



"To enrich lives through effective and caring service"



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

October 04, 2011

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

28 October 4, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS
APPROVAL OF RENEWAL OF LEASE OPTION AGREEMENT TO FACILITATE
DEVELOPMENT-
SENIORS-ONLY RETIREMENT RESIDENCE (Parcel OT) -
MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval of Renewal of Lease Option Agreement for Parcel OT, currently a parking lot, extending for up to a maximum of 66 months the period for MDR Oceana, LLC to obtain the remaining regulatory approvals and complete the processing of entitlements regarding its proposed development of a seniors-only retirement residence facility in Marina del Rey.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that your Board has previously considered and certified the combined Final Environmental Impact Report relating to the proposed Parcel 21 lease extension, Parcel OT new lease, and development on Parcels 21 and OT and adopted the related Environmental Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Programs for these projects.
2. Approve and authorize the Mayor to sign the Renewal of Lease Option Agreement attached as Exhibit A, granting to MDR Oceana, LLC, a California limited liability company, an extension for up to 66 months from September 30, 2011 to obtain the remaining regulatory approvals and satisfy the other conditions to the exercise of the option for the proposed project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 15, 2008, your Board granted MDR Oceana, LLC ("Oceana") an option (the "Option"), upon the fulfillment of certain conditions, to enter into a new 60-year lease (the "Lease") to develop a public parking lot on Parcel OT in Marina del Rey, to construct and operate a 5-story 114-unit seniors-only retirement residence facility consisting of 47 two-bedroom and 67 one-bedroom units, and 5,000 square feet of retail space. Of the existing 186 public parking spaces currently on Parcel OT, 92 public parking spaces will be replaced onsite while 94 public parking spaces will be transferred to Parcel 21. In addition to keeping the 92 public parking spaces on Parcel OT, 62 parking spaces will be added onsite to accommodate parking required by the residential and retail uses. Parcel OT is not currently zoned for a retirement residence facility. Accordingly, a Local Coastal Program ("LCP") Amendment will be required to establish the new use and to transfer the 94 replacement public parking spaces from Parcel OT to Parcel 21.

Upon exercise of the Option, Parcel OT will be renamed Parcel 147.

Oceana has diligently pursued its entitlements but, due to delays beyond its control, was not able to acquire the entitlements for this project prior to the expiration of its existing option. Among the major reasons for the delay have been: a) the complexity of completing a shared Environmental Impact Report (EIR) for two entirely different types of development, a commercial complex with docks and a retirement facility, in two different locations; and b) an unsuccessful appeal to your Board challenging the certification of the EIR and approval of the project by the Regional Planning Commission.

On April 26, 2011, your Board certified the EIR and stated its intent to approve the project subject to the submission and consideration of findings and conditions for the final approval of the entitlements at a future Board meeting. In addition, Oceana had anticipated that the Coastal Commission would consider the LCP Amendment and the Master Waterside Coastal Development Permit at the June 2011 Coastal Commission meeting but the hearing on those matters was postponed.

The original Lease Option Agreement between County and Oceana expired on January 15, 2010. In consideration for the County's approving the Renewal of Lease Option Agreement, to extend the option period for up to 66 months, Oceana has agreed to pay County a total amount not to exceed \$100,000, payable as follows: (1) \$20,000 upon signing of the Renewal of Lease Option Agreement, which provides for an initial extension up to the time at which Oceana receives final approval of its entitlements but in no event later than March 31, 2014; (2) \$30,000 for an additional twenty four-month extension; (3) \$20,000 for an additional six-month extension; and (4) \$30,000 for a second additional six-month period.

Our economic consultant has reviewed the consideration being paid for the extension of the date by which the option must be exercised and has found that the County is receiving fair value for the amount of time that it is granting to extend the date to implement the transaction as previously negotiated.

