



Caring for Your Coast

Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

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Deputy Director

November 12, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

20 November 12, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS
APPROVAL OF EXTENSION OF AND AMENDMENT TO OPTION AGREEMENT
REGARDING LEASEHOLD INTEREST FOR THE ANCHORAGE AT THE MARINA
DEL REY HOTEL
(PARCEL 43 AT 13534 BALI WAY) –
MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval of an Amendment to Option Agreement Regarding Leasehold Interest for Parcel 43 extending for up to 12 months the period for MDR Marina, L.P. to obtain certain regulatory approvals and satisfy other conditions to the exercise of the option regarding the proposed redevelopment of the marina adjacent to the Marina del Rey Hotel.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and authorize the Chairman of the Board to sign the Amendment to Option Agreement Regarding Leasehold Interest for Parcel 43 in substantially the form attached as Exhibit A, granting to MDR Marina, L.P., a California limited partnership, an extension for up to 12 months from November 17, 2014 to obtain certain regulatory approvals and satisfy certain other conditions to the exercise of the option for the proposed marina leasehold project.
2. Delegate authority to the Director of the Department of Beaches and Harbors to approve required amendments to the existing Reciprocal Easement

Agreement dated August 30, 2013 to coordinate the construction and operation of each of the hotel and marina projects.

3. Authorize the Director of the Department of Beaches and Harbors to execute and deliver such other ancillary documentation (including, without limitation, a lender estoppel certificate) for Parcel 43 as is required to facilitate development of the parcel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On May 17, 2011, your Board granted IWF MDR Hotel, L.P. (Hotel Lessee) two separate options (Options) to extend for an additional 39 years the term of the existing leasehold interests for the hotel and marina components of the project to facilitate the redevelopment of Parcels 42 and 43. The exercise of each respective Option is contingent upon obtaining certain entitlements and the fulfillment of other conditions by the Hotel Lessee for the hotel Option for Parcel 42 and by MDR Marina, L.P., a California limited partnership (Marina Lessee) for the marina Option for Parcel 43.

Hotel Lessee satisfied the conditions to the exercise of the hotel Option and has exercised the hotel leasehold Option. In accordance with the Option documentation approved by the Board, upon the exercise of the hotel leasehold Option the hotel and marina leaseholds were bifurcated and the marina leasehold Option was assigned to Marina Lessee.

Upon exercise of the marina leasehold Option, the marina leasehold will be expanded to include additional water area located to the west of the current project, and Marina Lessee will be required to completely replace the existing 349-slip and 16 end-tie marina with no fewer than 277 new slips, 13 end ties, and one side tie in a configuration and design conforming to current marina standards and as approved by the Director of the Department of Beaches and Harbors ("Department"), and in accordance with the redevelopment plan attached to the form of a new restated lease for the marina leasehold previously approved by the Board. Parking and boater amenities (e.g., a dock master's office, restrooms, showers, and laundry facilities) for Parcel 43 are to be provided on the landside in accordance with the terms of the existing Reciprocal Easement Agreement dated August 30, 2013, and/or other leasehold arrangements acceptable to County.

Marina Lessee has diligently pursued its entitlements and financing, but due to delays beyond its control is not able to acquire the entitlements for the marina leasehold and secure evidence of financing prior to the expiration of the marina leasehold Option. Among the major reasons for the delay is the unanticipated requirement by the Army Corps of Engineers (ACOE) that Marina Lessee apply for and procure a Section 408 Permit (33 USC 408), which could delay for up to one year the satisfaction of the conditions required to exercise the marina leasehold Option. A review under 33 USC

Section 408 is required by the ACOE because the lessee is proposing to extend the docks into the federal navigation channel.

The marina leasehold Option currently expires on November 17, 2014. In consideration for the County's agreement to the proposed Amendment of Option Agreement Regarding Leasehold Interest (Option Amendment) for Parcel 43, extending the marina leasehold Option period for up to 12 months, Marina Lessee will pay the County up to \$125,000, as follows: (a) \$20,000 for the first 3-month extension to February 17, 2015; (b) \$20,000 for an additional three-month extension to May 17, 2015; (c) \$35,000 for an additional three-month extension to August 17, 2015; and (d) \$50,000 for a final additional three-month period that will end on November 17, 2015.

An independent economic consultant has reviewed the aforementioned consideration to be paid for the extension(s) of the marina leasehold Option and has determined that under the current circumstances such consideration is fair and equitable and provides appropriate incentives for timely satisfaction of the remaining conditions to the exercise of the marina leasehold Option.

