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Caring for Your Coast

• • •
Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Amy M. Caves
Deputy Director

May 12, 2020

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:

**CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST
AND AMENDMENT TO LEASE NO. 77973 ESPRIT
(PARCEL 12R AT 13900 MARQUESAS WAY)
MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board letter requests the Board's consent to the proposed assignment of Lease Agreement No. 77973 (Lease) for Parcel 12R in Marina del Rey from the current lessee GATEWAY KW-ESPRIT I OWNER, LLC, a Delaware limited liability company, to ESPRIT MDR OWNER, LLC, a Delaware limited liability company, and approval of Amendment No.2 to Lease.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that consent of the proposed assignment of the leasehold interest and amendment of the lease for Parcel 12R, Lease No. 77973, is not a project under the California Environmental Quality Act pursuant (CEQA) pursuant to Section 15378 of the CEQA guidelines, or in the alternative, is exempt from CEQA for the reasons stated in this Board letter and the record.
2. Consent to the proposed assignment of the Parcel 12R Lease to ESPRIT MDR OWNER, LLC.
3. Authorize the Director of Beaches and Harbors to execute any consents, estoppels, or other related documentation, approved as to form by County Counsel, necessary to effectuate the assignment of Parcel 12R Lease, if consummated.
4. Authorize the Director of Beaches and Harbors to sign the attached Amendment No. 2 to Lease

No. 77973 (Amendment) (Exhibit A) pertaining to additional excluded transfers required by the proposed assignee of the Lease, upon consummation of the transfer.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Gateway KW-Esprit I Owner, LLC, a Delaware limited liability company (Lessee), is currently the Lessee of Esprit (Parcel 12R). The existing lease for Parcel 12R will expire July 31, 2061. The current improvements on Parcel 12R include 437 residential apartment units, 227 marina slips, and 2,000 square feet of visitor-serving commercial. Parcel 12R is located at the end of Marquesas Way.

The Lessee has requested County's consent to assign its leasehold interest in Parcel 12R (Parcel) to Esprit MDR Owner, LLC, a Delaware limited liability company (Assignee), for a fixed price of \$273,500,000. Lessee will receive the above-mentioned payment of \$273,500,000. In addition, Assignee has requested certain additional excluded transfers be included in the Lease by way of Amendment due to Assignee's affiliation with a real estate investment trust that may require reorganization or restructuring of a fund from time to time.

Per the terms of the Lease Agreement for the Parcel (Lease), the Lessee must obtain the County's consent to the proposed assignment of the Lease, which consent may not be unreasonably withheld.

Pursuant to Department of Beaches and Harbors Department Policy Statement No. 23 – Assignments of Lease dated January 16, 1974, the County's decision whether to approve the proposed assignment shall be based on the following: a) the financial condition of the proposed assignee; b) the price to be paid for the leasehold as it relates to the development or potential development thereon; and c) the management of the leasehold by the proposed assignee being in the best interest of the whole Marina.

Department staff has reviewed the proposed assignment and concluded: a) the proposed Assignee's financial condition is sufficient; b) the proposed combined sales price of \$273,500,000 for Lessee's interest in the Lease appears to be justified based on the present income generated by the current uses on the parcel; and c) the proposed assignee's property management company, WESTHOME PROPERTY MANAGEMENT LLC, has the requisite experience as it is an affiliate of CityView, an investment management firm with a portfolio of over \$2.3 billion in multifamily and mixed use assets under management.

The terms of the proposed assignment were negotiated by the current Lessee and the Assignee without any involvement by the Department of Beaches and Harbors.

Implementation of Strategic Plan Goals

The recommended actions maximize the use of County assets, guide strategic investments, and support economic development, in ways that are fiscally responsible and align with the County's highest priority needs, all of which promote Strategic Plan Goal No. III.3.2 (Manage and Maximize County Assets).

