esprit II).
2. Authorize the Chairman to execute Amendment No. 1 to Amended and Restated Lease No. 74729 for Parcel 15U, attached as Exhibit A, granting an extension of the outside completion date within which to complete the redevelopment of the parcel as described in the Amended and Restated Lease.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Your Board previously entered into Amended and Restated Lease Agreement (Lease No. 74729) with ESPRIT TWO LLC, a California limited liability company (Lessee), on December 29, 2003 for Parcel 15U (Esprit II) in Marina del Rey that calls for demolition of all existing improvements (288 apartments and 215 slips) and the construction of 585 new apartments, including 47 very low-income senior units, and a new 225-slip marina, to be completed by June 30, 2009.

The Amended and Restated Lease Agreement (Lease), which was negotiated in conjunction with an Amended and Restated Lease Agreement for Parcel 12R (Esprit I), called for phased redevelopment of Esprit I and Esprit II so as to lessen the impact on Marina residents and boaters. Due to delays prior to start of construction caused by litigation and, during construction, by material shortages and a lack of necessary skilled labor, Esprit I was not completed until August 2008. The Esprit II lease does not provide tolling for delays in the construction of Esprit I as an adjustment for the outside completion date of Esprit II.

Although Lessee has received all of its entitlements for Esprit II and is able to apply for a building permit at this time, the condition of the financial markets, along with the state of the economy, make it impractical for the Lessee to arrange financing and to redevelop the property at this time. Esprit II cannot meet its original outside completion date, causing the Lessee to request an amendment to the Lease and an extension of the outside completion date for the construction of the project.

In consideration for extending the outside completion date to the later of June 30, 2013 or the fourth anniversary of the earlier of (a) the date of substantial commencement of construction or (b) the anticipated commencement of construction (currently set at July 1, 2010, but extendable for continued general unavailability of financing), Lessee has agreed to: 1) pay the County the sum of \$1,000,000 in four equal annual installments of \$250,000 each, with the first payment due and payable concurrent with execution and delivery of the Amendment; 2) effective April 1, 2009, increase the annual minimum rent from \$415,272 (\$34,606.00 per month) to \$630,000 (\$52,500.00 per month); 3) effective 36 months following the earlier of construction completion or the outside completion date, adjustment every three years of the minimum annual rent to 75% of the average of the total annual rent paid to County during the 36 months immediately prior to the adjustment date, but in no event less than \$2,793,000 per year (the sum projected by the Lessee if Esprit II is built); 4) termination of the abatement of monthly minimum rent during the construction period; 5) termination of deferral of percentage rent; 6) elimination of the possible earnback of up to 50% of the extension fee paid; and 7) renovate the marina in the event that Esprit II is not constructed and the Lease reverts to its original expiration date of 2022.

### Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to proactively redevelop its leasehold improvements, which will result in fulfillment of approved Strategic Plan Goal Nos. 1 and 4, "Service Excellence" and "Fiscal Responsibility", respectively.

### **FISCAL IMPACT/FINANCING**

#### Operating Budget Impact

Upon your Board's approval of the Amendment, the Department of Beaches and Harbors' operating budget will receive a \$1,000,000 fee, payable in four equal annual installments of \$250,000 each, as partial compensation for extending the outside completion date for the project. The revenue was not budgeted in the FY 2008-09 Final Adopted Marina Budget; therefore, the first \$250,000 payment will be accounted for as one-time over-realized revenue. The installment payments received from FY 2009-10 through FY 2011-12 will be subsequently budgeted as one-time revenue.

In addition, the annual minimum rent shall be increased from \$415,272 to \$630,000, and the corresponding monthly minimum rent will increase from \$34,606 to \$52,500 effective April 1, 2009. This revenue increase is budgeted in the Department's FY 2008-09 Final Adopted Marina Budget.

Costs of consultants and primary County staff involved in the negotiation and development of the Amendment are being reimbursed by the Lessee.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The term of the Amended and Restated Lease for Parcel 15U commenced on August 1, 1962 and expires on July 31, 2061.

At its meeting of March 11, 2009, the Small Craft Harbor Commission considered and \_\_\_\_\_ the Director's recommendation to approve the proposed amendment. County Counsel has approved the document as to form.

