

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

The City of San Diego, a Municipal Corporation in the County of San Diego, State of California ("City") , as Lessor under that certain Lease Agreement entered into with Torrey Pines Inn, Inc. a California corporation, ("Lessee"), dated October 2, 1961, and filed in the Office of the City Clerk as Document 629873 ("Lease"), and later assigned to Torrey Pines Resort, Ltd., a California limited partnership ("Successor Lessee"), hereby (a) consents to the Assignment of that Lease Agreement to The Lodge at Torrey Pines Partnership, a California limited partnership ("Assignee"), in accordance with the terms and conditions set forth in the attached Assignment and Assumption of Lease entered into by Successor Lessee and said Assignee, dated May 15, 1995 , and (b) releases, acquits and discharges Successor Lessee from all liability or obligations under the Lease effective 12:01 A.M. on June 5, 1995 subject to a final audit by the City through the day Mission Valley Escrow numbers 95-33230-5 and 95-33231-8 close.

THE CITY OF SAN DIEGO

Dated: 5/24/95

By: Robert J. Collins

City Manager

Deputy Director

APPROVED AS TO FORM:

JOHN W. WITT, CITY ATTORNEY

Dated: 5/24/95

By: [Signature]

Deputy

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE ("Assignment") is dated May 15, 1995, between TORREY PINES RESORT, LTD., a California limited partnership ("Assignor"), and THE LODGE AT TORREY PINES PARTNERSHIP, a California limited partnership ("Assignee"), who agree as follows:

1. RECITALS. This Assignment is entered into in contemplation of the following facts and circumstances:

(a) THE CITY OF SAN DIEGO, a Municipal Corporation in the County of San Diego, State of California, as Lessor ("Lessor"), and TORREY PINES INN, INC., ("Lessee"), entered into that certain Lease, dated September 21, 1961 ("Lease"). Under the terms of the Lease, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, Lessor leased to Lessee that certain real property situated in the City and County of San Diego, State of California, which is more particularly described in the Lease and commonly known as the Torrey Pines Inn ("Premises"). Lessor leased the Premises to Lessee for a term of fifty (50) years, commencing on September 21, 1961 and continuing until September 20, 2011.

(b) Assignor is the successor-in-interest to Lessee's right, title and interest in and to the Lease.

(c) Assignor desires to assign its entire interest in the Lease to Assignee upon and subject to the provisions and conditions hereinafter set forth.

(d) The provisions of Section 8 of the Lease provide that Lessor must consent to the assignment of Assignor's interest in the Lease.

2. ASSIGNMENT. Assignor hereby transfers, assigns and delegates to Assignee all of Assignor's right, title, interest and obligations as Lessee under the Lease ("Assignment") effective upon Assignor receiving (a) all consideration specified in the Purchase and Sale Agreement dated February 3, 1995 between Assignor and Assignee's predecessor in interest; and (b) a properly executed Consent to Assignment from Lessor providing that Assignor is released from all obligations under the Lease.

3. ACCEPTANCE. Assignee hereby accepts the Assignment and agrees to perform all of the obligations of the named Lessee under the Lease.

4. FURTHER ASSURANCES. Each of the parties hereto does hereby covenant and agree, without the necessity of any further consideration whatsoever, to execute, acknowledge and deliver all such other documents and to take all such other actions as may be in the reasonable opinion of any of the parties hereto necessary or convenient in order to consummate the transactions contemplated hereby or carry out more effectively any of the purposes of this Assignment.

ASSIGNOR:

TORREY PINES RESORT, LTD.,
a California limited
partnership

By: Double Eagle, Inc.
a California corporation,
general partner

By: Allard Roen
Allard Roen, President

ASSIGNEE:

THE LODGE AT TORREY PINES
PARTNERSHIP, a California
limited partnership

By: Anne L. Evans
Anne L. Evans,
Managing General Partner

RECORDING REQUESTED BY:
Chicago Title

WHEN RECORDED RETURN TO:
Robert H. Gleason
Evans Hotels
998 W. Mission Bay Drive
San Diego CA 92109

651

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH, COUNTY RECORDER

RF:	9.00	FEES:	19.00
AF:	9.00		
MF:	1.00		

920239-13

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is made as of April 24, 1995 between the CITY OF SAN DIEGO, a municipal corporation ("Lessor"), and THE LODGE AT TORREY PINES PARTNERSHIP, a California limited partnership ("Lessee"), who, for purposes of recordation and notice, acknowledge, agree, and confirm as follows:

