

DUPLICATE

SECOND AMENDMENT TO PERCENTAGE LEASE

This Second Amendment to Percentage Lease ("Second 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 "Second Amendment Effective Date").

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

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, 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") (together, 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, and further amended by the Second Amendment to Lease Agreement, dated January 1, 2013.
- H. Since April 2007, LESSEE and HILTON invested approximately Twenty Two Million Dollars (\$22,000,000) of LESSEE'S and HILTON capital to upgrade the Premises, ("Capital Expenditures").
- I. The Capital Expenditures increased the value of the Premises to the benefit of LESSEE, HILTON and CITY, and repositioned the Premises to produce increased rent to CITY.
- J. It is estimated that as result of Capital Expenditures, CITY's percentage rent under the Lease was increased by approximately Two Million Three Hundred Thousand Dollars (\$2,300,000) for the period of July 1, 2009 through June 30, 2016, or by approximately Three Hundred Twenty Eight Thousand Five Hundred Seventy One Dollar (\$328,571) annually.
- K. Since July 2014, LESSEE has committed and has already invested an additional Three Million One Hundred Eighty Four Thousand Dollars (\$3,184,000) in Hotel Improvements to the Premises. It is expected that the additional investment will generate increased rent to CITY.
- L. LESSEE has requested an approximately twenty-four (24) year extension of the Lease term so that the term will expire 50 years after the first day of the calendar month following the Second Amendment Effective Date.
- M. As consideration for CITY's agreement to extend the Lease term, LESSEE will execute and deliver this Second Amendment and to pay to CITY a lump-sum payment of Five Hundred Thousand Dollars, \$500,000 ("the Extension Compensation"). The Extension Compensation is due within thirty days of the Second Amendment Effective Date.
- N. The amendments to the Lease in this Second Amendment are intended to provide appropriate consideration to CITY for LESSEE'S use and possession of the Premises and to ensure the ongoing capital improvements and routine maintenance of the Premises and to secure LESSEE'S commitment to improve Premises' economic viability.
- O. The Parties wish to update language in the Lease to comply with federal, state, and local laws and regulations.

AGREEMENT

- 1. City Council Action Required. LESSEE acknowledges and agrees that this Second Amendment is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City

Council's failure to grant the Council Authorization.

- 1.1 LESSEE'S Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF THE CITY COUNCIL'S FAILURE TO GRANT THE COUNCIL AUTHORIZATION.
2. Section 2: Term. Subsection 2.1, Commencement, is deleted in its entirety and replaced with the following:

2.1. Commencement. The term of this Lease shall be fifty (50) years ("Term") commencing on the Second Amendment Effective Date ("Commencement Date"). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date, so that the Lease shall expire on the last day of the calendar month. "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the Commencement Date.
3. Section 2: Term. The following language is added as new Section 2.5. Extended Term:
 - a. Extended Term Capital Investment Obligations. For the purposes of this Second Amendment, "Capital Investment Obligations" means investment by LESSEE that consists of expenditures for physical improvements that enhance the value or increase the useful life of the Premises, such as, but not limited to, the construction of new buildings or other structures, additions, or major renovations, or alterations to existing buildings, and landscaping. Costs and expenses associated with renovations (typical of those required by hotel brands in the industry every 6-8 years on average) of the hotel's guest rooms, corridors, public space and meeting rooms, including but not limited to, finishes and equipment shall constitute Capital Investment Obligations.
 - b. Extended Term. Except in the case of a default as set forth in Section 4.12 of the Lease, LESSEE may request in writing, at least ninety (90) days prior to the expiration of the Term, either a ten (10) year extension of the Term or an approximately twenty (20) year extension of the Term, as set forth below:
 1. Ten- Year Extension. If LESSEE invests, on average, no less than five percent (5%) of its annual Gross Income, as defined in Section 3.4 of the Lease, as Capital Investment Obligations on the Premises during the first forty-nine years of the Term ("Test Period"), then the Term shall be extended for an additional ten (10) years. LESSEE shall continue to invest, on average no less than four percent (4%) of its annual Gross Income as Capital Investment Obligations on the Premises during the Ten-Year Extension.