FISCAL IMPACT/FINANCING

If the leasehold is transferred to Assignee, the Department of Beaches and Harbors will receive \$13,675,000 as County's share of the proceeds from the assignment. Approximately \$4.6 million of the funds will be directed to the Marina ACO Fund to continue to maintain and improve the public areas of the Marina and its infrastructure. The remaining amount of approximately \$9.0 million will be retained by and allocated to the operating budget for the Department of Beaches and Harbors and will be accounted for as over-realized revenue in FY 2019-20.

Costs of the County's consultants involved in the assignment of the leasehold and the negotiation and development of the Second Amended and Restated Lease Agreement are being reimbursed by the lessee on an ongoing basis.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Department staff, in consultation with County Counsel and outside counsel, have reviewed the Lease and proposed assignment agreement, Amendment and related documents and have determined that the County has no reasonable basis on which to withhold its consent to the proposed assignment. A participation fee of \$13,675,000 is due to the County under the terms of the Lease.

Leasing of the County's Marina del Rey real property is authorized by Government Code sections 25907 and 25536, and the proposed assignment is permitted by the Lease.

Department of Beaches and Harbors received notice from the Lessee that the transfer may not close due to lack of funding, but nevertheless the Lessee is seeking County consent in accordance with the purchase agreement.

ENVIRONMENTAL DOCUMENTATION

The proposed County consent to assignment and Amendment are not subject to CEQA because they are activities that are excluded from the definition of a project by Section 21065 of the Public Resources Code and Section 15378(b)(5) of the CEQA Guidelines, as the proposed consent to lease assignment and Amendment are each an administrative activity of government that will not result in direct or indirect physical changes in the environment; or, in the alternative, are categorically exempt pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines, as the proposed actions involve negligible or no expansion of existing or former use and will not have a significant effect on the environment. In addition, based on the proposed project records, it will comply with all applicable regulations, and there are no cumulative impacts, unusual circumstances, damage to scenic highways, listing on hazardous waste site lists compiled pursuant to Government Code section 65962.5, or indications that it may cause a substantial adverse change in the significance of a historical resource that would make the exemption inapplicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current services or projects.

CONCLUSION

It is recommended that your Board approve the proposed consent to assignment and Amendment of the Parcel 12R Lease.

The Honorable Board of Supervisors

5/12/2020

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Please instruct the Executive Officer of the Board to send 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 Ivy Bordenave-Priestley at (424) 526 7734 or IBordenavePriestley@bh.lacounty.gov

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Jones". The signature is fluid and cursive, with a large initial "G" and "J".

GARY JONES

Director

GJ:AC:ibp

Enclosures

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

AMENDMENT NO. 2 TO THE SECOND AMENDED AND RESTATED
LEASE AGREEMENT
PARCEL NO. 12R – MARINA DEL REY

THIS AMENDMENT NO. 2 TO THE SECOND AMENDED AND RESTATED LEASE AGREEMENT PARCEL NO. 12R – MARINA DEL REY (this “Amendment”) is dated as of _____, 2020,

BY AND BETWEEN

COUNTY OF LOS ANGELES,
Hereinafter referred to as “County,”

AND

ESPRIT MDR OWNER LLC, a Delaware limited liability company, as successor in interest to GATEWAY KW-ESPRIT I OWNER, LLC, a Delaware limited liability company, hereinafter referred to as “Lessee.”

WITNESSETH:

WHEREAS, County and GATEWAY KW-ESPRIT I OWNER, LLC, a Delaware limited liability company (“Original Lessee”), entered into that certain Second Amended and Restated Lease Agreement dated June 27, 2013, as amended by that certain Lease Amendment No. 1 to Second Amended and Restated Lease Agreement dated as of July 12, 2018 (collectively, as amended, the “Lease”);

WHEREAS, Original Lessee has entered into that certain Assignment and Assumption of Ground Lease dated _____, 2020 (“Assignment”), and County has approved such Assignment, whereby Original Lessee is assigning its interest in the Lease to Lessee;

WHEREAS, concurrently with the execution of the Assignment, Lessee and County desire to enter into this Amendment to amend the Lease, as set forth hereinbelow, pursuant to the terms and conditions hereof;

NOW, THEREFORE, with reference to the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given such terms in the Lease.