1. LEASE PREMISES: The parties have executed that certain Percentage Lease dated April 24, 1995, Document 00-18172 ("Lease"), under which Lessor has leased to Lessee and Lessee has leased from Lessor that certain real property in the City of San Diego, County of San Diego, State of California, described in Exhibit A attached hereto and incorporated herein by reference.
2. TERM: The term of the Lease is for a period of forty years commencing June 5, 1995 and expiring June 4, 2035, provided, however that the term is subject to extension for an additional fifteen (15) year period upon and subject to the provisions and conditions of the Lease.
3. GOLF COURSE EXCLUSIVE: The Lease contains the following provision:

"LESSEE shall also operate the Facilities (as defined below), and shall have the first and exclusive right to sell and(or) serve at other locations upon Torrey Pines Golf Courses, food, non-alcoholic and alcoholic beverages, tobaccos, confections, or other merchandise first approved in writing by CITY, so long as LESSEE operates said Facilities. . . . The "Facilities" shall include the existing snack bar, a second snack bar (if approved by the CITY Manager), mobile service carts, temporary additional facilities for special events, and such other facilities as approved by the CITY Manager. If CITY desires to develop a permanent food and(or) beverage facility or facilities at the Torrey Pines Golf Courses in addition to the Facilities and LESSEE desires to operate such a permanent facility or facilities, then CITY and LESSEE shall first negotiate in good faith to arrive at an

agreement satisfactory to the CITY Manager and LESSEE under the same rent percentages and substantially similar terms and conditions as contained in this lease. If LESSEE does not desire to and otherwise refuses to operate the Facilities or any other permanent food and(or) beverage facility or operation on said golf courses outside the leased area, then CITY shall be free to let such concessions to any other person or persons."

4. CANCELLATION: This Lease cancels and supersedes in its entirety that certain lease dated October 2, 1961, Document 629873, between Lessor and Torrey Pines Inn, Inc. which said lease was subsequently assigned to Torrey Pines Resort, Ltd., and subsequently assigned to Lessee.
5. DEFINITIONS: Capitalized terms not otherwise defined in this Memorandum shall have the same meanings as defined in the Lease.
6. RECORDATION: This Memorandum is being recorded for the purposes of notice only and is not intended to amend, modify, or otherwise change the provisions and conditions of the Lease.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Memorandum effective as of the date written above.

"LESSOR

THE CITY OF SAN DIEGO

Date: 6/1/95

By: Robert J. Collins
City Manager

APPROVED AS TO FORM AND LEGALITY:
John W. Witt, City Attorney

Date: 6/1/95

By: [Signature]
Deputy City Attorney

"LESSEE"

THE LODGE AT TORREY PINES
PARTNERSHIP, a California limited
partnership

Date: 6-1-95

By: [Signature]
Managing General Partner

EXHIBIT A

LEGAL DESCRIPTION

All those portions of Pueblo Lots 1330 and 1331 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to map thereof made by James Pascoe in 1870, a copy of which map was filed in the Office of the County Recorder of San Diego County, November 14, 1921, as Miscellaneous Map No. 36, more particularly described as follows:

Commencing at the Northeast corner of Pueblo Lot 1331, which corner is the common corner of Pueblo Lots 1330, 1331, 1333, and 1334; thence South $00^{\circ}22'50''$ West, 1155.24 feet; thence South $89^{\circ}55'53''$ West, 115.41 feet to the TRUE POINT OF BEGINNING; thence continuing South $89^{\circ}55'53''$ West, 277.68 feet; thence South $05^{\circ}03'32''$ East, 553.00 feet; thence North $84^{\circ}57'03''$ East, 402.47 feet; thence North $07^{\circ}05'02''$ West, 96.61 feet to the beginning of tangent 168.13-foot radius curve, concave Southwesterly; thence Northerly and Northwesterly along the arc of said curve through a central angle of $29^{\circ}13'53''$, a distance of 85.78 feet; thence tangent to said curve, North $36^{\circ}18'55''$ West, 148.40 feet to the beginning of a tangent 212.00-foot radius curve, concave Northeasterly; thence Northwesterly and Northerly along the arc of said curve through a central angle of $36^{\circ}32'23''$, a distance of 135.20 feet; thence North $00^{\circ}13'28''$ East, 94.72 feet returning to the TRUE POINT OF BEGINNING.

