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8.11.22 Special

**RECOMMENDATION APPROVED;
RESOLUTION 22-10046 (PERMIT 915) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS**

August 11, 2022

AMKlesges

**AMBER M. KLESGES
Board Secretary**



**THE PORT
OF LOS ANGELES**

Executive Director's

Report to the
Board of Harbor Commissioners

DATE: AUGUST 9, 2022

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. 22-10046 APPROVE FIFTH AMENDMENT TO
LEASE NO. 915 WITH SAN PEDRO PUBLIC MARKET, LLC**

SUMMARY:

Staff requests approval of the proposed Fifth Amendment to Lease No. 915 (Lease) between the City of Los Angeles Harbor Department (Harbor Department) and San Pedro Public Market LLC (SPPM).

The Lease is a 66-year agreement with SPPM for the commercial redevelopment of the site formerly known as Ports O' Call in San Pedro. SPPM is required to secure financing as part of its obligations under the Lease. SPPM has secured conditional funding represented by a signed preliminary term sheet from Petros PACE Finance, LLC (Petros) for \$54,863,646 and a signed preliminary letter of interest from Parkview Financial REIT, LP (Parkview) for \$44,500,000.

The proposed Fifth Amendment proposes to amend the Lease to extend the Option Period no later than November 16, 2022, address SPPM's financing, including but not limited to modifications pertaining to assignments for security purposes and leasehold mortgages and authorizes the Executive Director to sign the consenting documents, Memorandum of Lease and Estoppel Certificate when escrow opens between SPPM and their lenders or when required prior to closing of the respective loans.

The proposed Fifth Amendment is not anticipated to have a financial impact on the Harbor Department.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;
2. Approve the proposed Fifth Amendment to Lease No. 915 with San Pedro Public Market, LLC;
3. Direct the Board Secretary to transmit the Fifth Amendment to Lease No. 915 to the City Council pursuant to Charter Section 607;

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4. Authorize the Executive Director to execute and the Board Secretary to attest to the Fifth Amendment to Lease No. 915 upon approval by City Council;
5. Authorize the Executive Director to execute the Estoppel Certificate as contemplated by the Fifth Amendment to Lease No. 915;
6. Authorize the Executive Director to execute the Memorandum of Lease as contemplated by the Fifth Amendment to Lease No. 915;
7. Authorize the Executive Director to execute and the Board Secretary to attest to the Consent to Hypothecation and Agreement with Parkview Financial upon approval of the Fifth Amendment by City Council and the loan has been conditionally approved indicated by the opening of escrow;
8. Authorize the Executive Director to execute and the Board Secretary to attest to the Petros Consent upon approval of the Fifth Amendment by City Council; and
9. Adopt Resolution No. 22-10046

DISCUSSION:

Background - On May 16, 2016, the Board approved the Lease with SPPM for the redevelopment of the site formerly known as Ports O' Call in San Pedro. The Los Angeles City Council (City Council) subsequently approved the Lease on June 10, 2016. This will be the first comprehensive redevelopment of the approximately 40-acre site since its original development in the 1960s.

In November 2019, the Board approved the First Amendment to the Lease amending the term to 66 years and adjusting the Option Period to 48 months, during which time SPPM worked on updating the project design, securing financing, and soliciting tenants while the Harbor Department and SPPM continued site preparation for the development. The First Amendment also modified provisions related to development elements, design, plans, timing, and phasing of the overall project.

In November 2020, the Board approved the Second Amendment to the Lease, amending various Lease provisions to extend the Option Period, providing definitions and processes for delivering Substantial Completion Notices and Delivery Notices, clarifying the primary electrical service delivery condition and responsible parties for initiation of work required to meet this condition, and deleting language creating financial liabilities for each party, as both parties had met respective investment and construction obligations.

In December 2021, the Board approved the Third Amendment to the Lease, amending various Lease provisions, including the approval of a new fourth option period that extended the overall Option Period to June 16, 2022. The Third Amendment included a requirement that SPPM complete the following five financing milestones by April 15, 2022 (Milestones Completion Date):

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1. Release debt request marketing package
2. Receive first bona fide term sheet for project construction debt
3. Execute term sheet with selected lender
4. Receive credit committee approval from selected lender
5. Close loan

As provided for in Section 1. Article 1, Section 1.2.1 (d) of the Third Amendment to the Lease, on April 4, 2022, SPPM submitted a letter to the Harbor Department to request extension of the Milestones Completion Date to June 16, 2022. On April 14, 2022, the extension was granted following review of SPPM's commercially reasonable efforts to secure financing.

