

Item # 5508
11/16/2021

(R-2022-162)

RESOLUTION NUMBER R- 313794

DATE OF FINAL PASSAGE NOV 29 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND RATIFYING THE CITY'S PRIOR EXPENDITURE OF FUNDS FOR OCCUPANCY PAYMENTS IN THE AGGREGATE AMOUNT OF \$1,565,590 ATTRIBUTABLE TO THE CITY'S OCCUPANCY PERIOD OF JULY THROUGH NOVEMBER 2021, AND AUTHORIZING THE CITY'S FUTURE EXPENDITURE OF FUNDS FOR OCCUPANCY PAYMENTS IN AN AGGREGATE AMOUNT NOT TO EXCEED \$2,199,654 FOR THE CITY'S CONTINUED OCCUPANCY DURING THE PERIOD OF DECEMBER 2021 THROUGH JUNE 2022, RELATED TO THE REAL PROPERTY AND IMPROVEMENTS LOCATED AT 1200 THIRD AVENUE AND 201 A STREET IN DOWNTOWN SAN DIEGO.

WHEREAS, in Ordinance O-20462 adopted effective February 12, 2015, the San Diego City Council (Council) authorized and directed the Mayor or designee to sign, deliver, and effectuate the terms of a 20-year lease-to-own agreement (Agreement) with CCP 1200, LLC, a Delaware limited liability company (CCP 1200), which is an affiliate of Cisterra Partners, LLC, for the City's lease and eventual acquisition from CCP 1200 of the real property and improvements located at 1200 Third Avenue and 201 A Street in downtown San Diego (collectively, Property); and

WHEREAS, the City and CCP 1200 signed the Agreement, dated as of March 13, 2015 (on file in the Office of the City Clerk as Document Number OO-20462), which requires the City to pay monthly base rent to CCP 1200 in the amount of \$270,000, subject to an annual rent increase of 2.5 percent; and

WHEREAS, the Property includes two buildings: (1) the Civic Center Plaza building at 1200 Third Avenue, which is occupied by employees of various City departments; and (2) the

King-Chavez Community High School building at 201 A Street, which is subleased by the City to the operator of a public charter school; and

WHEREAS, in 2015, CCP 1200 assigned certain rights and benefits under the Agreement to Wilmington Trust, National Association, as the trustee of CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017-CTL-1 (“Wilmington Trust”); and

WHEREAS, in accordance with the Agreement, the City commenced making scheduled monthly rent payments to Wilmington Trust in 2015, and continued to make monthly rent payments as required by the Agreement through June 2021; and

WHEREAS, through discovery in litigation involving a similar lease-to-own agreement for the 101 Ash Street building, the City recently discovered that the City’s commercial real estate advisor had a prohibited financial interest in the Agreement when the broker participated in making the Agreement on the City’s behalf; and

WHEREAS, based on the Council’s authorization, the City initiated a lawsuit against CCP 1200, Wilmington Trust, and related entities on June 29, 2021, designated as San Diego County Superior Court Case No. 37-2021-00028026-CU-FR-CTL (City Lawsuit), seeking a court judgment that the Agreement is void, due to a violation of conflict-of-interest laws (and other improper conduct), and that the City is entitled to resulting monetary damages; and

WHEREAS, the City Lawsuit is in the discovery phase and is anticipated to be set for trial in early 2023; and

WHEREAS, in light of the City’s assertion in the City Lawsuit that the Agreement is void and unenforceable, the City ceased making monthly rent payments to Wilmington Trust under the Agreement commencing in July 2021; and

WHEREAS, Wilmington Trust declared the City in monetary default under the Agreement and initiated an unlawful detainer action against the City on July 28, 2021, designated as San Diego County Superior Court Case No. 37-2021-00032273-CU-UD-CTL (Unlawful Detainer Action), seeking to evict the City from the Property; and