Drawing 13929-CL / Job 220592 / P. Crawford

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

654

No. 5907

State of California

County of San Diego

On 6/1/95 before me, Marsha L Alesi, Notary Public

DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Robert J. Collins, Deputy Director

NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Marsha L Alesi
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

City of San Diego

DESCRIPTION OF ATTACHED DOCUMENT

Memorandum of Lease
TITLE OR TYPE OF DOCUMENT

3
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

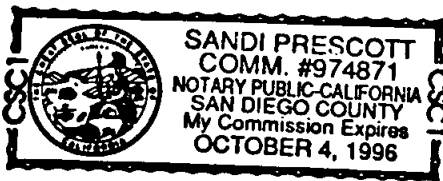
State of CALIFORNIA

County of SAN DIEGO

On JUNE 1 1995 before me, SANDI PRESCOTT, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared ANNE L. EVANS
NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sandi Prescott
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☒ PARTNER(S) ☐ LIMITED
☐ GENERAL

- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Memoandum of Lease
TITLE OR TYPE OF DOCUMENT

3
NUMBER OF PAGES

April 24, 1995
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

WHEN RECORDED MAIL TO
Peninsula Bank of San Diego
Real Estate Department
2170 Chatsworth Boulevard
San Diego, CA 92107
SEND TAX NOTICE TO
The Lodge at Torrey Pines,
a California Limited Partnership
998 West Mission Bay Drive
San Diego, CA 92109

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF LEASE AND CONSENT OF LANDLORD

Borrower: The Lodge at Torrey Pines Lender: Peninsula Bank of San Diego
a California Limited Partnership Real Estate Department
998 West Mission Bay Drive 2170 Chatsworth Boulevard
San Diego, CA 92109 San Diego, CA 92107

Tenant: The Lodge at Torrey Pines Landlord: The City of San Diego
(If other a California Limited Partnership a Municipal Corporation
than 998 West Mission Bay Drive 1200 Third Avenue, Suite 1700
Borrower) San Diego, CA 92109 San Diego, CA 92101

Landlord and Tenant have entered into a lease dated April 24, 19 95, (the "Lease"), a true copy of which has been provided to Lender or is attached to this Assignment. The Lease covers the following described premises located at (if the lease has been recorded, use legal description and list recording information together with the legal description):

Parcel 1:

Those portions of Pueblo Lots 1330 and 1331 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of said map being filed in the Office of the County Recorder of San Diego County, and is known as Miscellaneous Map No. 36, as more fully described in Exhibit "A" attached hereto and made a part hereof.

Commonly known as: 11480 North Torrey Pines Road, La Jolla, CA 92037

(the "Premises"). Lender is making a loan directly to the above named Borrower (the "Loan"). To secure the Loan, Tenant (who may, but need not, be the same person as the Borrower) has agreed to assign the Lease to Lender. Both Landlord and Tenant acknowledge that they each will benefit from the Loan and that Lender would not make the Loan if it did not receive this Assignment.

1. **Assignment of Lease.** In consideration of the Loan and for other valuable consideration, the receipt of which is hereby acknowledged, Tenant assigns to Lender all of Tenant's rights in the Lease, as partial security for the Loan. The parties intend that this Assignment will be a present transfer to Lender of all of Tenant's rights under the Lease, subject to Tenant's rights to use the Premises and to enjoy the benefits of the Lease while not in default on the Loan or Lease. This Assignment will take effect when received by Lender, without the necessity of any acceptance by Lender, in writing or otherwise, and will remain in full force and effect until the Loan is paid in full, including all renewals, extensions and modifications. This Assignment includes all future renewals of and amendments to the Lease. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld.
2. **Consent of Landlord.** Landlord hereby expressly consents to the assignment of the Lease to Lender on the terms set forth in this Assignment. If Tenant defaults under the Loan or the Lease, Lender may reassign the Lease to a new lessee who thereupon shall assume all of Tenant's obligations under the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation, liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Tenant will remain fully liable for all obligations of Tenant as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or abandons the Premises, Lender will have no further obligation to Landlord.
3. **Lease Defaults.** Landlord agrees not to terminate the Lease, despite default by Tenant, without giving Lender written notice of the default and an opportunity to cure the default within a period of not less than thirty days from receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Tenant), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord. Lender may, at Lender's option, elect to substitute itself to the estate of the Lessee as provided in Section 4 of the Lease. In the event such substitution is elected, Lender shall give notice to the City of such election within the time period provided in the Lease.
4. **Personal Property.** Landlord agrees that all personal property on the Premises in which Lender has a security interest is severable and may be removed without further consent from Landlord in the event Tenant defaults under the Loan or the Lease. Any liens which Landlord may have against the personal property will be subordinate to all security interests of Lender in the personal property, if any. However, Lender will not remove any such property in such a way that the Premises are damaged without reimbursing Landlord for the cost of repair.
5. **Additional Provisions.** This Assignment shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Assignment and all covenants of the Landlord and Tenant stated in this Assignment are enforceable by any transferee or endorsee to whom the Lender may have transferred this Assignment.

Landlord and Tenant each acknowledges it has read all of the provisions of this Assignment of Lease and Consent of Landlord, and each agrees to its terms. This Assignment is dated _____.