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 the Lessee to continue its effort towards the proactive redevelopment of the parcel, 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 Mayor's execution of the Renewal of Lease Option Agreement, the Department of Beaches and Harbors' operating budget will receive a \$20,000 payment. The \$20,000 initial payment was not included in the 2011-2012 Final Adopted Budget; therefore, it will be accounted for as over-realized revenue. If additional extension payments are anticipated, they will be budgeted as one-time revenue.

Costs of consultants and primary County staff involved in the negotiation and preparation of the Renewal of Lease Option Agreement are being reimbursed by Oceana.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In exchange for granting Oceana a 60-year Lease, which will be available upon execution of the Option and, upon satisfaction of the Option's enumerated conditions, Oceana has agreed to develop and construct a 5-story 114-unit seniors-only retirement residence facility, consisting of 47 two-bedroom and 67 one-bedroom units, along with 5,000 square feet of retail space on Washington Boulevard. The Lease will also require renovations beginning not earlier than 12 months before and not later than 12 months after the 30th year prior to the expiration date of the Lease, to physically reposition the project to then current market requirements.

Oceana has made application to the Department of Regional Planning ("Regional Planning") for its discretionary land use entitlements under the applicable standards of the LCP, including those related to building height and traffic requirements. A new land use category, Senior Retirement Facility, was included in the submittal to Regional Planning for approval as none of the existing use categories adequately describe this use. An LCP Amendment will be required to establish the new use and to transfer the 94 replacement public parking spaces from Parcel OT to Parcel 21. That application is still under review. Approval of the 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 Option.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code Sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of September 14, 2011, the Small Craft Harbor Commission considered the recommendation to approve the Renewal of Lease Option Agreement for Parcel OT in the form attached, and voted to recommend the project.

County Counsel has approved the Renewal of Lease Option Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

On April 26, 2011 your Board considered and certified the combined Final Environmental Impact Report relating to the proposed Parcel 21 lease extension, new Parcel OT lease, and development on Parcels 21 and OT and adopted the related Environmental Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Programs for these projects.

The Honorable Board of Supervisors

10/4/2011

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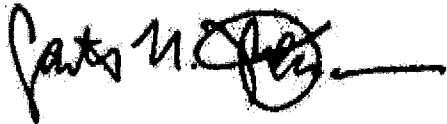
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send one copy of this Board Letter, as approved, and two copies of the executed Renewal of Lease Option Agreement to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", with a horizontal line extending to the right.

SANTOS H. KREIMANN

Director

SK:GJ:dlg

Enclosures

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

**RENEWAL OF LEASE OPTION AGREEMENT
(Parcel 147)**

THIS RENEWAL OF LEASE OPTION AGREEMENT (“**Renewal Agreement**”) is made as of October 4, 2011 (the “**Effective Renewal Date**”), between COUNTY OF LOS ANGELES (“**County**”), and MDR OCEANA, LLC, a California limited liability company (“**Lessee**”).

RECITALS

A. County and Lessee entered into that certain Lease Option Agreement dated as of July 15, 2008 (the “**Option Agreement**”), whereby County granted Lessee an option (referenced in the Option Agreement as the “**Option**”) to lease certain real property owned by County in Marina del Rey Small Craft Harbor commonly known as Parking Lot 8 or Parcel OT and annexing a portion of Parcel P, and more particularly described on Schedule 1 to Exhibit A to the form of the Lease attached to the Option Agreement as Exhibit A.

B. In accordance with the terms and provisions of Section 2 of the Option Agreement, the Outside Expiration Date for the exercise by Lessee of the Option was January 15, 2010.

C. Lessee did not receive the Entitlements nor satisfy other conditions to the exercise of the Option set forth in Section 3 of the Option Agreement by January 15, 2010.

D. County and Lessee desire to renew the Option by providing for the extension of the Outside Expiration Date for the exercise by Lessee of the Option, and to make certain other modifications to the Option Agreement, all in accordance with the terms and provisions set forth herein.