2. Approximately Twenty Year Extension. If LESSEE invests, on average, no less than six percent (6%) of its annual Gross Income, as defined in Section 3.4 of the Lease, as Capital Investment Obligations on the Premises during the Test Period, then the Term shall be extended until June 30, 2087, an additional approximately twenty (20) years. LESSSEE shall continue to invest, on average no less than four percent (4%) of its annual Gross Income as Capital Investment Obligations on the Premises during the approximately Twenty Year Extension.

c. Interim Reporting of Capital Investment Obligations Invested by LESSEE. Commencing with the first Lease Year, within ninety (90) days after the end of each Lease Year during the Term, LESSEE shall submit to CITY a statement evidencing the amount of Capital Investment Obligations invested by LESSEE on the Premises for that Lease Year (the "Capital Investment Obligations Statement"). The Capital Investment Obligations Statement shall include the total Gross Income for that Lease Year, data evidencing the percentage of that Gross Income spent on Capital Investment Obligations for that Lease Year, and all previous Lease Years combined, and a specific list of the Capital Investment Obligations for that Lease Year, and the average of Gross Income spent on Capital Investment Obligations to the date of that Capital Investment Obligation Statement. The Capital Investment Obligations Statement shall be signed by LESSEE or its authorized agent, attesting the accuracy of the information provided in the Capital Investment Obligations Statement. The Capital Investment Obligations Statement shall be subject to CITY'S right to inspect and audit in Sections 3.5.c and 6.2 of this Lease. Following the submittal of Capital Investment Obligation Statement, City shall have ninety (90) business days to review and reject Capital Investment Obligations for such Lease Year, and respond with its specific findings ("City Report") to LESSEE. If no objection to a specific Capital Investment Obligation is received by LESSEE within such ninety (90) day City review period, such Capital Investment Obligation shall be deemed to have been accepted by the City.

d. Failure to Invest. LESSEE acknowledges and agrees that if it fails to invest, on average, no less than five percent (5%) of its annual Gross Income, as defined in Section 3.4 of the Lease, as Capital Investment Obligations on the Premises during the Test Period, then the Term will not be extended and will expire on the fiftieth year following the Second Amendment Effective Date.

4. Section 3.2.d. Percentage Rate Adjustment. The first sentence of Section 3.2 d, Percentage Rent Adjustment, is deleted and replaced with the following language:

a. At least six (6) months prior to the end of each tenth (10th) Lease Year after the Second Amendment Effective Date, the parties, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S Gross Income to be paid CITY effective upon the first day of the succeeding ten-year period.

5. Section 4: Assignment; Encumbrance; Subletting; Additional Consideration to CITY. Section 4.2, Financing and Encumbrance, is deleted and replaced with the following language:

4.2. Financing and Encumbrance. LESSEE shall have the right at any time from the Effective Date of this Second Amendment and from time to time to subject this Lease, its leasehold estate and any or all improvements hereon to a mortgage or deed of trust of an "Institutional Lender" (as defined below) as security for a loan or other obligations of LESSEE. LESSEE shall have the right with CITY'S prior consent in each instance to refinance its leasehold estate and any and all improvements thereon from time-to-time. City's consent shall not be unreasonably withheld, provided that the indebtedness secured by LESSEE's estate hereunder shall not exceed seventy five percent (75%) of LESSEE's leasehold estate as appraised in connection with any such loan by a lender's appraisal which has been approved by the CITY." Provided that the seventy-five percent (75%) requirement stated above is met, LESSEE shall pay CITY two percent (2%) of the net proceeds of any such refinancing. Notwithstanding anything to the contrary, if a refinancing occurs within twelve months of the date of an assignment of the LESSEE'S interest in this Lease, the 2% of the net proceeds of refinancing fee shall not be required if 2% of Additional Consideration to CITY (as defined in Section 4.5) is paid. For purposes of calculating the payment to CITY, net proceeds shall be determined as the total loan proceeds minus the following:

- (i) any prior obligations against LESSEE'S interest in the Premises and the improvements thereon, paid from the proceeds of the refinancing; and
- (ii) any financing costs incurred in connection with the refinancing, including, but not limited to, brokerage fees, fees paid to the lender, attorneys' fees, title and escrow costs; and
- (iii) any proceeds from such refinancing expended in connection with improvements to the Premises, including the purchase of any items of furniture, fixtures or equipment for the hotel with a usable life in excess of three (3) years as determined in accordance with hotel industry standards; and
- (iv) the original equity of LESSEE, its successors or assigns (defined for the purposes of this paragraph as the initial equity of LESSEE, or the then current LESSEE under this Lease computed from the date of contribution without addition of any interest thereon or reduction due to cash flow from operations) unless such equity has previously been recaptured in connection with any prior refinancing of the Premises; and
- (v) any outstanding hotel operating deficits (other than from depreciation) incurred from the Commencement Date of the Lease, as that term is generally defined in the hotel industry, without interest thereon and without reduction for operating profits.
- (vi) As an example of the application of the above formula, if, LESSEE refinances for Eighty Million Dollars (\$80,000,000) and if the net proceeds after deducting the amount specified above are Twenty Million Dollars (\$20,000,000),