### **ENVIRONMENTAL DOCUMENTATION**

On December 6, 2000, the Regional Planning Commission considered and certified a final environmental impact report (FEIR) and adopted Findings of Fact and a Statement of Overriding Considerations regarding the FEIR for the proposed redevelopment project contemplated by the Lease. The proposed Amendment No. 1 does not raise any new or different environmental impacts.

The Honorable Board of Supervisors

March 24, 2009

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**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 send two copies of the executed Amendment to the Department of Beaches and Harbors.

Respectfully submitted,

Santos H. Kreimann  
Director

SK:GB

Attachments (1)

c: County Counsel

AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE AGREEMENT  
PARCEL 15U – MARINA DEL REY  
(LEASE NO. 74729)

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE AGREEMENT (“Amendment”) is made and entered into as of \_\_\_\_\_, by and between COUNTY OF LOS ANGELES (“County”) and ESPRIT TWO LLC, a California limited liability company (“Lessee”).

RECITALS

A. County and Lessee entered into Amended and Restated Lease Agreement (Lease No. 74729) dated December 29, 2003 (the “Lease”), pursuant to which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 15U.

B. Subsection 5.5.1 of the Lease requires Lessee to have caused the Substantial Commencement of Construction for the Redevelopment Work to have occurred on or before the date which would reasonably permit the substantial completion of the Redevelopment Work by the Outside Completion Date of June 30, 2009, and to substantially complete the Redevelopment Work by such June 30, 2009 Outside Completion Date.

C. As of the date of this Amendment, the Substantial Commencement of Construction of the Redevelopment Work has not yet occurred and the period required for construction will not permit the substantial completion of the Redevelopment Work by June 30, 2009.

D. The parties desire to enter into this Amendment to extend the Outside Completion Date under the Lease and to make certain other modifications to the Lease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

2. Extension of Outside Completion Date. Subsection 1.1.93 of the Lease is hereby amended in full to read as follows:

1.1.93 “Outside Completion Date” shall mean the later of (a) June 30, 2013, or (b) the fourth (4<sup>th</sup>) anniversary of the earlier of (i) the date of the Substantial Commencement of Construction of the Redevelopment Work, or (ii) the Anticipated Commencement Date

(as such Anticipated Commencement Date may be extended in accordance with the terms of Section 5.5 of this Lease).

3. Extension of Construction Schedule. Subsection 5.5.1 of the Lease is hereby amended in full to read as follows:

5.5.1 Substantial Commencement and Completion of Construction. It is a condition of this Lease that, except to the extent Lessee is prevented from so doing by the events identified in subsection 5.5.3, Lessee shall cause the Substantial Commencement of Construction for the Redevelopment Work to have occurred on or before July 1, 2010 (the "Anticipated Commencement Date"), and shall substantially complete the Redevelopment Work by the Outside Completion Date. For the purposes of this Lease, "Substantial Commencement" or "Substantial Commencement of Construction" means that physical construction work pertaining to the Redevelopment Work has been commenced and thereafter proceeds with diligence, provided that for this purpose the demolition work required for the commencement of excavation and new improvement construction shall qualify as physical construction work as long as such demolition work is performed on a diligent basis and is followed by excavation and new improvement construction work without interruption. The Anticipated Commencement Date and the Outside Completion Date will only be extended under the specific circumstances set forth in this Section 5.5, and under no other circumstances.

Lessee shall use good faith, diligent efforts to obtain construction financing for the Redevelopment Work as soon as reasonably possible. Lessee shall keep the Department apprised (on a monthly basis) of Lessee's efforts towards, and the status of, Lessee's receipt of construction financing for the Redevelopment Work. If Lessee is unable to obtain construction financing for the Redevelopment Work on commercially reasonable terms by not later than six (6) months prior to the Anticipated Commencement Date, then Lessee shall provide written notice to Department of such inability (the "Financing Delay Notice"). The Financing Delay Notice shall include an explanation and status of Lessee's efforts to obtain the construction financing, including potential financing sources and the terms and requirements applicable to any such potential financing sources. If (a) Lessee provides the Financing Delay Notice, (b) Lessee has exercised, and thereafter continues to exercise, its good faith, diligent efforts to obtain the construction financing, and keeps the Department apprised of such efforts as provided above, (c) Lessee continues to be unable to obtain the construction financing by the Anticipated Commencement Date, and (d) the reason for

