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Caring for Your Coast



Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

June 06, 2017

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. 3 TO LEASE NO. 26695 MARINA DEL REY MARRIOTT
(PARCEL 141V) – MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

Request approval of a lease amendment for Parcel 141V (Marina del Rey Marriott) that modifies the provisions regarding the security deposit, square foot rental, and general rent renegotiation and arbitration; readjusts certain percentage rental rates; and updates the insurance provisions.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed lease Amendment No. 3 to Lease No. 26695 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the Environmental Document Reporting Procedures and Guidelines adopted by your Board, per Section 15301 of the State of California Environmental Quality Act Guidelines (Existing Facilities).
2. Approve and authorize the Chairman to sign the attached Amendment No. 3 to Lease No. 26695, pertaining to the readjustment of rents and insurance for a ten-year period ending February 28, 2023.

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 the

County's interests (collectively, the "Adjustments"). 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.

County Lease No. 26695 (Lease) with HMH Marina LLC (Lessee) for Parcel 141V requires that the Adjustments occur on March 1, 2013 (2013 Rental Adjustment Date) and every fifth anniversary thereafter. Typically, Marina del Rey ground leases require that such adjustments occur every ten years. Therefore, effective on the 2013 Rental Adjustment Date, in order to increase efficiency and standardize the adjustments across Marina del Rey ground leases, Amendment No. 3 provides that the Adjustments to the Lease shall occur every ten years.

Effective on the 2013 Rental Adjustment Date, proposed Amendment No. 3 also provides the following:

- A. Changes to the percentage rental rates: (1) Occupancy of Structures from 7.5% to 10.0% for parking fees and offices only; (2) Restaurants from 3.0% to 3.5%; and (3) Miscellaneous Sales from 1.0% to 5.0%. All other percentage rental rates remain unchanged;
- B. Amends the Lease's Square Foot Rental section to include a provision that all subsequent minimum rent adjustments shall either increase the annual minimum rent or maintain it at the then-current level;
- C. Amends the Lease's Rental Security Deposit section to include a provision requiring the Lessee to maintain the full amount of the Rental Security Deposit at all times;
- D. Provides for a reconciliation of the rent retroactive as of the 2013 Rental Adjustment Date and requires payment of any additional rent owed to the County as a result of the rent adjustment; and
- E. Incorporates changes to the indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform with the Chief Executive Office's Risk Management Branch's current requirements.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rent categories at Parcel 141V comparable to other Marina del Rey parcels and will incorporate new insurance provisions, in fulfillment of Strategic Plan Goal Strategy III.3, "Pursue Operational Effectiveness, Fiscal Responsibility, and Accountability."

FISCAL IMPACT/FINANCING

Proposed Amendment No. 3 would result in an increase in the annual minimum rent from \$67,759 to \$103,037, an increase of \$35,278. However, as the percentage rents for this leasehold

routinely exceed the new minimum rent, this change in the minimum rent likely will not affect the overall increase in rent received by the County which is anticipated as a result of the above described changes in the percentage rent rates.

Furthermore, Amendment No. 3 contains a provision for payment of retroactive rent calculated from the 2013 Rental Adjustment Date through the time of payment, to be remitted by the Lessee within

ten days after your Board's approval of Amendment No. 3. The approximate amount of retroactive rent is \$287,356 (as of March 2017), which, when added to the projected annual percentage rent increase for the remainder of this Fiscal Year (April through June) of \$8,878, will yield an additional \$296,234 to the County in Fiscal Year 2016-17.

Operating Budget Impact

The recommended action will increase Marina del Rey annual revenue by an estimated \$35,512 in percentage rent and approximately \$287,356 in one-time retroactive rent. A portion of the annual revenue increase received from Fiscal Year 2016-17 and the one-time retroactive rent revenue were not budgeted in the Fiscal Year 2016-17 Final Adopted Budget; therefore, the additional revenue will be accounted for as one-time over-realized revenue.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as the Marina del Rey Marriott, Parcel 141V occupies a total land area of 156,758 square feet in Marina del Rey. Parcel 141V is improved with a nine-story hotel building with approximately 240,000 square feet of building area which contains 370 hotel rooms, an indoor/outdoor restaurant having a seating capacity of 225 persons, and additional banquet and meeting rooms. Other improvements include a pool and spa area, and a two-story parking structure having approximately 600 parking spaces. The original lease commenced on October 1, 1962, having a 60-year term (Original Lease). However, the Original Lease was entered into on August 26, 1975, which incorporated by reference certain terms of the Original Lease. Amendment No. 2 to the Lease extended the term to 60 years from the effective date of March 1, 1983.

Amendment No. 3 has been approved as to form by County Counsel. At its meeting of May 10th, 2017, the Small Craft Harbor Commission endorsed the Director's recommendation that your Board approve and execute the Amendment.

ENVIRONMENTAL DOCUMENTATION

Proposed Amendment No. 3 is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 3.

CONCLUSION

CONCLUSION

Please have the Chairman sign all three copies of Amendment No. 3 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. Should you have any questions please contact Michael G. Rodriguez (424) 526-7737 or mirodriguez@bh.lacounty.gov.

The Honorable Board of Supervisors

6/6/2017

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Jones". The signature is stylized with a large, looping initial "G" and a long horizontal stroke extending to the right.

GARY JONES

Director

GJ:KS:BL:SP:MR:s

kn

Enclosures

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

AMENDMENT NO. 3 TO LEASE NO. 26695

PARCEL NO. 141V – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE is made and entered into this _____ day of _____ 2017 (the "Effective Date")

BY AND BETWEEN

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

AND

**HMH MARINA LLC, a Delaware limited
liability company hereinafter referred to as
"Lessee."**

RECITALS:

WHEREAS, County and Interstate Marina Development Co. entered into Lease No. 26695 under the terms of which County leased to Interstate Marina Development Co. 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 141V, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit A attached to and incorporated in said Lease, and amended (the Lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Interstate Marina Development Co. assigned the Lease to Marina Hotels, Inc. by Document 84-15412 recorded in the official records of the Los Angeles County Registrar-Recorder's Office; and

WHEREAS, HMH Marina, Inc. acquired the Lease at a foreclosure sale on November 3, 1995; and

WHEREAS, HMH Marina, Inc. assigned the Lease to HMH Marina LLC on December 14, 1998; and

WHEREAS, Section 15 of said Lease provides that as of March 1, 2013, and every fifth (5th) year thereafter, the square foot rental and percentage rentals and the amount of casualty insurance (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, the parties hereto have reached agreement with respect to the required adjustments and wish to amend the Lease as set forth herein, effective as of March 1, 2013 ("2013 Rental Adjustment Date").

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof, and the mutual agreements, covenants and restrictions contained herein, the parties agree as follows:

1. **RENTAL SECURITY DEPOSIT.** Commencing as of the 2013 Rental Adjustment Date, Section 7 of the Lease is deleted in its entirety and the following substituted therefor:

Lessee shall at all times maintain a security deposit in an amount equal to three (3) monthly installments of the then-in effect annual square foot rental. The security deposit shall be retained by County to cover delinquent rents and any other financial obligations of the Lessee under this Lease, and shall be so applied at the discretion of County.

In the event all or any part of the security deposit is applied against any rent or other financial obligations of Lessee due and unpaid, the Lessee shall immediately reimburse the County an amount equal to that portion of the security deposit applied by County so that, at all times during the life of this Lease, said full security deposit shall be maintained with County. Failure to maintain the full amount of security deposit shall constitute an event of default pursuant to Section 21. Upon forfeiture or termination of this Lease, any portion of said security deposit due the Lessee shall be returned.

2. **SQUARE FOOT RENTAL.** Commencing as of the 2013 Rental Adjustment Date, Section 12 (SQUARE FOOT RENTAL) of the Lease, sometimes elsewhere in the Lease referred to as "minimum rents," is amended by the adding the following:

The annual square foot rental shall be readjusted on the 2013 Rental Adjustment Date and on March 1 every third year thereafter (each, a "Square Foot Rental Adjustment Date"). On the Square Foot Rental Adjustment Date, the annual square foot rental shall be readjusted to an amount equal to seventy-five percent (75%) of the annual average of all rents payable by Lessee for the preceding three-year period that ends three (3) months prior to the Square Foot Rental Adjustment Date; provided, however, that in no event shall the annual square foot rental be readjusted to an amount that is less than the then-in effect annual square foot rental.

3. **PERCENTAGE RENTALS.** Effective as of the 2013 Rental Adjustment Date, subsections (c), (j), and (s) of Section 13 (PERCENTAGE RENTALS) are deleted and the following subsections (c), (c1), (j), and (s) are substituted therefor:

(c) SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts or other fees charged for the rental, occupancy, or use of the following structures: (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, (5) rental of land and/or water or facilities for activities not otherwise provided for in this section such as but not limited to television and/or motion pictures;

(c1) TEN PERCENT (10%) of Gross Receipts or other fees charged for the rental, use, or occupancy of the following structures: (1) parking fees or charges

except where such parking fees or charges are collected in conjunction with an activity, the gross receipts from which are required to be reported in a percentage category greater than TEN PERCENT (10%), and (2) offices utilized for banking, financial or investment activities, internal clerical or administrative activities or business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services but not to include, however, stores, shops, or other commercial establishments, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section;

(j) THREE AND ONE-HALF PERCENT (3.5%) of gross receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that gross receipts from facilities established and operated as a take-out food operation shall be reported under Subsection (s);

(s) FIVE PERCENT (5%) of gross receipts from the sale of miscellaneous goods and services not specifically provided for elsewhere in this Section.

4. **RETROACTIVE RENT.** Lessee shall pay to County, within ten (10) days following the Effective Date, for the period between the 2013 Rental Adjustment Date and the actual date of payment (the "Retroactive Period"), the difference between (i) the actual rents paid by Lessee under the rental rates in effect prior to the effectiveness of this Amendment from the 2013 Rental Adjustment Date to the Effective Date, and (ii) the rents that should have been paid for the same period in accordance with the new rental rates as determined hereby ("Retroactive Payment").
5. **GENERAL RENT RENEGOTIATION AND ARBITRATION.** Effective as of the 2013 Rental Adjustment Date, the last sentence of the first paragraph of Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION) is hereby deleted and the following substituted therefor:

At the end of said period, and at the end of every ten (10) year period thereafter (each such date is hereafter referred to as a "Decennial Rental Adjustment Date"), said rentals shall be readjusted as provided hereinafter.

6. **PROPERTY INSURANCE.** Commencing as of the 2013 Rental Adjustment Date, Section 25 of Lease (Property Insurance) is deleted in its entirety and the following substituted therefor:

This section is intentionally left blank.

7. **INDEMNIFICATION AND INSURANCE REQUIREMENTS.** Commencing as of the 2013 Rental Adjustment Date, Section 26 of Lease (Indemnification and Insurance Requirements) is deleted in its entirety and the following substituted therefor:

INDEMNIFICATION AND INSURANCE REQUIREMENTS: During the term of this Lease, the following indemnification and insurance requirements shall be in effect.

I. INDEMNIFICATION AND INSURANCE REQUIREMENTS

The Lessee shall indemnify, defend and hold harmless the County, from and against any and all liability, loss, injury or damage including (but not limited to) demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the Lessee's repair, maintenance and other acts and omissions arising from and/or relating to the Lessee's use of the Premises, except for such loss or damage that arises from the sole negligence or willful misconduct of the County.

II. GENERAL INSURANCE PROVISIONS - LESSEE REQUIREMENTS

Without limiting the Lessee's indemnification of County and during the term of this Lease, and until all of its obligations pursuant to this Lease have been met, Lessee shall obtain and maintain at its own expense insurance coverage satisfying the requirements specified in this Lease. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Lessee pursuant to this Lease. The County in no way warrants that the Required Insurance is sufficient to protect the Lessee for liabilities which may arise from or relate to this Lease.

A. Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Additional Insured status under the Lessee's General Liability policy, shall be delivered to County at the address shown below and provided prior to the start day of this Lease.
- Renewal Certificates shall be provided to County prior to Lessee's policy expiration dates.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Lease by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Lessee identified in this Lease. Certificates shall provide the full name of each insurer providing coverage and list any County-required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or

endorsement, or any other insurance documentation or information provided by the Lessee, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

- Certificates and copies of any required endorsements, and notices of cancellation shall be delivered to:

County of Los Angeles
Department of Beaches and Harbors
Attention: Asset Management Division
13837 Fiji Way
Marina del Rey, CA 90292

- Lessee also shall promptly notify County of any third-party claim or suit filed against Lessee which arises from or relates to this Lease, and could result in the filing of a claim or lawsuit against Lessee and/or County.

