

#103  
2/14/17

(R-2017-359)

RESOLUTION NUMBER R- 310950

DATE OF FINAL PASSAGE FEB 22 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE LEASE SURRENDER AND TERMINATION AGREEMENT FOR THE CITY-OWNED PROPERTY COMMONLY KNOWN AS DOWNTOWN JOHNNY BROWN'S.

WHEREAS, in May 2002, the City of San Diego (City) and Downtown Johnny Brown's, Inc., entered into that certain City of San Diego Percentage Lease (Lease), on file in the Office of the San Diego City Clerk as Document No. RR-296518, for City-owned property located at 1220 Third Avenue, San Diego, California, commonly known as Downtown Johnny Brown's (Property); and

WHEREAS, in March 2006, the Lease was assigned to Alexander Construction and Home Inspection, Inc.; and

WHEREAS, in October 2013, the Lease was assigned to MDTQ LLC (Tenant); and

WHEREAS, the Lease is scheduled to expire on May 31, 2017; and

WHEREAS, for the last two years, Tenant has expressed to City staff that it has faced financial difficulties caused by several contributing factors, including major repairs required to the building located on the Property due to the building's age, high maintenance costs, increased labor costs due to higher minimum wage requirements, and an Americans with Disabilities Act non-compliance lawsuit served in January 2016; and

WHEREAS, on January 15, 2016, City and Tenant entered into a Letter Agreement whereby City agreed to refrain from issuing Tenant a notice of default for its failure to timely pay rent and Tenant agreed to allow City to instigate and process a request for proposal (RFP) for the award of a new lease for the Property; and

WHEREAS, in April 2016, City issued an RFP for the operation and lease of the Property, however, City did not receive any responses to the RFP; and

WHEREAS, on or about April 22, 2016, Tenant notified City of its intent to cease its operations at the Property on April 30, 2016; and

WHEREAS, on April 29, 2016, City sent Tenant a Notice that City does not waive any rights or remedies available to City, at law or in equity, as a result of damages that the City may incur as a result of Tenant's abandonment of the Lease; and

WHEREAS, on June 24, 2016, City received a letter from Tenant requesting early termination of the Lease; and

WHEREAS, City staff recommends that City accept Tenant's requested surrender and termination of the Lease because of the following: the earlier possession and control of the Property by City will allow City to better market the Property as vacant space, and not require further permission from Tenant to access the Property; the Property is currently vacant, is an attractive nuisance, and needs to be re-leased as soon as possible in order to activate the Concourse; earlier possession and control of the Property by City will permit City to assume maintenance of the Property, and forego waste and destruction of the Property; City staff does not believe Tenant has adequate assets worth the legal expense to pursue rent through May 31, 2017; and earlier possession and control of the Property by City will create an increased opportunity to locate a replacement tenant to assume responsibility for the Property and its operating expenses; NOW, THEREFORE,

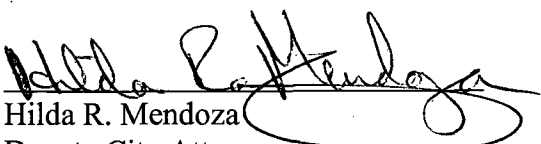
BE IT RESOLVED, by the City Council of the City of San Diego, that the Council finds that the acceptance of Tenant's requested surrender and termination of the Lease will serve the public purposes of City and are in the best interest of City because: the earlier possession and

control of the Property by City will allow City to better market the Property as vacant space, and not require further permission from Tenant to access the Property; the Property is currently vacant, is an attractive nuisance, and needs to be re-leased as soon as possible in order to activate the Concourse; earlier possession and control of the Property by City will permit City to assume maintenance of the Property, and forego waste and destruction of the Property; City does not believe Tenant has adequate assets worth the legal expense to pursue rent through May 31, 2017; and earlier possession and control of the Property by City will create an increased opportunity to locate a replacement tenant to assume responsibility for the Property and its operating expenses.

BE IT FURTHER RESOLVED, based on the foregoing determinations, that the Mayor, or his designee, is authorized and directed to execute that certain Lease Surrender and Termination Agreement, on file in the Office of the City Clerk as Document No.

RR- 310950.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Hilda R. Mendoza  
Deputy City Attorney

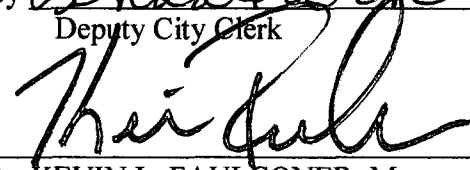
HRM:als  
01/30/2017  
Or.Dept: READ  
Doc. No.: 1429562

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 14 2017.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 2/22/17  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 14 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 22 2017.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By *Jennifer Brown*, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 310950