Implementation of Strategic Plan Goals

The County Strategic Plan directs that we maximize the effectiveness of the County's processes, structure, and operations to support timely delivery of customer-oriented and efficient public services. The recommended action will allow Marina Lessee to continue its efforts toward the proactive redevelopment of Parcel 43, which will help the County achieve fiscal sustainability (Strategic Plan Goal No. 1, Strategy No.1).

FISCAL IMPACT/FINANCING

Operating Budget Impact

Upon your Board's approval and the Chairman's execution of the proposed Amendment of Option Agreement Regarding Leasehold Interest (Option Amendment) for Parcel 43, the Department's operating budget will receive a one-time \$75,000 option fee as stated above. The revenue will be accounted for as Fiscal Year 2014-15 one-time over-realized revenues.

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

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Without exercise of the Option regarding the proposed redevelopment of the marina adjacent to the Marina del Rey Hotel (marina leasehold Option), the term of the existing lease for Parcel 43 will expire February 28, 2022.

Approval of the extension of the marina leasehold Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land-use entitlements required for the possible exercise of the marina leasehold Option.

Amendment and extension of the existing lease for the marina leasehold are authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

County Counsel has approved the Option Amendment as to form.

ENVIRONMENTAL DOCUMENTATION

On April 26, 2011 your Board considered and certified the Mitigated Negative Declaration relating to the proposed lease extension, bifurcation, and development on Parcels 42 and 43 and adopted the related Environmental Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Programs for these projects.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

It is requested that the Executive Officer, Board of Supervisors send two copies of the executed Option Agreement and an adopted Board letter to the Department of Beaches and Harbors. Should you have any questions please contact Don Geisinger at (310) 305-9506 or dgeisinger@bh.lacounty.gov.

Respectfully submitted,



Gary Jones

GJ:BL:dlg

Attachment

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

**AMENDMENT TO OPTION AGREEMENT REGARDING LEASEHOLD INTEREST
(Parcel 43)**

THIS AMENDMENT TO OPTION AGREEMENT REGARDING LEASEHOLD INTEREST (Parcel 43) ("**Amendment**") is dated as of November 12, 2014, by and between the COUNTY OF LOS ANGELES ("**County**") and MDR MARINA, L.P., a California limited partnership ("**Lessee**").

R E C I T A L S

A. County and Lessee entered into that certain Option Agreement Regarding Leasehold Interest (Parcel 43) dated August 30, 2013 (the "**Agreement**"). All capitalized terms used in this Amendment, but not defined herein, have the meanings given to such terms in the Agreement.

B. Pursuant to the Agreement County granted to Lessee an option (the "**Option**") to: (a) expand the Modified Parcel 43 Premises from the Modified Parcel 43 Premises (Pre-Expansion) to the Modified Parcel 43 Premises (Post-Expansion); (b) extend the term of the lease for the Modified Parcel 43 Premises from February 28, 2022 to February 28, 2061; and (c) redevelop the Modified Parcel 43 Premises (Post-Expansion) in accordance with the Redevelopment Plan. The matters described above shall be effectuated pursuant to, and in accordance with the terms and provisions of, the Amended and Restated Parcel 43 Lease (Post-Parcel 43 Option Exercise).

C. Lessee previously exercised its rights under the Agreement to extend the Option Outside Expiration Date from November 17, 2013 to November 17, 2014. The term of the Option is currently scheduled to expire on November 17, 2014 with no further right of extension by Lessee.

D. Lessee has been unable to satisfy the Option Conditions to permit exercise of the Option prior to November 17, 2014 due in part to the unanticipated requirement by the Army Corps of Engineers that Lessee apply for and procure a 408 permit, which could delay satisfaction of the Option Conditions for up to an estimated one-year period.

E. Lessee has requested, and County is willing to grant, an extension of the Option Outside Expiration Date for up to an additional one-year period to November 17, 2015 on the terms and conditions set forth in this Amendment.