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

1. Capitalized Terms. All capitalized terms used in this Renewal Agreement but not otherwise defined herein shall have the same meanings given such terms in the Option Agreement.

2. Renewal of Option. The Option set forth in the Option Agreement is hereby renewed on the same terms and conditions as set forth in the Option Agreement, which is incorporated into this Renewal Agreement as though fully set forth herein, except that the terms and provisions of the Option Agreement as incorporated herein are modified in accordance with the remaining terms and provisions of this Renewal Agreement. County and Lessee hereby acknowledge and agree that the Option remains in full force and effect and that the Option has been reinstated by this Renewal

Agreement retroactive to prior to the expiration of the Option Term that was in effect prior to this Renewal Agreement.

3. Extension of Outside Expiration Date. Section 2 of the Option Agreement is hereby amended in its entirety to read in full as follows:

“2. Option Term. The term of the Option (the “**Option Term**”) shall commence on the date of this Agreement and expire on that date (the “**Option Expiration Date**”) which is the earlier of (i) forty-five (45) days following the later of the Entitlement Receipt Date under this Agreement and the “Entitlement Receipt Date” under the Parcel 21 Option Agreement, as defined in Section 4.4 of this Agreement (the “**Parcel 21 Entitlement Receipt Date**”), or (ii) the Outside Expiration Date.

For purposes hereof, the “**Entitlement Receipt Date**” shall mean the first date upon which (a) Lessee has received all discretionary planning and zoning land use entitlements required to be obtained from governmental authorities (including the County and the California Coastal Commission) for the construction of the Development Work (as defined below) and has satisfied all conditions to the issuance of a building permit for the Development Work other than the payment of any applicable building permit fee (the “**Entitlements**”), (b) any appeal period to contest the issuance of such land use entitlements has lapsed, and (c) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Development Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee or the Parcel 21 Lessee (a “**Lessee Affiliate**”)), or if such a proceeding or litigation is pending, then the date such proceeding or litigation has been dismissed or a decision or judgment rendered thereon, which decision or judgment is not subject to further appeal.

For purposes of this Agreement, the “**Development Work**” shall mean the demolition of any existing Improvements (as defined in the Lease) currently located on the Premises and the construction of a new 5-story, 114 unit mixed-use senior-only retirement residence facility in accordance with the Development Plan attached to the Lease as Exhibit B (the “**Development Plan**”), including without limitation, the following Improvements (as defined in the Lease): (i) 47 two-bedroom and 67 one-bedroom residential units; (ii) 5,000 square feet of ground floor retail space; (iii) structured parking for 154 vehicles; and (iv) public open space on the Northeasterly portion of the Premises, including without limitation, a public pedestrian walkway linking Admiralty Way and Washington Boulevard, each as more particularly described in the Development Plan and the Lease.

The “**Outside Expiration Date**” shall initially be March 31, 2012; provided, however, that if the Entitlement Receipt Date and the Parcel 21 Entitlement Receipt Date have not occurred as of March 31, 2012, then as long as Lessee and the Parcel 21 Lessee have proceeded and continue to use diligent efforts to cause the Entitlement Receipt Date and the Parcel 21 Entitlement Receipt Date to occur as soon as possible, and are not, and continue to not be, in Default of this Option Agreement or Parcel 21 Option Agreement, the Outside Expiration Date shall be automatically extended until the earlier of (I) forty-five (45) days following the later of the Entitlement Receipt Date or the Parcel 21 Entitlement Receipt Date, (II) the date of the denial by the applicable governmental authority of any of the required Entitlements under this Agreement and the required “Entitlements” under the Parcel 21 Option Agreement, without further right of appeal, or (III) March 31, 2014. Notwithstanding the foregoing, at any time that Lessee or the Parcel 21 Lessee fails to continue to use diligent efforts to cause the Entitlement Receipt Date and the Parcel 21 Entitlement Receipt Date to occur as soon as possible, and such failure is not cured within ten (10) days after written notice from County, or at any time that Lessee or the Parcel 21 Lessee is in Default under this Option Agreement or the Parcel 21 Option Agreement, County shall have the right to terminate this Option Agreement upon written notice to Lessee.

