

CALENDAR ITEM

C110

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09/20/13

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S. Haaf

INTERIM AUTHORIZATION TO EFFECTUATE VESSEL REMOVAL

PARTY:

Maxim Commercial Capital, LLC

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land at and adjacent to 410 Airport Boulevard, Burlingame, San Mateo County.

AUTHORIZED USE:

To cause removal of the vessel, gangway, pilings, and other restaurant-related improvements from the Premises, including restoration of the Premises as specified therein.

TERM:

The lesser of six (6) months or the time necessary to secure contracts and the necessary authorizations for removal of the vessel from sovereign lands and restoration of Premises, beginning on September 1, 2013, and terminating on February 28, 2014, or sooner as provided therein.

CONSIDERATION:

Payment of Back Rent Due: One-time non-refundable payment of \$9,328 (\$848 per month) (the "Back Rent Payment"), based upon the reasonable rental value of the subject property. Such consideration is calculated on a monthly basis for the period covering October 2012 through August 2013, during which time Maxim Commercial Capital, LLC (MAXIM), as the owner of the vessel, unlawfully occupied the Premises absent authorization from the Commission. Notwithstanding anything to the contrary set forth in this Paragraph, MAXIM shall be required to pay \$5,088 (6 months back rent) upon execution of the Interim Authorization, and the balance of the Back Rent Payment shall be due and payable on January 1, 2014 if the vessel and related improvements have not been removed on or prior to December 31, 2013. In the event that the vessel and related improvements are removed prior to January 1, 2014, the balance of the Back Rent Payment or \$4,240 shall be waived by the Commission.

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Interim Rent: \$848 per month during the Authorization term; and subject to modification by the Commission as specified in Paragraph 2 of Section 3, General Provisions.

SPECIFIC PROVISIONS:

Insurance: Liability Insurance in an amount of no less than \$2,000,000 per occurrence.

Bond: \$500,000 (or cash equivalent in a form acceptable to Commission staff).

BACKGROUND:

1. On April 6, 2011, the California State Lands Commission (Commission) authorized the termination of Lease No. 5467.1, a General Lease – Commercial Use, issued to Dago Mary's, a California corporation, collection of back rent (in the amount of \$24,143), and litigation for trespasses and ejectment. Staff has been unable to collect the back rent from the prior lessee. Staff did not proceed with a trespass and ejectment action in light of pending Commission consideration of a lease application submitted by Frank M. Coxe, LLC on December 8, 2011.
2. On October 19, 2012, the Commission authorized the issuance of Lease No. PRC 5467.1, a General Lease – Commercial Use, for a 10-year term to Frank M. Coxe, LLC for the operation and maintenance of a floating restaurant and appurtenant facilities, parking lot, and public access amenities on sovereign land adjacent to San Francisco Bay, in the city of Burlingame, San Mateo County. Lloyd Bothwell is the Managing Agent of Frank M. Coxe, LLC at all times relevant hereto.
3. Lloyd Bothwell claimed to be prior owner of the subject vessel and sold the vessel to MAXIM with an agreement to rent-back the vessel for use by himself and his company Frank M. Coxe, LLC.
4. MAXIM is a California limited liability company and the current owner of the vessel known as "the Frank M. Coxe," also/formerly known as "Dago Mary's," "The Sherman," and "The Showboat," among other names, hereinafter referred to as the "vessel."
5. After the November 16, 2012 execution of the Lease, Frank M. Coxe, LLC failed to satisfy any of the core lease conditions, including but not limited to providing the executed guaranty from MAXIM and payment of any rent. Commission staff promptly advised Frank M. Coxe, LLC of the unmet lease provisions on several occasions, including, but not limited to written

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correspondence on November 15, 2012, a default notice letter on December 18, 2012, and follow-up correspondence on January 25, 2013. MAXIM received a courtesy copy of each of the above-referenced correspondence.

6. As a result of the numerous unmet lease provisions, Commission staff recommended the Commission terminate the lease with Frank M. Cox, LLC at its meeting on February 22, 2013. At said duly noticed public meeting, the Commission terminated the lease with Frank M. Cox, LLC, determined the vessel was in trespass, and authorized Commission staff and the Attorney General to take whatever action was necessary, including filing suit, to remove the vessel and other restaurant-related improvements. Written notice of the Commission's action was promptly provided to Frank M. Cox LLC, Lloyd Bothwell, and MAXIM.

OTHER PERTINENT INFORMATION:

1. MAXIM is the record owner of the subject vessel based upon Department of Motor Vehicles registration and U.S. Coast Guard documentation submitted to Commission staff. Furthermore, MAXIM claims ownership and has represented to staff that it has conducted a thorough title search on the vessel and it is MAXIM's position that there are no other valid title claims against the vessel.
2. As owner of the vessel, on March 1 and April 4, 2013, notice of the Commission's February 22, 2013 lease termination action and written demand were also made on MAXIM to request removal of the vessel. When Commission staff received no response, on May 30, 2013, another letter was sent to MAXIM notifying them that the vessel was in trespass and demanding that the vessel be immediately removed.
3. On June 18, 2013, Commission staff posted a Notice of Trespass on the vessel and a final demand letter was sent to MAXIM. Subsequently, it was discovered that said Notices were removed. On July 2, 2013, the trespass Notices were re-posted and MAXIM was advised that the Notices should not be removed.
4. To date, the vessel remains at the same location, in trespass, with no date certain for its removal and restoration of the Premises.
5. In lieu of commencing litigation for trespass and ejectment, Commission staff recommends the Commission authorize the issuance of a short-term *Interim Authorization to Effectuate Vessel Removal* in order to allow MAXIM the time to secure contracts and the necessary authorizations for

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removal of the vessel, gangways, pilings and other restaurant-related improvements from sovereign lands including restoration of the Premises consisting of the removal of all attachments to the vessel, including but not limited to, service lines, electrical systems, and satellite dish. Floating docks and pilings servicing the personal watercraft shall remain, shoreline protection shall remain, storage shed located on the upland to remain, and paved parking lot to remain. All services shall be capped at the adjacent upland.

6. MAXIM shall use a reputable, licensed, bonded tug boat company to remove the vessel from the Premises and shall comply with all applicable laws while completing this work. MAXIM shall notify Commission staff within seventy-two (72) hours of securing any necessary contracts and authorizations to effectuate removal of the vessel and within seven (7) calendar days after removal of the vessel and completing all restoration work.
7. By October 31, 2013, MAXIM shall provide a work plan including, but not limited to: proof of the selected contractor's credentials, scope of work for the vessel's removal, notice of any required regulatory authorizations, estimates of costs, and scheduled dates for completion of work for Commission staff's review and prior approval. Vessel may not be towed to any area under the jurisdiction of CSLC, including granted lands.
8. MAXIM agrees to provide Commission staff with monthly updates, due by the 10th of each month, as to the status of the removal of the vessel, including, but not limited to: parties contacted, contracts rendered, and actions taken to remove the vessel and restore the Premises.
9. Both the Commission and MAXIM acknowledge and understand that the *Interim Authorization* is intended to be limited in scope and duration and permits MAXIM to occupy the Premises only insofar and for the purposes expressly set forth therein. The *Interim Authorization* is non-transferable and non-assignable. Likewise, MAXIM's obligations under the *Interim Authorization*, including but not limited to all provisions related to removal of the vessel, are non-transferable and non-assignable.
10. The Commission expressly reserves the right to require a lease, compensation, and/or removal of the subject vessel and of any unauthorized improvements, should it be deemed appropriate at the Commission's sole discretion. The parties agree that the *Interim Authorization* does not convey any right to MAXIM to obtain a lease for

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occupation or continued use of the Premises beyond the limited *Interim Authorization* term.

11. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15301.

12. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site Location and Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of an Interim Authorization to Effectuate Vessel Removal (in a form substantially similar to that on file at the Commission), to Maxim Commercial Capital, LLC for the lesser of six (6) months or the time to secure contracts and the necessary authorizations for removal of the vessel from sovereign lands and restoration of Premises, beginning on September 1, 2013, and terminating on February 28, 2014, or sooner as

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provided therein; payment of back rent due by the one-time non-refundable payment of \$9,328 (the "Back Rent Payment"), based upon the reasonable rental value of the subject property; MAXIM is required to pay \$5,088 upon execution of the Interim Authorization, and the balance of the Back Rent Payment shall be due and payable on January 1, 2014 if the vessel and related improvements have not been removed on or prior to December 31, 2013; if the vessel and related improvements are removed prior to January 1, 2014, the balance of the Back Rent Payment or \$4,240 shall be waived by the Commission; consideration in the amount of \$848 per month during the Interim Authorization term; and subject to modification by the Commission as specified in Paragraph 2 of Section 3, General Provisions; liability insurance in an amount no less than \$2,000,000 per occurrence; surety bond (or cash equivalent in a form acceptable to Commission staff) in the amount of \$500,000; authorize staff of the Commission and the Office of the Attorney General to take all steps necessary, including litigation, against MAXIM, its agents, successors and/or assigns, to redress trespass and for ejectment, to recover damages, to cause payment of rent and back rent, for the removal of any improvements, for the restoration of the Premises to the satisfaction of the Commission, and to recover the Commission's damages and costs.

EXHIBIT A

W 26713

LAND DESCRIPTION

A parcel of land conveyed to the State of California by Anza Pacific Corporation under Boundary Line Agreement 131, situate in the City of Burlingame, County of San Mateo, State of California, lying adjacent to the San Francisco Bay and more particularly described as follows:

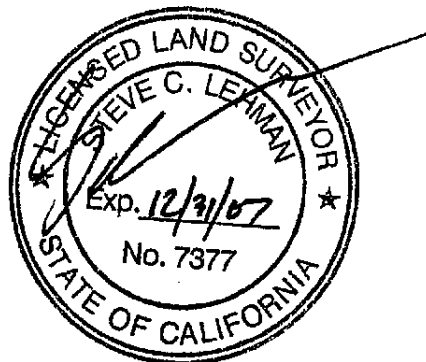
Parcel 5 as described in that Grant Deed recorded July 13, 1972 in Book 6198 at Page 76 of official records of the County of San Mateo.

EXCEPTING THEREFROM that portion of Lot 7 as shown on that map of Anza Airport Park Unit No. 6 recorded February 27, 1973 in Book 70 of maps at Page 33 of official records of the County of San Mateo and more particularly described as follows:

BEGINNING at the southwest corner of Lot 7, thence along the West line of said Lot 7 $N02^{\circ}25'31''W$ 359.50 feet to the northwest corner of said lot, thence along the North line of said lot $N89^{\circ}43'01''E$ 35.89 feet to a point on said North line, thence leaving said North line $S00^{\circ}17'00''E$ 358.80 feet to a point on a non-tangent curve having a radius of 643.50 feet from which a radial line bears $S00^{\circ}25'32''E$, said point also being on the South line of said Lot 7, thence westerly along said South line 22.46 feet along said curve through a central angle of $1^{\circ}29'59''$ to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared by the California State Lands Commission Boundary Unit November 19, 2007.



NO SCALE

SITE

San Francisco Bay

PROPOSED GARBAGE &
STORAGE ROOM

LOT 6

LOT 7

LOT 8

APN 026-363-610

AIRPORT BLVD

410 AIRPORT BLVD.

LEASE AREA

NO SCALE

LOCATION



Exhibit B

W 26713
MAXIM COMMERCIAL
CAPITOL LLC
INTERIM AUTHORIZATION
SAN MATEO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

DJF 10/12