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

1. Extension of Option Outside Expiration Date. The Option Outside Expiration Date is hereby extended to February 17, 2015. In consideration of such extension, concurrent herewith Lessee has paid to County the sum of Twenty Thousand Dollars (\$20,000) (with any additional amounts set forth in subparagraphs (a) through (c) below, a "**Supplemental Option Extension Fee**"). Lessee shall have the right to further extend the Option Outside Expiration

Date set forth in the immediately preceding sentence for up to the following three (3) additional periods (each, a **"Supplemental Option Extension"**) upon delivery by Lessee to County, not later than one (1) month prior to the Option Outside Expiration Date that is then in effect prior to such Supplemental Option Extension, of both written notice by Lessee to County of the exercise of such Supplemental Option Extension and the payment by Lessee to County of the following additional applicable Supplemental Option Extension Fee for each of such Supplemental Option Extensions:

- (a) extension of the Option Outside Expiration Date to May 17, 2015 upon payment of an additional Twenty Thousand Dollars (\$20,000);
- (b) extension of the Option Outside Expiration Date to August 17, 2015 upon payment of an additional Thirty-Five Thousand Dollars (\$35,000); and
- (c) extension of the Option Outside Expiration Date to November 17, 2015 upon payment of an additional Fifty Thousand Dollars (\$50,000).

The Supplemental Option Extension Fees shall be non-refundable, and are in addition to the Option Fee paid by Base Optionee to County pursuant to Section 6.2.1 of the Base Option Agreement, the Option Extension Fees paid by Base Optionee to County pursuant to Section 3.1 of the Base Option Agreement (as amended by the Base Option Agreement Amendment), and the Option Extension Fees paid by Lessee to County under the Agreement. The Supplemental Option Extension Fees shall not be applicable against the Option Fee or the Extension Fee referenced in Section 6.2 of the Agreement.

Notwithstanding the foregoing, Lessee shall have no right to extend the Option Outside Expiration Date at any time during which there is an uncured Lessee Default under the Agreement or an uncured material breach or default by Lessee under the Amended and Restated Parcel 43 Lease (Pre-Parcel 43 Option Exercise) after notice and the expiration of any cure period applicable under the Amended and Restated Parcel 43 Lease (Pre-Parcel 43 Option Exercise). Time is of the essence with respect to the exercise by Lessee of any right to extend the Option Outside Expiration Date pursuant to this Amendment.

If Lessee is unable to satisfy the Entitlements Condition as a result of (i) a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements for the Redevelopment Work and all other similar marina replacement projects in Marina del Rey on water area leased from the County, or (ii) after the issuance of the Entitlements, the continued pendency of an appeal, proceeding or litigation (including all appeals of such litigation) brought by a third party unaffiliated with Lessee or the Parcel 42 Lessee that contests the issuance of the Entitlements, then as long as there is not a Lessee Default under the Agreement and Lessee is not in material breach or default of the Amended and Restated Parcel 43 Lease (Pre-Parcel 43 Option Exercise) (after notice and the expiration of any applicable cure period under the Amended and Restated Parcel 43 Lease (Pre-Parcel 43 Option Exercise)), the Option Outside Expiration Date shall be extended until sixty (60) days following the cessation of such moratorium, temporary restraining order, injunction or other court order, or the denial, dismissal or other resolution in favor of the issuance of the Entitlements, of such appeal,

proceeding or litigation that contested the issuance of the Entitlements, as applicable; provided, however, that the Option Outside Expiration Date shall in no event be extended pursuant to this paragraph beyond May 17, 2016.

2. County Costs. Regardless of whether the Option is exercised, Lessee shall promptly reimburse County for the Actual Costs (as defined in the form of Amended and Restated Parcel 43 Lease (Post-Parcel 43 Option Exercise) incurred by County in the review, negotiation, preparation, documentation and administration of this Amendment.

3. Miscellaneous.

3.1 Entire Agreement. This Amendment sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

3.2 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Amendment, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services to the extent that County is represented by the County Counsel and is the prevailing party.

3.3 No Other Modifications. In the event of any conflict between the terms and provisions of the Agreement and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control. All other terms and provisions of the Agreement shall continue in full force and effect.

3.4 Counterparts. This Amendment may be signed in any number of counterparts. Each counterpart shall represent an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Lessee have entered into this Amendment as of the date first set forth above.

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: Carla Little
Deputy



THE COUNTY OF LOS ANGELES

By: Alan Keene
Chairman, Board of Supervisors

MDR MARINA, L.P., a California limited partnership

By: MDR Marinas, LLC, a California limited liability company, General Partner

By: Pacific Marina Development, Inc., a California corporation, Manager

By: Thomas J. Hogan
Thomas J. Hogan, President

ATTEST:

SACHI A. HAMAI, Executive Officer
of the Board of Supervisors

By: Carla Little
Deputy

APPROVED AS TO FORM:

MARK J. SALADINO,
County Counsel

By: Mark J. Saladino
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: [Signature]

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

2014

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Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER