

THIRD AMENDMENT TO PERCENTAGE LEASE

This Third Amendment to Percentage Lease ("**Third Amendment**") is made by and between the CITY OF SAN DIEGO, a California municipal corporation ("**CITY**"), as lessor, and CHH TORREY PINES HOTEL PARTNERS, LP, a Delaware limited partnership, as lessee ("**LESSEE**") to be effective as of the date of approval by the San Diego City Attorney, (the "**Third Amendment Effective Date**").

RECITALS

- A. CITY owns that certain real property consisting of approximately 11.383 acres of land located at 10950 N. Torrey Pines Road, in the City of San Diego, County of San Diego, State of California, 92037, as described in Exhibit "A" to the Lease ("**Premises**").
- B. CITY is the lessor under the Percentage Lease between CITY and Torrey Pines Hotel Associates, dated August 10, 1987 ("**Original Lease**"), as amended by the First Amendment to Lease Agreement, filed in the Office of the San Diego City Clerk on May 21, 2002, as Document No. RR-296517 ("**First Amendment**"), as amended by the Second Amendment to Percentage Lease, filed in the Office of the San Diego City Clerk as Document No. RR-311148 ("**Second Amendment**" and, together with the Original Lease and the First Amendment, collectively, the "**Lease**").
- C. Pursuant to the First Amendment, CITY and Hilton Hotels Corporation, Hilton La Jolla Torrey Pines entered into the Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times, dated September 27, 2002, as amended by the Amended Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times, entered into by CITY, Hilton Hotel Corporation, CHH Torrey Pines Tenant Corp. and dated February 13, 2007.
- D. Torrey Pines Hotel Associates, a California general partnership ("**TPH Associates**"), was the original lessee under the Lease. TPH Associates caused the Premises that is the subject of the Lease to be developed with certain buildings and other improvements comprising a hotel, parking, restaurant, and related facilities commonly known as the "Hilton La Jolla Torrey Pines."
- E. Hilton Hotels Corporation, a Delaware corporation doing business as "Hilton La Jolla Torrey Pines" ("**HILTON**"), succeeded TPH Associates as lessee under the Lease pursuant to the Assignment and Assumption of Percentage Lease and Deed to Improvements, dated December 29, 1998, and recorded in the Office of the San Diego County (California) Recorder as Instrument No. 1998-0853813.
- F. LESSEE succeeded HILTON as lessee under the Lease pursuant to the Assignment and Assumption of Percentage Lease and Deed to Improvements, dated December 17, 2003, and recorded December 18, 2003, in the Office of the San Diego County (California) Recorder as Instrument No. 2003-1487568.
- G. LESSEE, as lessor ("**Sublessor**"), subleased to CHH TORREY PINES TENANT CORPORATION, a Delaware corporation ("**Sublessee**") pursuant to the Amended and Restated Lease Agreement, dated as of April 11, 2007, as amended by the First Amendment

to Lease Agreement, dated April 1, 2009, as amended by the Second Amendment to Lease Agreement, dated January 1, 2013, as amended by the Third Amendment to Lease Agreement, dated January 1, 2016, and as amended by the Fourth Amendment to Lease Agreement, dated January 1, 2018.

- H. CITY and LESSEE desire to enter into this Third Amendment in order to correct certain drafting errors in the Lease.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Section 4.4d of the Lease is hereby deleted in its entirety and replaced as follows:

“d. In case of a default by LESSEE in the payment of money required to be paid under this Lease, CITY shall take no action to effect a termination of this Lease because of such default unless it has continued beyond thirty (30) days after expiration of LESSEE’S cure period. Nothing contained in this Section 4.4d or Section 4.4e shall require the Leasehold Beneficiary to cure or commence to cure any default consisting of LESSEE’S failure to satisfy and discharge any lien, charge or encumbrance against LESSEE’S interest in this Lease or the Premises which is junior in priority to the lien of the deed of trust held by such Leasehold Beneficiary.”

2. Section 4.4e of the Lease is hereby deleted in its entirety and replaced as follows:

“e. In the case of any other default other than a monetary default by LESSEE, CITY shall take no action to effect a termination of this Lease by reason thereof as long as the Leasehold Beneficiary shall have commenced within the additional cure period set forth in Section 4.4c to cure the default in question, and prosecutes the same to completion with reasonable diligence and continuity to CITY’S satisfaction (provided that such Leasehold Beneficiary shall have paid, and shall continue to pay, to CITY all minimum rent and percentage rent, if such Leasehold Beneficiary or a receiver is in possession of the Premises), and otherwise complies with all other terms and conditions of this Lease except those requiring possession; provided, that such Leasehold Beneficiary shall:

- (1) Commence and diligently proceed to cure such default to CITY’s satisfaction, if such default is susceptible of being cured by the Leasehold Beneficiary without the Leasehold Beneficiary obtaining possession of the Premises; or
- (2) Commence and diligently proceed to obtain possession of the Premises (including possession by a receiver) and to cure such default to CITY’s satisfaction in the case of a default which is susceptible of being cured when the Leasehold Beneficiary has obtained possession thereof; or
- (3) Institute foreclosure proceedings within thirty (30) days and thereafter to complete such foreclosure proceedings or otherwise acquire LESSEE’S interest under this Lease with reasonable and continuous diligence, unless precluded from doing so by circumstances

beyond the reasonable control of the Leasehold Beneficiary, such as a stay of proceedings or an injunction granted by a court. A Leasehold Beneficiary shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such a notice has been cured to CITY's satisfaction."