CITY would be paid Two Percent (2%) of the net proceeds, i.e., Four Hundred Thousand Dollars (\$400,000).

(vii) LESSEE shall deliver to CITY such information as is required to verify compliance with this provision.

6. Section 4.3, Institutional Lender, is deleted and replaced with the following language:

4.3. Institutional Lender. "Institutional Lender" shall mean any insurance company, domestic or foreign bank, trust company or federally or state chartered savings and loan association, mortgage banker, credit union, pension, profit or retirement fund or trust, real estate investment trust, governmental agency or fund, or other domestic or foreign financing or lending institution whose loans on real estate or with respect thereto are regulated by state or federal law of the United States. Provided the CITY does not reasonably object to such entity because of poor or questionable business or general reputation, "Institutional Lender" also includes the following entities: (i) any domestic or foreign institution engaged in making loans secured by real property having a net worth of more than Twenty-Five Million Dollars (\$25,000,000) (adjusted to reflect any increases in the Consumer Price Index for San Diego County, All Items, For Urban Wage Earners and Clerical Workers (1967=100), from the date of this Lease) and (ii) any corporation which is the wholly owned subsidiary of a domestic or foreign institution meeting such net worth criteria and such subsidiary is engaged in making loans secured by real property in the United States.

7. Section 4.4, Assurance to Lender, is deleted and replaced with the following language:

4.4. Assurance to Lender. If LESSEE, subject to CITY consent, encumbers the subject leasehold under this Lease to one or more deeds of trust to secure a loan permitted hereunder to the beneficiary under such leasehold deed of trust ("Leasehold Beneficiary"), LESSEE shall, within ten calendar days (10) days its execution, send to CITY a true copy thereof, together with written notice specifying the name and address of the Leasehold Beneficiary and the pertinent recording information with respect to such deed of trust, CITY agrees that so long as any such leasehold deed of trust shall remain unsatisfied of record or until notice of satisfaction is given by the Leasehold Beneficiary to CITY, the following provisions shall apply:

- a. There shall be no cancellation or surrender, of this Lease by joint action of CITY and LESSEE without, in each case, the prior consent in writing of the Leasehold Beneficiary. There shall be no merger of (i) CITY'S fee title to the Premises, on the one hand, with (ii) this Lease and the LESSEE'S leasehold estate, on the other hand, notwithstanding that said fee title and this Lease or leasehold estate may be owned by the same person or entity. Without limiting the generality of the foregoing, no merger shall result from the acquisition by LESSEE of CITY'S interest in the Premises (or the devolution upon any one entity of both the fee interest of CITY and the leasehold estate of LESSEE).

b. CITY shall, upon serving LESSEE with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Beneficiary, and no such notice of default or termination to LESSEE shall be effective unless and until a copy is so served upon each Leasehold Beneficiary in the manner provided hereinafter. Notice of LESSEE'S default and all the notices by LESSEE to a Leasehold Beneficiary shall be given by registered or certified mail, return receipt requested, addressed to the Leasehold Beneficiary at the address last designated in writing to CITY by the Leasehold Beneficiary or LESSEE. Each notice of LESSEE'S default given by CITY will state the amounts of any rent and other payments herein provided for are then claimed to be in default (or, in the case of any other default, shall describe the default(s) with reasonable specificity). Subject to this Lease, the Leasehold Beneficiary may (but shall not be obligated to) exercise all of LESSEE's rights under this Lease to cure any default. The Leasehold Beneficiary, upon serving LESSEE with a notice of default under the provisions of any leasehold deed of trust, shall simultaneously serve a copy of such notice of default upon CITY, addressed to CITY at the address last designated in writing to the Leasehold Beneficiary by CITY.

c. The Leasehold Beneficiary shall thereupon have the right within thirty (30) days, commencing upon written notice to the Leasehold Beneficiary of such default, to remedy or cause to be remedied the defaults complained, and CITY shall accept such performance by or at the instigation of such Leasehold Beneficiary as if the same had been done by LESSEE; provided, however that if such default is a non-monetary default and is not reasonably susceptible of cure within such thirty (30) day period, then the Leasehold Beneficiary shall, subject to CITY consent, have a longer period (not to exceed one hundred eighty (180) days), provided that the Leasehold Beneficiary is diligently pursuing such cure, and so long as there is no material adverse effect on the Premises. Nothing contained herein shall be deemed to impose upon any Leasehold Beneficiary the obligation to perform any obligation of Lessee under this Lease or to remedy any default by Lessee hereunder. Any provision of this Lease to the contrary notwithstanding, no performance by or on behalf of a Leasehold Beneficiary shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the premises or bound by or liable under this Lease.

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 4.4e or Section 4.4f 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.

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 4.4d 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.

f. As long as there is a Leasehold Beneficiary, neither the bankruptcy nor the insolvency of LESSEE shall operate or permit CITY to terminate this Lease as long as all rent and all charges payable by LESSEE hereunder continue to be paid in accordance with the terms of this Lease. During the period that a Leasehold Beneficiary shall be in possession of the Premises, the Leasehold Beneficiary shall pay, or cause to be paid, all minimum rent and all percentage rent, and all charges payable by LESSEE hereunder.

g. Any sale of this Lease and the leasehold estate in any proceedings for the foreclosure of any leasehold deed of trust, or the assignment or transfer of this Lease and the leasehold estate in lieu of the foreclosure of any leasehold deed of trust shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created, however, such transferee must be in good standing and of good general reputation in its business community, trade or industry. Pursuant to San Diego Charter section 225, prior to any sale, assignment, or transfer of this Lease and the leasehold estate, such transferee or assignee shall make a full and complete disclosure of the name and identity of each and every person/entity

directly or indirectly involved in this Lease and the precise nature of all interests of each such person.

h. Following the acquisition of LESSEE'S leasehold estate by the Leasehold Beneficiary or its designee, either as a result of the foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Beneficiary or party acquiring title to the leasehold estate shall, as promptly as possible, commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion to CITY satisfaction. Nothing herein contained shall require Leasehold Beneficiary, or its successor in interest, to cure any default of LESSEE referred to in Section 4.12a (2)-(4), and CITY'S right to effect a termination of this Lease based upon such default shall be deemed waived following the acquisition of LESSEE'S leasehold estate by the Leasehold Beneficiary or its designees.

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 4.4j shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 4.4j were a separate and independent contract among CITY, LESSEE and each Leasehold Beneficiary.

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 4.4f, 4.4f(1), 4.4f(2) and .4j

(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.

k. If two (2) or more Leasehold Beneficiaries each exercise their rights hereunder and there is conflict which renders it impossible to comply with all such requests, the Leasehold Beneficiary whose Leasehold deed of trust would be senior in priority if there were a foreclosure shall prevail. CITY shall be entitled to rely on a mortgage title insurance policy issued by a title insurer licensed to do business in California for determining such priority and shall incur no liability of any kind whatsoever to LESSEE or to any Leasehold Beneficiary because of such reliance.

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 LESSEE pursuant to Section 4.4j. 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.

m. CITY agrees that the name of the Leasehold Beneficiary may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by LESSEE hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold deed of trust or collateral document shall so provide.

n. CITY agrees promptly after submission to execute, acknowledge and deliver any agreements modifying this Lease requested by any Leasehold Beneficiary, provided that such modification does not decrease LESSEE'S obligations or decrease CITY'S rights pursuant to this Lease, or make any substantive change to the lease terms

o. If the proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Beneficiary and distributed pursuant to the provisions of this Lease, the Leasehold Beneficiary may reserve its rights to apply to the deed of trust debt all, or any part of, such proceeds which are not required for the repair and restoration of the Premises.

p. The Leasehold Beneficiary shall be given notice of any arbitration, appraisal or other dispute resolution proceedings by the parties hereto (other than those respecting percentage rental adjustments), or any proceedings or disputes relating to the application or determination of any insurance, casualty or condemnation proceeds to which CITY and LESSEE are parties, and shall have the right (but not the obligation) to participate therein or to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such participation or intervention. Any such participation shall, to the extent required by the Leasehold Mortgage, and subject to the rights of third parties, include: (i) the right to receive copies of all notices, demands, and other written communications and documents at the same time they are served upon or delivered to CITY or LESSEE; (ii) filing any papers contemplated or permitted by such proceedings; and (iii) attending and participating in all hearings, meetings, and other sessions or proceedings relating to such dispute resolution; provided, however, that the Leasehold Beneficiary shall have no greater rights in such proceeding than LESSEE. In the event that the Leasehold Beneficiary shall not elect to intervene or become a party to such proceedings, the Leasehold Beneficiary shall receive notice of and a copy of any award or decision made in said arbitration proceedings.