2. Amendment to Section 4.

(a) Section 4.6.2 of the Lease shall be amended to (i) delete “or” immediately after Sub-Section 4.6.2.6 and (ii) add the following language immediately after Sub-Section 4.6.2.7:

4.6.2.8 provided that the Exemption Requirements (as defined below) are satisfied immediately prior to and following any transfer described herein, the transfer in the ordinary course of business of any beneficial interests in the Prudential Fund (as defined below);

4.6.2.9 transfers of any direct or indirect beneficial interests in Prudential (as defined below); or

4.6.2.10 provided that the Exemption Requirements are satisfied immediately before and after the transfer, the transfer of the Prudential Fund's direct or indirect interest in Lessee from one Prudential Fund to another Prudential Fund or in connection with a reorganization or restructuring of such Prudential Fund.

For purposes of Subsections 4.6.2.8 through 4.6.2.10 above and Subsection 4.8.8 below, the following terms shall have the following meanings:

“Control” and its derivative terms such as “Controlling” or “Controlled” shall mean the direct or indirect power to direct the management, policies and/or decision making of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Exemption Requirements” means the satisfaction of all of the following: (a) Prudential continues to Control the Prudential Fund, (b) the beneficial interests of the Prudential Fund in Lessee constitute less than ten percent (10%) of the total assets held by such Prudential Fund (in terms of market value), and (c) no single person or entity (or group of affiliated persons or entities) ultimately holds more than fifteen percent (15%) of the total beneficial interests in the Prudential Fund.

“PRISA II” means PRISA II UHC LP, an investment vehicle managed by PGIM, Inc.

“Prudential” means Prudential Financial, Inc., a New Jersey corporation (or such other legal name or d/b/a name under which such entity may do business from time to time, “PFI”) and/or The Prudential Insurance Company of America, a New Jersey corporation (or such other legal name or d/b/a name under which such entity may do business from time to time, “PICA”) and/or PGIM, Inc., a New Jersey corporation (or such other legal name or d/b/a name under which such entity may do business from time to time, “PGIM”);

“Prudential Fund” means PRISA II and/or any real estate investment vehicle, fund and/or separate account that is managed or advised by Prudential.

(b) Section 4.8.8 – The references to “best efforts” shall be changed to “commercially reasonable efforts” and the following sentence shall be added to the end of Section 4.8.8:

“Notwithstanding any contrary provision of this Section 4.8.8, during such period as a Prudential Fund holds a beneficial interest in Lessee and the Exemption Requirements are satisfied, Lessee shall not be required to disclose the identity of the individual persons or entities that hold the beneficial interests in the Prudential Fund.”

3. No Other Amendment. The Lease has not been modified, amended or supplemented except as set forth in this Amendment and that certain Ground Lease Estoppel Certificate and Consent executed and delivered by the County as of even date herewith and, as amended by this Amendment, the Lease is and remains in full force and effect.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 as of the date first above written.

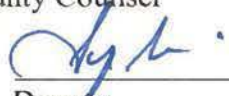
COUNTY OF LOS ANGELES

By: 

Gary Jones, Director of the
Department of Beaches and Harbors

APPROVED AS TO FORM:


MARY C. WICKHAM,
County Counsel

By: 

Deputy

APPROVED AS TO FORM:

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP


By: 

Roger H. Howard, Esq.

ESPRIT MDR OWNER LLC, a Delaware limited liability company

By: PR II CV Esprit MDR, LLC, a Delaware limited liability company, its sole member

By: PR II Esprit Member LLC, a Delaware limited liability company, its managing member

By: 
Name: Caitlin O'Connor
Title: Authorized Signatory