3. Section 4.4i of the Lease is hereby deleted in its entirety and replaced as follows:

- "i. If this Lease shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, to the extent permitted by applicable law, CITY shall promptly notify the Leasehold Beneficiary of such termination and the amount of the sums then due to CITY under this Lease, and either Leasehold Beneficiary, or a person designated by such Leasehold Beneficiary, shall have the right, exercisable by notice to CITY within thirty (30) days after receipt of such notice from CITY of such termination, to enter into a new lease of the Premises with CITY. The term of the new lease shall begin on the date of the execution of the new lease and shall continue for what would have been the remainder of the term if this Lease had not been terminated. The new lease shall otherwise contain the same terms and conditions as those set forth herein, including all rights and options herein contained, except for requirements which are no longer applicable or have already been performed. The new lease shall require the Lessee thereunder promptly to commence and diligently proceed to remedy all defaults on the part of LESSEE hereunder to the extent susceptible of being remedied. At the time of execution and delivery of the new lease: (1) the Leasehold Beneficiary shall have remedied all defaults on the part of LESSEE that are susceptible of being remedied by the payment of money required under the terms of this Lease, including loss of rent from date of termination to date of commencement of new lease; and (2) the Leasehold Beneficiary shall have paid or caused to be paid to CITY all reasonable expenses, including reasonable attorneys' fees, which CITY shall have incurred by reason of the termination of this Lease and the preparation, execution and delivery of the new lease and which have not otherwise been received by CITY from LESSEE or other party in interest under LESSEE. The provisions of this Section 4.4i shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 4.4i were a separate and independent contract among CITY, LESSEE and each Leasehold Beneficiary."

4. Section 4.4j of the Lease is hereby deleted in its entirety and replaced as follows:

- "j. In the event of a default by LESSEE and LESSEE'S failure to cure such default within the grace period available to LESSEE, the Leasehold Beneficiary shall, within thirty (30) days after the exercise of each of the rights granted to the Leasehold Beneficiary pursuant to Sections 4.4e, 4.4e(1), 4.4e(2) and 4.4i (collectively the "Leasehold Beneficiary Rights") and, as a condition for the perfection of such rights, notify CITY of the exercise of any such rights. Within thirty (30) days following CITY'S receipt of the Leasehold Beneficiary's notice, CITY may request the Leasehold Beneficiary to submit to CITY an itemized written statement, certified by an officer of Leasehold Beneficiary, of all sums then owing to Leasehold Beneficiary secured by the leasehold deed of trust. A copy of CITY'S request shall be sent simultaneously to LESSEE. CITY shall have, at any time no earlier than thirty (30) and no later than sixty

(60) days after delivery of each such certified statements, the option to purchase the interest of the Leasehold Beneficiary in the leasehold by paying to the Leasehold Beneficiary all sums owing on the date of purchase that are secured by the leasehold deed of trust, and upon payment of such sums all rights of the Leasehold Beneficiary under Section 4.4 of this Lease shall cease and terminate and CITY shall thereupon have the right to terminate this Lease or pursue any other remedy provided herein, as if there were no Leasehold Beneficiary. The failure of CITY to exercise the option granted to CITY under this Section 4.4j with respect to the exercise by the Leasehold Beneficiary of any of Leasehold Beneficiary's rights shall not preclude CITY from exercising such option with respect to any subsequent exercise of any such rights."

5. Section 4.4l of the Lease is hereby deleted in its entirety and replaced as follows:

"l. No Leasehold Beneficiary shall become personally liable for the performance or observance of any covenants to be performed by LESSEE unless and until the Leasehold Beneficiary becomes the owner of LESSEE'S interest hereunder upon the exercise of any remedy provided for in the Leasehold deed of trust or unless and until the Leasehold Beneficiary enters into a new lease with CITY pursuant to Section 4.4i. In either event, upon the assignment of the leasehold estate by the Leasehold Beneficiary, such assignment shall have the same effect as if it were an assignment to a Qualified Assignee pursuant to Section 4.5."

6. Section 4.4q of the Lease is hereby deleted in its entirety and replaced as follows:

"q. LESSEE's making of a leasehold mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Leasehold Beneficiary, as such, or in the exercise of its rights under this Lease, be deemed to be an assignee or transferee of this Lease so as to require such Leasehold Beneficiary, as such, to assume or otherwise be obligated to perform any of LESSEE's obligations hereunder except when, and then only for so long as, such Leasehold Beneficiary: (a) cures any defaults under this Lease to CITY's reasonable satisfaction; and (b) has acquired ownership and possession of LESSEE's leasehold estate pursuant to a foreclosure or other exercise of rights or remedies under its Leasehold Mortgage or assignment in lieu of foreclosure (as distinct from its rights under this Lease to cure defaults of LESSEE hereunder)."

7. Authority. Each individual executing this Third Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Third Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Third Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Third Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in

good standing in its home state and that such entity is qualified to do business in California

8. No Other Changes. All other terms and conditions of the Lease, as amended by this Third Amendment, shall remain in full force and effect. Any conflict between the terms and conditions of this Third Amendment and those of the Lease shall be resolved in favor of the terms and conditions of this Third Amendment.

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IN WITNESS WHEREOF, this Third Amendment is executed to be effective as of the Third Amendment Effective Date.

Date: May 17, 2019

CHH TORREY PINES HOTEL
PARTNERS, LP, a Delaware limited
partnership

By: CHH Torrey Pines Hotel GP LLC,
its general Partner

By: [Signature]
Name: Christopher A. Peckham
Title: Vice President

Date: 5/21/19

THE CITY OF SAN DIEGO, a California
Municipal corporation

By: [Signature]
Name: Cybele Benson
Title: Director, Personnel Assets

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

By: [Signature]
Name: Hilda R. Mendoza
Title: Deputy City Attorney
Date: May 28, 2019