



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: FEBRUARY 2, 2016

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ – APPROVAL OF REVOCABLE PERMIT NO. 14-11 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND ARDAGH METAL PACKAGING USA INC.

SUMMARY:

Staff requests approval of Revocable Permit (RP) No. 14-11 between the City of Los Angeles Harbor Department (Harbor Department) and Ardagh Metal Packaging USA Inc. (Ardagh). The proposed action will grant Ardagh approximately 378,481 square feet of land, which includes approximately 257,184 square feet of warehouse space at 936 and 938 Barracuda Street in the Fish Harbor area of Terminal Island. The premises will be used for producing, storing, and distributing metal cans and related uses.

The RP will be retroactive to December 11, 2012. Upon execution of the RP, Ardagh will pay the Harbor Department a retroactive lump sum rent. Moving forward, Ardagh will pay monthly rent of \$74,583 escalating annual by the Consumer Price Index (CPI). The RP will be revocable by either party upon 90 days' written notice and will terminate no later than 36 months after execution.

The proposed RP is being brought to the Board of Harbor Commissioners (Board), as the proposed annual rent exceeds the \$150,000 threshold that the Executive Director is authorized to grant without Board approval.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Section 1(14) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve Revocable Permit No. 14-11 with Ardagh Metal Packaging USA Inc.;
3. Authorize the Executive Director to execute and the Board Secretary to attest to Revocable Permit No. 14-11; and
4. Adopt Resolution No. _____.

SUBJECT: REVOCABLE PERMIT NO. 14-11 WITH ARDAGH METAL PACKAGING USA INC.

DISCUSSION:

Background/Context – Ardagh is a Luxembourg-based producer of glass and metal products. In 2011, Ardagh Group bought the metal packaging company Impress USA, Inc. The company operates 89 facilities in 21 countries, employs approximately 19,000 people, and has more than \$5 billion in revenue.

Ardagh is the successor-in-interest to Impress, USA, Inc. (Impress), which was formerly the Board approved subtenant of Big Heart Pet Brands (Big Heart), successor-in-interest to Del Monte Corporation (Del Monte) and Heinz Pet Products (Heinz) under various permits. During its occupancy, Heinz sold its in-house metal can-making equipment to Impress and contracted to produce metal cans for food products at the Terminal Island facility.

Since that time, Ardagh acquired Impress and Heinz merged with Del Monte. Some years later, Del Monte sold its consumer products division (human foods), leaving only the pet products division. To reflect the entity's singular focus on pet products, Del Monte changed its name to Big Heart Pet Brands.

Over the last few years, Big Heart has terminated portions of its premises, reverting certain property back to the Harbor Department and retaining a smaller footprint on Terminal Island. Ardagh wanted to remain on the premises even though Big Heart sent notice of termination to the Harbor Department for the portion of the premises that Ardagh occupied. Ardagh needed additional time to secure a permanent location and set up operations in another location. Therefore, the Harbor Department began negotiations with Ardagh for a revocable permit in its name. Negotiations have taken longer than expected due to the complexity of sorting out the responsibilities of Big Heart, Ardagh, and the Harbor Department.

Notable Revocable Permit Terms

Premises: The premises is comprised of 378,481 square feet of land, on which 257,184 a square feet warehouse building sits. The site address is 936 and 938 Barracuda Street and is located in Fish Harbor on Terminal Island.

Use: The premises will be used to operate and maintain a metal can production, storage, distribution facility, and related purposes.

Term: The RP shall be retroactive to December 11, 2012 and will be revocable upon at least 90 days' written notice by either party. However, in no event shall the RP terminate later than 36 months from the date of execution by the Executive Director (March 2019).

SUBJECT: REVOCABLE PERMIT NO. 14-11 WITH ARDAGH METAL PACKAGING USA INC.

Compensation: For the retroactive period of December 11, 2012 to September 30, 2014, monthly rent will be \$34,325. From October 1, 2014 to the execution date, current, monthly rent will be \$74,583. The rent is structured this way to account for the different dates that Ardagh took over responsibility of the premises from Big Heart. The rent also reflects the mutually-agreed value of the premises at the time Ardagh took responsibility for each portion of the premises. For the time period of December 11, 2012 to September 30, 2014 rent is based upon a Board approved annual rate of return of 12 percent for improvements applied to a warehouse value of \$22.00 per square foot. For the time period of October 1, 2014 to current, rent is based on an annual rate of return of 12 percent applied to a warehouse value of \$29.00 per square foot. The rental rate is in consideration of the condition of the buildings.

A breakdown of the rental calculation is as follows:

12/11/12-9/30/14

| Drawing Number | Pcl. No. | Property Type | Area (In Sq. Ft.) | Value (Per Sq. Ft.) | BOHC Rate of Return | Monthly Rental Rate | Monthly Rent |
|----------------|----------|----------------------|-------------------|---------------------|---------------------|---------------------|------------------|
| 5-7322 | 2 | Building (Warehouse) | 156,024 | \$ 22.00 | 12% | \$ 0.22 | \$ 34,325.28 |
| | | Associated Land | 26,002 | | | \$ - | \$ - |
| Total | | | 182,026 | | | | \$ 34,325 |

10/1/14-Current

| Drawing Number | Pcl. No. | Property Type | Area (In Sq. Ft.) | Value (Per Sq. Ft.) | BOHC Rate of Return | Monthly Rental Rate | Monthly Rent |
|----------------|----------|----------------------|-------------------|---------------------|---------------------|---------------------|------------------|
| 5-7322 | 1 | Building (Plant) | 101,160 | \$ 29.00 | 12% | \$ 0.29 | \$ 29,336.40 |
| | | Associated Land | 95,295 | | | \$ - | \$ - |
| 5-7322 | 2 | Building - Warehouse | 156,024 | \$ 29.00 | 12% | \$ 0.29 | \$ 45,246.96 |
| | | Associated Land | 26,002 | | | \$ - | \$ - |
| Total | | | 378,481 | | | | \$ 74,583 |

The rent will be adjusted annually by the increase, but never any decrease, in the CPI, capped at 3 percent annually. Also, the Executive Director will have the right to raise rent on at least 90 days' written notice. Retroactive rent will be due and payable upon execution of the RP. As of January 13, 2016, estimated retroactive rent is approximately \$1,900,000. This amount has been received and will be deposited once the RP has been fully executed.

Maintenance and Repair: Ardagh will maintain the premises and the existing buildings at the current condition as of the time of execution of the proposed RP. Further, the Harbor Department will have no liability or responsibility for the maintenance and repair of the premises or buildings.

SUBJECT: REVOCABLE PERMIT NO. 14-11 WITH ARDAGH METAL PACKAGING USA INC.

Ardagh took the buildings in "as-is, where-is" condition and is responsible for all maintenance. As such, Ardagh will conduct repair work that totals approximately \$340,000 to address major items of deferred maintenance such as the roof, loading dock doors and levelers, building exterior repairs, repairs to the concrete floors and surrounding exterior asphalt, heating, ventilation, and air conditioning (HVAC) work, among other things.

Restoration/Remediation: Big Heart (Del Monte) has the responsibility to demolish and remediate the premises that Ardagh occupies. Big Heart and the Harbor Department executed Harbor Department Agreement No. 12-3099, Permit Termination and Mutual Release Agreement, dated December 11, 2012 (Termination Agreement). Pursuant to this Termination Agreement, Big Heart paid the Harbor Department a restoration fee in-lieu of demolishing certain improvements. Therefore, the Harbor Department has been compensated to demolish the distribution warehouse that Ardagh occupies at costs as of 2012. The Harbor Department is in the process of negotiating with Big Heart on an amendment to the termination agreement for an additional restoration fee for the balance of the site.