Lessee's inability to obtain the construction financing is the continued existence of an Unreasonable Financial Market Condition (as defined below), then the Anticipated Commencement Date shall be extended for the period of time that Lessee is delayed in obtaining construction financing beyond the Anticipated Commencement Date set forth in the first paragraph of this subsection 5.5.1, as long as the conditions in clauses (b), (c) and (d) continue to be applicable during such period of delay. For purposes of this Lease, "Unreasonable Financial Market Condition" means an industry-wide commercially adverse condition, beyond Lessee's reasonable control, in the real estate construction lending market, such that, notwithstanding Lessee's exercise of good faith, diligent efforts, Lessee has been unable to secure construction financing for the Redevelopment Work on commercially reasonable terms and it would have been unlikely that any other apartment developer could have obtained such construction financing. In no event shall the Anticipated Commencement Date be extended under this subsection 5.5.1 for more than three (3) years beyond the Anticipated Commencement Date set forth in the first paragraph of this subsection 5.5.1. There shall be no extension of the Anticipated Commencement Date under this paragraph unless Lessee demonstrates to the reasonable satisfaction of Department that the requirements for such extension set forth herein have been met, including the occurrences, conditions or circumstances that constitute an Unreasonable Financial Market Condition. If Lessee and Department are unable to resolve any dispute as to whether an Unreasonable Financial Market Condition exists, whether the other requirements for an extension of the Anticipated Commencement Date under this paragraph have been satisfied, or as to the duration of the extension to which Lessee is entitled, the dispute shall be arbitrated pursuant to Article 16 of the Lease. Notwithstanding any contrary provision of this Lease, there shall be no extension of the Anticipated Commencement Date for any period during which Lessee is in breach or default under this Lease.

4. Construction Delays. Notwithstanding any contrary provision of Section 5.5 of the Lease, as modified by this Amendment, neither the Anticipated Commencement Date nor the Outside Completion Date shall be subject to extension for any act, omission, occurrence, condition, or circumstance (including without limitation a Force Majeure event or Unreasonable County Activity, if any) that first occurred or first arose prior to, or that otherwise exists as of, the date of this Amendment; provided, however, that this sentence shall not be applicable to an Unreasonable Financial Market Condition that hereafter exists even if such Unreasonable Financial Market Condition existed prior to, or exists as of, the date of this Amendment. Lessee represents and warrants to County that as of the date of this Amendment there is no threatened or anticipated delay in the

Substantial Commencement of Construction beyond the Anticipated Commencement Date of which Lessee is aware as of the date of this Amendment, except for any Unreasonable Financial Market Condition that might currently exist or hereafter arise. Notwithstanding any contrary provision of the Lease, no future Force Majeure delay under subsection 5.5.2 of the Lease shall commence until Lessee has provided County with written notice of the occurrence, condition or circumstance that constitutes a Force Majeure event; provided, however, that if Lessee provides written notice to County of a Force Majeure event within five (5) business days after the date that the occurrence, condition or circumstance that constitutes Force Majeure first occurs or arises, then the Force Majeure delay shall commence retroactive to the date that the Force Majeure event first occurred or arose.

5. Delay Caused by Injunction. Subsection 5.5.3.2 of the Lease is amended in full to read as follows:

5.5.3.2 Delay Caused by Injunction. Except as otherwise provided in subsection 5.5.3.3, if as of the Anticipated Commencement Date (as it may be extended as provided above) a regulatory body or agency has obtained an injunction preventing the commencement of construction, and the removal of such injunction constitutes the major remaining impediment to the commencement of construction, then the Anticipated Commencement Date shall be extended to thirty (30) days after the date upon which such injunction is dissolved, provided that (1) Lessee has exhausted and continues to exhaust all commercially reasonable efforts to obtain the dissolution of such injunction, and (2) the Anticipated Commencement Date is not extended to later than two (2) years after the date of the Anticipated Commencement Date set forth in the first sentence of subsection 5.5.1 above. The extension provided by this subsection shall be the only extension available in a situation where a regulatory body or agency has obtained such an injunction.

6. Final Redevelopment Work Plans and Specifications. The second sentence of subsection 5.1.1 of the Lease is hereby amended in full to read as follows:

Not later than eight (8) months prior to the Anticipated Commencement Date, Lessee shall submit for approval by Director six (6) complete sets of final plans and detailed specifications for the Redevelopment Work on the Premises (the "Final Plans"), together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code.

