

RESOLUTION NUMBER R- 311148

DATE OF FINAL PASSAGE MAY 30 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT TO PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND CHH TORREY PINES HOTEL PARTNERS, LP, FOR THE PROPERTY LOCATED AT 10950 NORTH TORREY PINES ROAD, SAN DIEGO, CALIFORNIA, WHICH IS COMMONLY KNOWN AS THE HILTON LA JOLLA TORREY PINES.

ITEM # 333A
5/23/17

WHEREAS, the City of San Diego (City) owns approximately 11.38 acres of real property located at 10950 North Torrey Pines Road, San Diego, California (Premises), which is commonly known as the Hilton La Jolla Torrey Pines; and

WHEREAS, in 1987, City entered into a percentage lease (Original Lease) with Torrey Pines Hotel Associates, a California general partnership, for the development and operation of a hotel on the Premises; the Original Lease is on file in the Office of the City Clerk as Document No. RR-296077-1; and

WHEREAS, in 1998, Torrey Pines Hotel Associates assigned the Original Lease to Hilton Hotels Corporation, a Delaware corporation (Hilton), pursuant to that certain Assignment and Assumption of Percentage Lease and Deed to Improvements recorded with the San Diego County Recorder as Document No. 1998-0853813; and

WHEREAS, in 2002, City and Hilton entered into the First Amendment to Lease Agreement (First Amendment), on file in the Office of the City Clerk as Document No. RR-296517, which amended the Original Lease; and

WHEREAS, the Original Lease and the First Amendment are hereinafter referred to collectively as the "Lease"; and

WHEREAS, in 2003, Hilton assigned the Lease to CHH Torrey Pines Hotel Partners, LP, a Delaware limited partnership (CHH), pursuant to that certain Assignment and Assumption of Percentage Lease and Deed to Improvements recorded with the San Diego County Recorder as Document No. 2003-1487568; and

WHEREAS, CHH subleased the Premises to CHH Torrey Pines Tenant Corp., a Delaware corporation (Sublessee), pursuant to a lease agreement, dated December 17, 2003, which was later amended pursuant to the Amended and Restated Lease Agreement dated April 11, 2007, which was amended by the First Amendment to Lease Agreement, dated April 1, 2009, and further amended by the Second Amendment to Lease Agreement, dated January 1, 2013; and

WHEREAS, in 2003, Sublessee entered into a management agreement with Hilton to provide management services with respect to the Premises, and in 2007, Hilton assigned the management agreement to its affiliate, Hilton Management LLC; and

WHEREAS, the Premises is currently improved with a 394-room hotel, business center, meeting rooms, gift shop, bar, restaurant, fitness room, pool, tennis court, and 776 parking spaces; and

WHEREAS, the Lease is scheduled to expire on June 30, 2043; and

WHEREAS, since April 2007, both CHH and Hilton have invested approximately \$22,000,000 in capital improvements to upgrade the Premises, and such investment allowed CHH to increase the value of the Premises, and reposition the hotel to produce higher rent to the City; and.

WHEREAS, as a result of the completed capital improvements, the estimated percentage rent to the City increased by approximately \$2,300,000 for the period of July 1, 2009 through June 30, 2016, or approximately \$328,571 annually; and

WHEREAS, since July 2014, CHH has committed and already invested an additional \$3,184,000 of capital improvements to the Premises, and this additional investment is expected to generate additional percentage rent increases to the City; and

WHEREAS, CHH has requested a second amendment to the Lease (Second Amendment), which would extend the term of the Lease by approximately 24 years; this would mean, as the Lease has approximately 26 years remaining in its term, that the lease term would expire 50 years after the commencement date of the Second Amendment (New Term); and

WHEREAS, CHH will have two options to extend the New Term as follows: (1) 10 years if CHH invests on average at least 5% of its annual gross income into the Premises during the first forty-nine years of the New Term; or (2) approximately 20 years if CHH invests at least 6% of its annual gross income into the Premises during the first forty-nine years of the New Term; and

WHEREAS, as consideration for granting the Second Amendment, CHH also agrees to pay to City a lump-sum payment of \$500,000, which payment must be made within thirty (30) calendar days of the Second Amendment's effective date; and

WHEREAS, the Second Amendment also includes a new requirement for the payment of 2% additional consideration to City in the event of refinancing, assignment or subleasing a majority interest of the Lease, and that the Lease be updated to include the City's now-standard general lease provisions such as equal opportunity, City employee participation policy, accessibility, California Public Records Act, hazardous substance, environmental assessment, disabled access compliance, and water quality assurance among others; and

WHEREAS, the market value of the real estate subject to the Second Amendment, as appraised by an independent fee appraiser, is \$35,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Second Amendment to Percentage Lease between the City of San Diego and CHH Torrey Pines Hotel Partners, LP, the terms of which are more fully set forth therein, and which is on file in the Office of the City Clerk as Document No. RR- 311148.

APPROVED: MARA W. ELLIOTT, City Attorney

By Hilda R. Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM:als
05/02/2017
Or.Dept: READ
Doc. No.: 1483499

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 23 2017.

ELIZABETH S. MALAND
City Clerk

By City Clerk
Deputy City Clerk
Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Approved: 5/30/17
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 23 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 MAY 30 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 Atty Meady, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 311148