Since Big Heart has restoration obligations as the master tenant, Ardagh will not be responsible for full restoration of the property they will occupy. If Ardagh vacates the premises within one year of execution of the RP, Ardagh will not be responsible for demolition of the improvements; the settlement with Big Heart will be sufficient. However, if as expected, Ardagh remains on the premises after one year, Ardagh will be responsible to pay an escalation amount based on the increase in CPI, capped at 3 percent annually, with a floor of 0 percent, of the estimated demolition cost attributable to the area they occupy.

The estimated demolition cost of \$2,512,000 is comprised of \$692,000, which is the prorated amount of the \$3,122,493 demolition portion of the restoration fee already collected from Big Heart in the 2012 Termination Agreement and the estimated demolition cost of \$1,820,000 yet to be finalized with Big Heart in a future termination agreement. The \$3,122,493 amount has been prorated to \$692,000 based on the amount of square footage occupied by Ardagh.

For example, Ardagh would owe an estimated \$152,980.80 if the proposed RP expired after its full term. Below is a table that shows the calculation:

| Year | Amount |
|---|---------------|
| Year 1 - Grace Period | \$ - |
| Year 2 - 3% Cap on \$2,512,000 | \$ 75,360.00 |
| Year 3 - 3% Cap on \$2,512,000 plus Year 2 Amount | \$ 77,620.80 |
| <hr/> | |
| Estimated Maximum Amount Ardagh Would Owe | \$ 152,980.80 |

SUBJECT: REVOCABLE PERMIT NO. 14-11 WITH ARDAGH METAL PACKAGING USA INC.

In addition, Ardagh is responsible for any necessary environmental remediation beginning from the time Ardagh's predecessor (Impress) occupied the premises through the term of the proposed RP. Ardagh's former landlord (Big Heart) is in the process of obtaining a Phase I Environmental Assessment at the time of this writing.

Transfers: Normally, the standard RP language states that if a tenant is a corporation, and more than 10 percent of the outstanding shares of capital stock are traded in a calendar year, the tenant must notify the Executive Director in writing. However, this provision does not apply if the tenant's stock is listed on the New York Stock Exchange (NYSE), NASDAQ, or the NYSE Arca Options. Ardagh, as a European company, is pending a listing on the Frankfurt and other European stock exchanges. This provision has been altered to replace the specific exchanges listed with "a recognized securities exchange" to allow this provision to apply to European exchanges.

Language in the proposed RP has been altered to allow the Executive Director to approve an assignment or transfer if the acquiring entity is a corporation or part of a group of corporations with a net worth that is equal to or greater than the net worth of Ardagh. Such approval will be conditioned on Ardagh providing the Harbor Department with information about the new entity adequate to make an informed decision as to the net worth, financial creditworthiness, ownership, and ability to perform under the permit of the assignee.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Revocable Permit with Ardagh for continued operation and maintenance of a metal can production, storage and distribution facility at 936 and 938 Barracuda Street on Terminal Island, which is an activity involving the issuance of a permit to use an existing facility involving negligible or no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Executing the proposed RP will allow the Harbor Department to collect approximately \$1,900,000 in retroactive rent and approximately \$894,996 (\$74,583/mo. x 12 months) in annual rent moving forward from the date of execution. This amount has been received and will be deposited once the RP has been fully executed.

Assuming Ardagh stays the 36 month maximum term outlined in the RP, the total rent during that time will be \$2,684,988 (\$894,996/year x 3 years).

As previously noted, this rent is aligned with the Board approved rate of return of 12 percent on improvements.

DATE: FEBRUARY 2, 2016

PAGE 6 OF 6

SUBJECT: REVOCABLE PERMIT NO. 14-11 WITH ARDAGH METAL PACKAGING USA INC.

CITY ATTORNEY:

RP No. 14-11 (Transmittal 2) has been reviewed by the Office of the City Attorney and approved as to form and legality.


TRANSMITTALS:

1. Aerial Map
2. Proposed RP




JACK C. HEDGE
Director of Cargo & Industrial Real Estate

FIS Approval:  (initials)
CA Approval:  (initials)



MICHAEL DIBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

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