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; (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);

r. CITY and LESSEE acknowledge that customs and market conditions for obtaining leasehold financing may change over the course of the term of this Lease. In order to carry out the intended purpose of this Section 4.4 to facilitate LESSEE's ability to obtain leasehold financing on market terms with an Institutional Lender, CITY and LESSEE agree that they may take such further actions as may be necessary or desirable to update the provisions of this Section 4.4 and the other provisions of this Lease to reflect the then current terms for obtaining leasehold financing from an Institutional Lender, provided, that any such action taken pursuant to this Section 4.4 shall not increase in any material respect the obligations

of CITY. Further parties agree that such actions may be taken so long as there is also substantial benefit to be gained by CITY. This may take the form of either an increased percentage share of the loan proceeds or an upward adjustment to the rent, or both.

s. Estoppel Certificate. Within thirty (30) calendar days after written request by LESSEE or an Institutional Lender, CITY shall execute and deliver a statement certifying as follows:

- (i) The existence and effect of the Lease and all amendments to it, if any;
- (ii) The last date CITY received rent under the Lease, the date such rent was due and the amount thereof;
- (iii) Whether there are any events of default under the Lease (and, whether there is or has been any event, act, or omission which would constitute an event of default with notice or lapse of time or both) to the best knowledge of CITY as of the date of the certificate;
- (iv) Acknowledging Institutional Lender and receipt of Institutional Lender's name and address for purpose of notices to be given and received pursuant to the provisions of the Lease;
- (v) That Institutional Lender may exercise against CITY all of Institutional Lender's rights in the Lease and all amendments to it, if any;
- (vi) Confirming the commencement and termination dates of the Lease, whether any options to renew or extend the Lease or to purchase the CITY's interests in the Premises have been exercised or have lapsed, and other factual matters or assurances as reasonably requested; and
- (vii) That CITY understands the recipient will rely on the certificate.

8. Section 4.5. LESSEE'S Right to Assign, is amended by adding the following paragraphs added at the end of the section:

4.5.1. Charter Section 225. Pursuant to San Diego Charter section 225, LESSEE and each of its assignees and subtenants shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease and the precise nature of all interests of each such person. Each and every person/entity proposed to have an interest in this Lease shall be subject to CITY'S review and approval, in CITY's discretion. Notwithstanding the foregoing, if LESSEE, or its parent, are a publicly traded company on a nationally recognized exchange, it shall not be required to identify the shareholders of the publicly traded entity, as long as those shareholders are not directly or indirectly involved in this Lease.

4.5.2 Additional Consideration to CITY. If LESSEE assigns this Lease or subleases a majority of the Premises, then in addition to any other amounts payable by LESSEE under this Lease, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid to LESSEE for the assignment of the leasehold; and (b) for majority subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease ("Additional Consideration to CITY")

4.5.3 Basis of 2% Calculation. The amount upon which such two percent payments shall be based shall be the total consideration resulting from the transaction, including, without limitation, all cash payments and the market value of non-cash consideration, including, without limitation, stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments.

4.5.4 Transaction Statement. Prior to CITY'S consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee or sublessee as to the amount due CITY, which shall be attested to in writing by and binding upon LESSEE and such assignee. The consideration payable to CITY for each assignment or majority subleasing shall be paid concurrently with the closing of the proposed transaction and shall be in addition to any rent or other payment required under this Lease.

4.5.5. Exceptions to Additional Consideration to CITY. The two-percent (2%) payments required by this section shall not apply to:

- (a) an assignment of this Lease to a LESSEE Affiliate. For purposes hereof LESSEE Affiliate shall include entities controlled by, controlling or under common control with LESSEE. Without limiting the foregoing, "LESSEE Affiliate" includes any entity controlled by, controlling, or under common control with Ashford Hospitality Prime, Inc., Ashford Hospitality Trust, Inc., Ashford Inc., Hilton Worldwide, Inc., Hilton Worldwide Holdings Inc., Hilton Management LLC and Hilton Resorts Corporation;
- (b) the subleasing of a majority of the Premises to a LESSEE Affiliate;
- (c) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the holder of a controlling interest in LESSEE
- (d) foreclosure, deed in lieu transfer and subsequent assignment.

9. Section 4.7, Successor; Section 4.8, Conditions Precedent to Consent and Release; are deleted in their entirety

10. The first sentence of Section 4.9, Arbitration In Event of Disagreement on Qualified Assignee Status or CITY'S Refusal to Consent, is deleted and replaced with the following:

Prior to the date thirty (30) business days after the time LESSEE has complied with the requirements of Section 4.5, CITY may give notice to LESSEE of a valid objection that the proposed assignee is not a Qualified Assignee or, as regards other assignees, that such proposed assignee does not meet the requirements of the Lease with respect to net worth, competent management, general business reputation or has not made the disclosure requirements of City Charter, Section 225.

11. Section 7: General Provisions, is amended by deleting Section 7.1., Notices, in its entirety and replacing it with the following:

7.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, delivered by a nationally recognized courier service, or by the United States Postal Service ("USPS"), postage prepaid. If Notice is given by USPS, it shall be deemed given as of the date four (4) USPS business days after the postmark date, unless the postmark is illegible or a return receipt is requested, in which event it shall be effective when received. Notices shall be addressed as follows:

If to LESSEE:

CHH Torrey Pines Hotel Partners
Attention: Legal Department
14185 N. Dallas Pkwy, Ste. 1100
Dallas, TX 75254

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Any party entitled or required to receive notices may designate by notice to the other party a different address to which notices shall be sent.

12. Section 7, General Provisions, is amended by deleting Section 7.3. CITY Approval, in its entirety and replacing with the following:

7.3. City Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Mayor, or his designee, without need for further resolution by the City Council

13. Section 7, General Provisions, is amended by deleting Section 7.4, Nondiscrimination, in its entirety and replacing it with the following:

7.4. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.

14. Section 7, General Provisions, is amended by deleting Section 7.5, Equal Opportunity, in its entirety and replacing it with the following:

7.5. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority (as the same may be amended from time to time) LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements, may result in termination of this Lease, and debarment from participating in CITY contracts for a period of not less than one (1) year.

15. Section 7, General Provisions, is amended by deleting Section 7.11, CITY Employee Participation Policy, in its entirety and replacing it with the following:

7.11. CITY Employee Participation Policy. CITY may, unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

16. Section 7, General Provisions, is amended by adding new Section 7.13, Accessibility Assessment, to read as follows:

7.13. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY states that the Premises and Improvements have not been inspected by a Certified Access Specialist (CAS).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

17. Section 7, General Provisions, is amended by adding new Section 7.14, California Public Records Act, to read as follows:

7.14 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs

7.14.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

7.14.2 LESSEE'S Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS

THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

18. Section 7, General Provisions, is amended by adding new Section 7.15, Hazardous Substances, to read as follows:

7.15 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance in violation of applicable law on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste in violation of applicable law.

7.15.1 Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.

7.15.2 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises in accordance with all applicable laws, rules and regulations of competent governmental authority.

7.15.3 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.

7.15.4 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY

harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

7.15.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) business days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

7.15.6 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

19. Section 7, General Provisions, is amended by adding new Section 7.16, Equal Benefits, to read as follows:

7.16 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

20. Section 7, General Provisions, is amended by adding new Section 7.17, Disabled Access Compliance, to read as follows:

7.17 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA" as the same may be amended from time to time); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

- 7.17.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 7.17.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 7.17.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 7.17.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 7.17.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.
- 7.17.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall, be a default of this Lease.

21. Section 7, General Provisions, is amended by adding new section 7.18, Drug-free Workplace, to read as follows:

7.18 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, as may be amended from time to time, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

7.18.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

7.18.2 Establish a drug-free awareness program to inform employees about all of the following:

7.18.3 The dangers of drug abuse in the workplace;

7.18.4 LESSEE's policy of maintaining a drug-free workplace;

7.18.5 Any available drug counseling, rehabilitation, and employee assistance programs; and

7.18.6 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

22. Section 7, General Provisions, is amended by adding new Section 7.19, Local Business and Employment, to read as follows:

7.19 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises LESSEE shall to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its efforts to hire qualified local residents and firms whenever practicable.

