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Caring for Your Coast

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Gary Jones
Director

Kerry Silverstrom
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Amy M. Caves
Deputy Director

October 15, 2019

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. 4 TO MASTER AMENDED AND RESTATED LEASE NO.
55623
TO UPDATE INSURANCE PROVISIONS - PARCEL 125H (HOTEL PARCEL) THE RITZ-CARLTON
- MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board Letter requests approval of Amendment No. 4 to Marina del Rey Master Amended and Restated Lease No. 55623 ("Lease") for the Ritz-Carlton Hotel located on Parcel 125H (Hotel Parcel) to modify the insurance requirements.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Lease Amendment No. 4 is categorically exempt from the California Environmental Quality Act 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).
2. Approve and authorize the Chair to execute the attached Amendment No. 4 to Lease No. 55623, pertaining to the readjustment of the insurance for a five-year period ending November 6, 2021.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the proposed Amendment No. 4 will incorporate changes to the Lease's indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the Chief Executive Office Risk Management Branch's current and more stringent requirements.

Commonly known as the Ritz-Carlton, Parcel 125H (Hotel Parcel) consists of a 12-story hotel with 304 rooms and suites. The property was improved with two restaurants, spa retreat, tennis courts, pool, spa, promenade, and a covered parking structure.

The County and MDP, LTD., a California corporation entered into that certain Master Amended and Restated Lease on November 7, 1986 (“Lease”) to provide an 80-year term for the newly created parcel of County-owned land commonly known as Parcel 125H (Hotel Parcel) in Marina del Rey. The lease was later assigned to Host Hotels and Resorts, L.P. a Delaware limited Partnership.

Ground leases of County-owned property in Marina del Rey generally provide for the periodic review of liability insurance coverage to ensure that the amount of general liability insurance is adequate to protect the County’s interests.

Section 11.03 of the Lease provides the amounts of liability insurance required by said Section shall be subject to negotiation every fifth (5th) anniversary of the commencement date of the term (November 7, 1986), just as the amounts of rent are adjusted pursuant to the Lease.

Implementation of Strategic Plan Goals

The recommended action will incorporate new insurance provisions in fulfillment of County Strategy III.3 - Pursue Operational Effectiveness, Fiscal Responsibility and Accountability, and County Strategy III.3.2 by managing and maximizing County assets.

FISCAL IMPACT/FINANCING

There will be no fiscal impact from your Board’s approval of Amendment No. 4.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Amendment No. 4 has been approved as to form by County Counsel. At its meeting of September 18, 2019, the Small Craft Harbor Commission voted unanimously in favor of endorsing the Department of Beaches and Harbors’ recommendation that your Board approve and execute Amendment No. 4.

Leases of County-owned property in Marina del Rey are authorized by Government Code Sections 25536 and 25907.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment No. 4 is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1(r) of the County’s Environmental Document Reporting Procedures and Section 15301 of the CEQA Guidelines (Existing Facilities).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services or projects from your Board’s approval of Amendment No. 4.

CONCLUSION

Please have the Chair of the Board of Supervisors sign all three copies of Amendment No. 4 and have the Executive Officer of the Board, return two (2) executed copies, as well as an adopted-stamped copy of this letter, to the Department of Beaches and Harbors, retaining a copy for your records. Should you have any questions, please contact Maureen Sterling at (424) 526-7740 or msterling@bh.lacounty.gov.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Jones", with a stylized, cursive flourish at the end.

GARY JONES
Director

GJ:AC:SP:SG:AT:ms

Enclosures

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

AMENDMENT NO. 4 TO LEASE NO. 55623

PARCEL NO. 125H – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE No. 4 is made and entered into this ____ day of _____ 2019 (the "Effective Date")

BY AND BETWEEN

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

AND

**HOST HOTELS & RESORTS, L.P. , a
Delaware limited partnership hereinafter
referred to as "Lessee."**

RECITALS:

WHEREAS, County and MDP, LTD., a California Corporation entered into an Amended and Restated Lease (Hotel Parcel), No. 55623 dated November 7, 1986 in that certain real property located in Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 125H, 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");

WHEREAS, County and MDP. LTD, a California Corporation, and J.H. Snyder Company, enter into a First Amendment to the Amended and Restated Lease No. 55623 (Hotel Parcel);

WHEREAS, MDP, LTD, a California Corporation assigned its entire interest to J.H. Snyder Company, a California limited partnership, pursuant to that Assignment, Assumption and Consent Agreement on the Change of Ownership in the Amended and Restated Lease (Improved Parcel), No. 55624 and the Amendment and Restated Lease (Hotel Parcel), No. 55623, Parcel 125H Marina del Rey Small Craft Harbor, a Memorandum of which was recorded on December 9, 1986, as Instrument No. 86-1703720, Los Angeles Official Records;

WHEREAS, Marina City Club L.P. a California limited partnership, the successor to J.H. Snyder Company, a California limited partnership, assigned its entire interest to MDP, LTD, a California Corporation pursuant to Assignment and Assumption Pursuant to Plan of Reorganization recorded on November 7, 1994, as Instrument No. 94-2018292, Los Angeles County Records;

WHEREAS, MDP, LTD., a California Corporation assigned its entire interest to Host Hotels & Resorts, L.P. , a Delaware limited partnership, in accordance with that certain Assignment of Lease and Acceptance of Assignment of Lease effective May 9, 2000, date adopted by the Los Angeles County Board of Supervisors;

WHEREAS, Article 11 of said Lease provides that the amounts of casualty insurance required by said article shall be subject to renegotiation every fifth (5th) anniversary of the Commence Date of the term (November 7, 1986) in the same manner as the amounts of rent to be adjusted under the Lease; 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 November 7, 2016 ("2016 Insurance Renegotiation Date").

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

1. **PROPERTY INSURANCE.** Commencing as of the 2016 Insurance Renegotiation Adjustment Date, Article 11.01 of Lease (Property Insurance) is deleted in its entirety and the following substituted therefor:

This section is intentionally left blank.

2. **INDEMNIFICATION AND INSURANCE REQUIREMENTS.** Commencing as of the 2016 Insurance Renegotiation Date, Article 11 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 to the extent that damages arise out of the 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. Failure to Procure Insurance.

In case of failure on the part of Lessee to procure or renew the herein required insurance, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connections therewith and all monies so paid by County shall be repaid, by Lessee, to county upon demand.

F. 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.

G. 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 negligence or intentional acts of the County. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Lessee coverage.

H. 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.

I. Deductibles and Self-Insured Retentions (SIRs).

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

J. Self Insurance.

If it is no longer prudent to obtain the insurance required hereunder in light of the costs payable for the benefits obtained and Lessee adopts a program of self-insurance that is approved by the Director, such approval not to be unreasonably withheld, then Lessee shall not be in breach hereof if it fails to obtain such insurance. Self-insurance shall be deemed to be fully coverage in the amounts required by this lease.

K. Notice of Intent.

Not less than ninety (90) days prior to the expiration date of the existing insurance, Lessee shall notify the Director of its desire to self-insure.

L. 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.

M. 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.

N. 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.

O. 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.

P. Submission of Program

Not less than seventy (70) days prior to the expiration of the date of the existing insurance, Lessee shall submit to the Director a complete description of its proposed self-insurance program and sufficient supporting data to enable the Director to make an informed evaluation and decision of Lessee's program.

Q. Director's Right to Challenge.

The Director shall have the right to challenge Lessee's decision to self-insure by written notice given within forty (40) days after Director's receipt of the data required by subsection P, or at any time thereafter.

R. Right to place Insurance.

If the Director challenges the decision to self-insure or the program of self-insurance, County shall have the right to place the insurance otherwise required by this Lease if Lessee does not otherwise obtain the insurance required under this Lease.

S. Arbitration.

Any challenge under this section shall be resolved by binding arbitration in accordance with Section 16.16. Should County prevail, it shall be entitled to recover the cost of any insurance placed by County as well as all other fees and costs.

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.

3. **WORKMAN'S COMPENSATION INSURANCE.** Commencing as of the 2016 Insurance Renegotiation Date, Article 11.04. of Lease (Workman's Compensation Insurance) is deleted in its entirety and the following substituted therefor:

This section is intentionally left blank.

4. **FAILURE TO PROCURE INSURANCE.** Commencing as of the 2016 Insurance Renegotiation Date, Article 11.05. 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. 4 to Lease No. 55623 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:

HOST HOTELS & RESORTS, L.P.
A Delaware limited partnership

By: Host Hotels & Resorts, Inc., its
general partner

By: Jeffrey S. Clark

Name: Jeffrey S. Clark
Vice President

Title: _____

ATTEST:

COUNTY OF LOS ANGELES

CELIA ZAVALA
Executive Officer
of the Board of Supervisors

By: _____
Deputy

By: _____
JANICE HAHN
Chair, Board of Supervisors

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: Mary C. Wickham
Deputy