WHEREAS, when Wilmington Trust scheduled a trial date in the Unlawful Detainer Action for late August 2021, the Office of the Mayor elected to make monetary payments to Wilmington Trust for occupancy of the Property to avoid a potential adverse outcome in the Unlawful Detainer Action that could displace numerous City employees from the Civic Center Plaza building and disrupt the day-to-day provision of critical City services; and

WHEREAS, as of July 2021, the monthly base rent for the Property under the Agreement equaled \$313,118, subject to the next annual increase of 2.5 percent effective June 1, 2022, at which time the monthly base rent under the Agreement will be \$320,946; and

WHEREAS, the City's principal appraiser has determined that the current market rental value of the Property is equal to or greater than the monthly base rent for the Property set forth in the Agreement; and

WHEREAS, representatives of the City and Wilmington have reached a mutual understanding that the City will make monthly occupancy payments to Wilmington Trust in exchange for the City's continued occupancy of the Property pending the outcome of the City Lawsuit, subject to the City and Wilmington Trust reserving all of their respective rights (Mutual Reservation of Rights); and

WHEREAS, in late August 2021, the City made an occupancy payment to Wilmington Trust in the amount of \$626,236, as consideration for the City's occupancy of the Property during the months of July and August 2021, subject to the Mutual Reservation of Rights; and

WHEREAS, after receiving the City's occupancy payment in late August 2021, Wilmington Trust dismissed the Unlawful Detainer Action without prejudice; and

WHEREAS, the City has made three additional occupancy payments to Wilmington Trust in the monthly amount of \$313,118 (for an aggregate total of \$939,354), as consideration for the City's occupancy of the Property during the months of September through November 2021, subject to the Mutual Reservation of Rights; and

WHEREAS, accordingly, the City has made a cumulative total of \$1,565,590 in occupancy payments to Wilmington Trust attributable to the City's occupancy of the Property during the months of July through November 2021; and

WHEREAS, subject to the Mutual Reservation of Rights, the City intends to continue making occupancy payments to Wilmington Trust in the monthly amount of \$313,118, with a one-time inflationary increase of 2.5 percent effective June 1, 2022, for the City's continued occupancy of the Property until the earlier of (i) June 30, 2022, or (ii) the resolution of the City Lawsuit through a final, non-appealable court judgment or a settlement agreement; and

WHEREAS, taking into account an increase of 2.5 percent effective June 1, 2022, the aggregate amount of the occupancy payments for the Property during the months of December 2021 through June 2022 (i.e., the balance of Fiscal Year 2022) will be \$2,199,654; and

WHEREAS, the City continues to receive regular monthly sublease payments from the operator of the King-Chavez Community High School building; and

WHEREAS, if it is ultimately infeasible for the City Lawsuit to be resolved by June 30, 2022, and if the City continues to occupy the Property, the Council will be asked to consider the adoption of another resolution by June 2022 to authorize the making of additional occupancy payments for the Property during Fiscal Year 2023; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The Council authorizes and ratifies the actions of the Mayor and the Chief Financial Officer in making a cumulative total of \$1,565,590 in prior occupancy payments on the City's behalf to Wilmington Trust from the City's General Fund for the City's occupancy of the Property during the months of July through November 2021, subject to the Mutual Reservation of Rights.

2. The Council authorizes the Chief Financial Officer to continue making monthly occupancy payments on the City's behalf to Wilmington Trust in an aggregate amount not to exceed \$2,199,654 from the City's General Fund for the City's continued occupancy of the Property during the months of December 2021 through June 2022, subject to the Mutual Reservation of Rights, provided that each monthly occupancy payment will equal \$313,118, with a one-time inflationary increase of 2.5 percent effective June 1, 2022, and provided further that the monthly occupancy payments will be made only to ensure the City's continued occupancy of the Property until the earlier of (i) June 30, 2022, or (ii) the resolution of the City Lawsuit through a final, non-appealable court judgment or a signed settlement agreement.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Kevin J. Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
11/10/21
Or.Dept: Real Estate Assets
Doc. No. 2769416

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 16 2021.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 11/25/21
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on NOV 16 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 29 2021.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

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

By Cennie Patterson Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 313794