23. Section 7, General Provisions, is amended by adding new Section 7.20, Water Quality Assurances, to read as follows:

7.20 Water Quality Best Management Practices. CITY and LESSEE are committed to the implementation of controls ("best management practices" or "BMPs")

to manage activities on the Premises in a manner which aids in the protection of the CITY's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of the San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

24. Section 7, General Provisions, is amended by adding new Section 7.21, Authority, to read as follows:

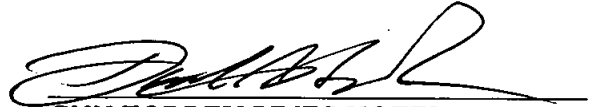
7.21 Authority. Each individual executing this Second Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Second Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing 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 Second Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Second 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.

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

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

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

Date: 4/28/2017



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

Date: 6/8/17

THE CITY OF SAN DIEGO, a California
municipal corporation

By: 

Name: CYNTHIA THOMPSON

Title: DIRECTOR, REAL ESTATE SERVICES

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

By: 
Name: Aldo R. Mendoza
Title: Deputy City Attorney
Date: June 9, 2017

R-311148

Exhibit "G"

ESTOPPEL CERTIFICATE

CHH Torrey Pines Hotel Partners, LP, a Delaware Limited Partnership

FROM: The City of San Diego
[]
[]
("Lessor")

TO: CHH Torrey Pines Hotel Partners, LP

Attention: _____
("Lessee")

Re: The Percentage Lease dated August 10, 1987, filed as document No. RR-269077-1, in the Office of the San Diego City Clerk on August 10, 1987, 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, the Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times, effective September 27, 2002, the Amended Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times, dated February 13, 2007, and the Second Amendment to Percentage Lease filed in the Office of the San Diego City Clerk on _____ as Document No. _____, (all together, the "Lease") pertaining to the CITY-owned property located at 10950 N. Torrey Pines Road, San Diego, California, 92037 (the "Leased Premises")

Ladies and Gentlemen:

As the present owner and holder of Lessor's interest under the Lease, a current and complete copy of which is attached as Exhibit A, CITY certifies to you, your lenders, and your respective successors and assigns, that as of the date this Certificate:

(a) The Lease described above constitutes the entire agreement between the Lessor and the Lessee and has not been otherwise modified or amended;

(b) To the best knowledge of CITY as of the date of this Certificate, there are no events of default under the Lease and CITY knows of no event which, but for the passage of time or the giving of notice, or both, would constitute an event of default under the Lease by the Lessee;

(c) The Commencement Date of the Lease is _____ and the Lease will terminate on _____;

(d) The current minimum rent under the Lease is \$ _____;

(e) The rental payment is due on _____. The last rental payment received by CITY was on _____ in the amount of \$_____;

(f) As an Institutional Lender pursuant to the Lease, CITY acknowledges receipt of your name and address for the purpose of notices to be given and received pursuant to the provisions of the Lease;

(g) As an Institutional Lender pursuant to the Lease, you may exercise against CITY all of the Institutional Lender's rights in the Lease; and

(h). CITY understands that the recipient will rely on this Certificate.

Very truly yours,

By: _____

Name: _____

Title: _____

Date: _____, _____

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

5/22/17

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

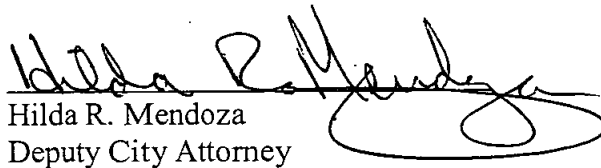
WHEREAS, the Second Amendment also includes a new requirement for the payment of 2% additional consideration to City in the event of refinancing, assignment or subleasing a majority interest of the Lease, and that the Lease be updated to include the City's now-standard general lease provisions such as 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
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


Deputy City Clerk

Approved: _____

5/30/17

(date)


KEVIN L. FAULCONER, Mayor

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	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

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.

(Seal)

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

By Atty Meady, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311148

Passed by the Council of The City of San Diego on May 23, 2017, by the following vote:

YEAS: BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,
ALVAREZ, GOMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

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: Stacy D. Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-311148, approved on May 23, 2017. The date of final passage
is May 30, 2017.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Stacy Ready, Deputy