Lessee shall have the right to extend the Option Expiration Date set forth in the immediately preceding paragraph for up to the following three additional periods upon delivery by Lessee to County, not later than one (1) month prior to the Option Expiration Date that is then in effect prior to such extension, of both written notice by Lessee to County of such extension and the payment by Lessee to County of the applicable “**Additional Option Extension Fee**” set forth below for such extension:

- (a) twenty-four (24) months upon payment of an Additional Option Extension Fee of Thirty Thousand Dollars (\$30,000);
- (b) six (6) months upon payment of an Additional Option Extension Fee of Twenty Thousand Dollars (\$20,000); and
- (c) six (6) months upon payment of an Additional Option Extension Fee of Thirty Thousand Dollars (\$30,000).

Notwithstanding the foregoing, Lessee shall have no right to extend the Option Expiration Date pursuant to this paragraph at any time during which Lessee is in Default under this Option Agreement or the Parcel 21 Lessee is in Default under the Parcel 21 Option Agreement. Time is of the essence with respect to the exercise by Lessee of any right to extend the Option Expiration Date pursuant to this paragraph.

For purposes of this Option Agreement, Lessee shall be in **“Default”** under this Option Agreement if Lessee is in material breach of any term or provision of this Option Agreement and Lessee fails to cure such breach (x) within ten (10) days after written notice from County in the case of a monetary breach, or (y) within thirty (30) days after written notice from County in the case of a non-monetary breach, provided that if the nature of the non-monetary breach is that it cannot reasonably be cured within a thirty (30) day period, then Lessee shall not be in Default as long as Lessee commences the cure of such breach within thirty (30) days after written notice from County and diligently and continuously prosecutes the cure of such breach to completion as soon as possible thereafter. For purposes of this Option Agreement, the Parcel 21 Lessee shall be in **“Default”** under the Parcel 21 Option Agreement based upon the meaning of **“Default”** set forth in clause (A) of the last paragraph of Section 2 of the Parcel 21 Option Agreement, as amended.”

4. Option Extension Fee and Additional Option Extension Fees.

Concurrently herewith, Lessee has paid to County the sum of Twenty Thousand Dollars (\$20,000) (the **“Option Extension Fee”**) in consideration for County’s execution and delivery of this Renewal Agreement and County’s renewal of the Option and extension of the Outside Expiration Date to the date set forth in the fourth paragraph of Section 2 of the Option Agreement (as amended above). The Option Extension Fee and any Additional Option Extension Fees paid by Lessee pursuant to Section 2 of the Option Agreement (as amended above) shall be non-refundable, and are in addition to the Option Fee paid by Lessee to County pursuant to Section 1 of the Option Agreement. The Option Extension Fee and any Additional Option Extension Fees shall not be applicable against the Option Fee.

5. Deletion of Section 5 of Option Agreement. Section 5 of the Option Agreement is hereby deleted.

6. Definition of Director. For purposes of this Renewal Agreement and the Option Agreement, **“Director”** means the Director of the Department of Beaches and Harbors of the County.

7. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Lease) incurred by County in connection with the review, negotiation, preparation and documentation of this Renewal Agreement and the matters addressed herein.

8. Entire Agreement. This Renewal Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all previous negotiations, communications or understandings between the parties, whether oral or written, with respect to the subject matter set forth herein.

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

COUNTY OF LOS ANGELES
By: Mike Antonovich
Mayor, County of Los Angeles

MDR OCEANA, LLC, a California limited liability company

By: Alta Group GP, LLC, a California limited liability company, a Manager

By: [Signature]
Jona Goldrich, Manager



ATTEST:

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

By: Lochelle Amitherman
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

28 OCT 4 2011

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN,
County Counsel

By: [Signature]
Deputy

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: [Signature]