B. Additional Insured Status and Scope of Coverage

The County, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents), shall be provided Additional Insured status under Lessee's General Liability policy with respect to liability arising from or connected with the Lessee's acts, errors, and omissions arising from and/or relating to the Lessee's operations on and/or its use of the Premises. County's additional insured status shall apply with respect to liability and defense of suits arising out of the Lessee's acts or omissions. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

C. Cancellation of or Changes in Insurance

Lessee shall provide County with, or Lessee's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Lease, in the sole discretion of the County, upon which the County may suspend or terminate this Lease.

Lessee shall notify County if at any time Lessee's insurance no longer meets the requirements of this Lease.

D. Failure to Maintain Insurance

Lessee's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the

Lease, upon which County immediately may suspend or terminate this Lease. County, at its sole discretion, may obtain damages from Contractor resulting from said Lease.

E. Insurer Financial Ratings

Insurance shall be provided by an insurance company legally able to provide insurance in California and acceptable to the County, with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County. However County may allow the use of insurers with a rating of A-VII as long as such insurers represent no more than 10% of Lessee's limits.

F. Lessee's Insurance Shall Be Primary

Lessee's insurance policies, with respect to any claims related to this Lease, shall be primary with respect to all other sources of coverage available to County, except where the claim arises out of the intentional acts of County. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Lessee coverage.

G. Waiver of Subrogation

To the fullest extent permitted by law, the Lessee hereby waives its and its insurer(s) rights of recovery against County under all required insurance policies for any loss arising from or related to this Lease. The Lessee shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

H. Deductibles and Self-Insured Retentions (SIRs)

Lessee's policies shall not obligate the County to pay any portion of any Lessee deductible or SIR.

I. Claims Made Coverage

If any part of the Required Insurance is written on claims made basis, any policy retroactive date shall precede the start date of this Lease. Lessee understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Lease expiration, termination or cancellation.

J. Application of Excess Liability Coverage

Lessee may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

K. Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

L. County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

III. INSURANCE COVERAGE TYPES AND LIMITS

At a minimum, Lessee's insurance coverage shall include Section III provisions A through E below.

A. Commercial General Liability Insurance providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$ 10 million
Products/Completed Operations Aggregate:	\$ 10 million
Personal and Advertising Injury:	\$ 5 million
Each Occurrence:	\$ 5 million

B. Automobile Liability Insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Lessee's use of autos related to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

C. Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If applicable to Lessee's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

D. Commercial Property Insurance. Such coverage shall:

- Provide coverage for Lessee's property, and any improvements and betterments; this coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form CP 10 30), including earthquake (if Lessee deems it reasonable), Ordinance or Law Coverage, flood, and Business Interruption equal to two (2) years annual rent;
- Be written for the full replacement cost of the property, with a deductible no greater than \$250,000 or 5% of the property value whichever is less, except for earthquake, where the deductible shall be equal to 5% of replacement cost including business interruption.

The coverage limit for earthquake may be determined by a probable maximum loss study, and the limit may apply jointly for the benefit of other assets owned by Lessee or its parents or affiliates. Insurance proceeds shall be payable to the Lessee and County as their interests may appear and be utilized for repair and restoration of the Premises. Failure to use such insurance proceeds to timely repair, restore, and rebuild the Premises shall constitute a material breach of the Lease.

E. Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be provided and maintained by the Lessee if and when the manufacturing, distribution or service of alcoholic beverages occurs on the Premises, 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.

8. WORKMAN'S COMPENSATION INSURANCE. Commencing as of the 2013 Rental Adjustment Date, Section 27 of Lease (Workman's Compensation Insurance) is deleted in its entirety and the following substituted therefor:

This section is intentionally left blank.

9. FAILURE TO PROCURE INSURANCE. Commencing as of the 2013 Rental Adjustment Date, Section 28 of Lease (Failure to Procure Insurance) is deleted in its entirety and the following substituted therefor:

This section is intentionally left blank.

IN WITNESS WHEREOF, as of the Effective Date, County has, by order of its Board of Supervisors, caused this Amendment No. 3 to Lease No. 26695 to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee or its duly authorized representative, has executed the same.

LESSEE:

HMH MARINA LLC,
A Delaware Limited Liability

By: Jeffrey S. Clark

Name: Jeffrey S. Clark

Title: Vice President

ATTEST:

COUNTY OF LOS ANGELES

LORI GLASGOW
Executive Office-Clerk
of the Board of Supervisors

By: _____

Deputy

By: _____

Mark Ridley-Thomas, Chairman
Board of Supervisors

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: Mary C. Wickham

Senior Deputy