In May 2022, the Board approved the Fourth Amendment to the Lease, enabling the Executive Director to extend the Milestones Completion Date and the 4th Option Extension Period to a date no later than September 17, 2022 to allow for SPPM to obtain and complete financing. Based on Harbor Department Finance Division (Finance) review of the aforementioned signed preliminary term sheet with Petros and signed preliminary letter of interest with Parkview, Finance has determined that Milestones 1 through 3 have been completed.

Project Financing Summary

Article 1, Section 2.1.1 of the Lease requires that Lessee shall have obtained an acceptable construction and term loan in an amount determined by Lessee on a legally defined parcel satisfactory for the issuance of a lessee/owner's and lender's title insurance policies and in connection therewith.

Further, Lease 915 requires that the Lessee's loan contains the following condition:

- a) Monies borrowed must be in a fixed amount. New borrowings or refinancings require further Board approval.
- b) The collateral covered by the security instrument shall cover only Lessee's leasehold interest and interest in the Lessee's Improvements on the Premises, not the interests of City Improvements. In addition, the Petros loan may be secured through an assessment on the leasehold estate.
- c) Nothing in the instrument which creates the security interest in the Leasehold Mortgagee shall amend, modify or otherwise affect the rights of City under this Lease or any guaranty.

These construction and term loan conditions have been confirmed based on the Harbor Department's review of the signed preliminary term sheet and letter of interest. The terms provided below represent the preliminary terms reviewed as of May 25, 2022, and these preliminary terms are subject to change pending the close of both loans (and completion of Milestone 5). In addition, SPPM has informed the Harbor Department following the Finance review on May 25, 2022 that the term of the Petros assessment has been revised from 20 to 30 years as described below.

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SPPM proposes to obtain debt financing at approximately 65 percent loan to cost for Phase 1A and 1B of their project currently estimated at approximately \$155 million which includes design, construction, tenant improvements and financing and closing costs. Financing will be provided from the project sponsors, SPPM and Osprey Investors, in the range of \$55,640,000 and the remainder from selected senior and junior level construction lenders in Parkview and Petros respectively. In accordance with the Lease, the lenders are requesting the Board to approve the (Lender Consent Documents). SPPM is seeking to secure the "senior" level bond financing in the amount of \$54,863,646 with Petros and "junior level" conventional construction financing in the amount of \$44,500,000 with Parkview.

The Petros loan is provided through bond financing where improvement bonds are issued through the California Statewide Communities Development Authority and are repaid as an assessment levied against the leasehold interest. The Petros financing represents the senior loan with project direct funding in the amount of \$54,863,646 with a primary term of 30 years, or the useful life of the PACE-eligible improvement measures. Founded in 2012, Petros is an industry leader in C-PACE (Commercial Property Assessed Clean Energy) commercial lending and fund management. C-PACE is enabled by state and local legislation, allowing private lenders to provide financing for project elements that improve building energy performance. C-PACE is a relatively new and quickly growing alternative financing mechanism that makes it possible for owners and developers of commercial properties to obtain low-cost, long-term financing for energy efficiency, water efficiency, renewable energy development projects.

Parkview is a conventional construction loan securing rights through a deed of trust on the leasehold interest. The Parkview financing represents the junior loan with funding in the amount of \$44,500,000 through a Deed of Trust which will encumber SPPM's entire estate, right, title and interests in the Lease and the premises. Parkview a private real estate lending institutions specializing in ground up construction financing. The loan from Parkview to SPPM will be paid on an interest only basis, with the principal balance due at the end of thirty-six (36) months. The anticipated repayment date shall be at the end of twenty-four (24) months of the loan term, or upon achieving Temporary Certificate of Occupancy for any portion of the Property, whichever is earlier.

SPPM has executed a preliminary term sheet and letter of interest with Petros and Parkview respectively which include all substantive loan terms. SPPM is in the process of completing various loan conditions to begin the escrow process which will culminate in the respective loans closing after SPPM executes final loan documents. SPPM has stated they expect the respective loans to close within 45 days of escrow opening and that escrow will open as soon as the consenting documents are approved given SPPM expects all other third party loan conditions as described below will have been met at that point. Outstanding third party loan conditions in addition to the approval of the consenting documents and issuance of an estoppel certificate at closing include the following:

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Title Insurance - SPPM has received a preliminary title report for the leasehold interest and recently updated the ALTA survey required for issuance of title insurance. A title date down will also be required just prior to closing;

Appraisal - SPPM expects completion of the property appraisal by August 5, 2022;

Environmental Reports - SPPM has completed the Phase 1 environmental report.

In addition to the above lender closing conditions, the following conditions are required to be met for SPPM to trigger the Option:

1. Financing condition – As discussed above, review of the preliminary term sheet and letter of interest as well as the expected approval of the consenting documents will lead to opening of escrow which will culminate in closing of the construction and term loans with Parkview and Petros. It is expected that this condition will be met within 45 days of approval of the consenting documents as requested in the report.
2. California State Lands Commission Consistency Determination – On July 21, 2022, SPPM and the Harbor Department received written confirmation from California State Lands Commission that the project as proposed is consistent with the Port of Los Angeles Tidelands Trust.
3. Project Labor Agreement (PLA) – On May 15, 2020, the developer secured a Project Labor Agreement with applicable labor organizations. The PLA between SPPM and the general contractor and sub-contractors ensures that all work proceeds continuously and without interruption. It also puts into practice effective methods to resolve and settle all disputes and misunderstandings.

Fifth Amendment – The Fifth Amendment includes necessary changes to: extend the Option Period, clarify the Lease terms to aid SPPM to secure lending with Petros and Parkview, and authorize the Executive Director to approve the consenting documents. The extension of the Option Period is required to provide adequate time to close the respective loans. As discussed above, SPPM expects it will take 45 days from the approval of the consenting documents to close on the respective loans and trigger the Option. Further, the Executive Director is being provided the authority to sign the consenting documents at a future date after escrow has been opened and there is a conditional commitment to fund the loans by the respective lenders.

The Fifth Amendment includes the following modifications:

1. Extension of the Option Period no later than November 16, 2022.
2. Definitions of Leasehold Mortgage and Leasehold Mortgagee are expanded to include the assessment and Petros, respectively.
3. The Lease is revised to permit the assessment against the leasehold estate as collateral.

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4. Modification to Exhibit N (Leasehold Mortgage provisions) to require the City to deliver a Consent and Agreement to a future lender that replaces the Leasehold Mortgagee.
5. The Lease contemplates issuance of an Estoppel Certificate in response to a request by any party in an agreed upon form. An Estoppel Certificate is a document that verifies certain statements of fact which is relied upon by parties as part of completing a transaction. The Fifth Amendment includes the form of Estoppel Certificate, and the Executive Director is delegated the authority to approve the final Estoppel Certificate provided there is no material difference from the form approved by the Board.
6. The attached Memorandum of Lease will be required to be executed by the Executive Director upon opening of escrow and the final fully executed document will be recorded upon closing of the respective loans and triggering of the Option.
7. Authorize Executive Director to approve the Petros and Parkview consenting documents with no further action of the Board of Harbor Commissioners or Los Angeles City Council when escrow is opened between SPPM, Petros and Parkview.

Staff recommends the Board approve the Fifth Amendment to the Lease and authorize the Executive Director to approve to the consenting documents with Petros and Parkview which will facilitate SPPM securing \$54,863,646 in financing with Petros in addition to \$44,500,000 of funding from Parkview Financial and \$55,600,000 of equity from established sponsors, all of which will cover the approximate \$155,000,000 estimated cost for design, construction, tenant improvements and financing and closing costs. Upon loan closing, SPPM will complete and meet all required Finance Milestones of the Lease.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Fifth Amendment to Lease No. 915, which is an activity for which the underlying project has been previously assessed in the San Pedro Waterfront Project Environmental Impact Report (SPW EIR) (SCH# 2005061041), which was certified by the Board on September 29, 2009, the Addendum to the SPW EIR for the San Pedro Public Market Project considered by the Board on May 19, 2016, and the Addendum to the SPW EIR for the San Pedro Public Market 2 considered by the Board on November 21, 2019. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA in accordance with Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The changes proposed under the Fifth Amendment serve to amend lease language pertaining to assignments and leasehold mortgages and is administrative in nature. The Amendment is not anticipated to have an additional financial impact on the Harbor Department.

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CITY ATTORNEY:

The proposed Fifth Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTAL:

1. Fifth Amendment

FIS Approval: JS
CA Approval: RFM

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