LANDLORD: The City of San Diego,
a Municipal Corporation

TENANT: The Lodge at Torrey Pines
a California Limited Partnership

BY: _____

BY: See attached Exhibit "A"

NOTE: If lease is recorded, this Assignment must be notarized. See reverse of original.

Anne L. Evans, Managing General Partner

LENDER: Peninsula Bank of San Diego

BY: _____
Gerry H. Veal, Vice President/Manager

DESCRIPTION

PARCEL 1:

THOSE PORTIONS OF PUEBLO LOTS 1330 AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF SAID MAP BEING FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID PUEBLO LOT 1331; THENCE SOUTH 0° 22' 50" WEST ALONG THE EASTERLY LINE THEREOF 1155.24 FEET; THENCE LEAVING SAID EASTERLY LINE, SOUTH 89° 55' 53" WEST 115.41 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89° 55' 53" WEST 277.68 FEET; THENCE SOUTH 5° 03' 32" EAST 553 FEET, THENCE NORTH 84° 57' 03" EAST 402.47 FEET; THENCE NORTH 7° 05' 02" WEST 96.61 FEET TO A TANGENT 168.13 FOOT RADIUS CURVE, CONCAVE WESTERLY, THENCE NORTHERLY ALONG SAID CURVE 85.78 FEET; THENCE TANGENT TO SAID CURVE, NORTH 36° 18' 55" WEST 148.40 FEET TO A TANGENT 212 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE 135.20 FEET; THENCE TANGENT TO SAID CURVE NORTH 0° 13' 28" EAST 94.72 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS TO AND FROM CALLAN ROAD AND NORTH TORREY PINES ROAD (OLD HIGHWAY 101) DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PUEBLO LOTS 1330 AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF SAID MAP BEING FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE TORREY PINES INN LEASEHOLD, PER DOCUMENT RECORDED OCTOBER 24, 1961 AS FILE NO. 184967 OF OFFICIAL RECORDS, THE SOUTHERLY LEASELINE OF SAID LEASEHOLD BEARS NORTH 82° 32' 25" EAST, (RECORD NORTH 84° 57' 03" EAST) TO SAID CORNER; THENCE LEAVING SAID LEASELINE NORTH 82° 32' 25" EAST, 120.81 FEET MORE OR LESS TO THE WESTERLY SIDELINE OF NORTH TORREY PINES ROAD (OLD HIGHWAY 101) 153.00 FEET IN WIDTH PER MAP NO. 12164; THENCE ALONG SAID SIDELINE NORTH 9° 28' 03" WEST 210.00 FEET TO THE TRUE POINT OF BEGINNING; SAID POINT IS ON A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 200.00 FEET; THENCE LEAVING THE SIDELINE OF NORTH TORREY PINES ROAD NORTHWESTERLY ALONG SAID CURVE A CENTRAL ANGLE OF 46° 31' 57" A DISTANCE OF 162.43 FEET; THENCE TANGENT TO SAID CURVE NORTH 56° 00' 00" WEST, 155.67 FEET MORE OR LESS TO A POINT ON A LINE 68.00 FEET SOUTHERLY AND PARALLEL WITH THE NORTHERLY LEASELINE OF SAID TORREY PINES INN LEASEHOLD; THENCE ALONG SAID PARALLEL LINE SOUTH 87° 31' 15" WEST (RECORD NORTH 89° 55' 53" EAST) 61.72 FEET MORE OR LESS TO THE EASTERLY LEASELINE OF SAID LEASEHOLD; SAID POINT BEARS SOUTH 2° 11' 10" EAST 68.00 FEET (RECORD NORTH 0° 13' 28" EAST) ALONG SAID EASTERLY LEASELINE FROM THE NORTHEAST CORNER OF SAID LEASEHOLD; THENCE ALONG SAID LEASELINE NORTH 2° 11' 10" WEST (RECORD NORTH 0° 13' 28" EAST) 68.00 FEET TO THE NORTHEAST CORNER OF SAID LEASEHOLD; THENCE NORTH 87° 31' 15" EAST (RECORD NORTH 89° 55' 53" EAST) 115.41 FEET TO A POINT ON THE EAST LINE OF SAID PUEBLO LOT 1330, SAID POINT BEARS SOUTH 2° 01' 48" EAST (RECORD SOUTH 0° 22' 50" WEST) 1155.24 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1330; THENCE NORTH 80° 31' 57" EAST 113.49 FEET TO THE WESTERLY SIDELINE OF SAID NORTH TORREY PINES ROAD; THENCE ALONG SAID SIDELINE SOUTH 9° 28' 03" EAST 313.17 FEET TO THE TRUE POINT OF BEGINNING.