

**CALENDAR ITEM
C49**

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04/23/14
PRC 4691.1
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**TERMINATION OF LEASE,
ISSUANCE OF A GENERAL LEASE - COMMERCIAL USE,
AND APPROVAL OF SUBLEASE**

APPLICANT/LESSOR:

FelCor/CSS Holdings, L.P.

SUBLESSEE:

DJONT Operations, LLC

AREA, LAND TYPE, AND LOCATION:

19.3 acres of filled and partially filled tide and submerged land in San Francisco Bay, city of Burlingame, San Mateo County.

AUTHORIZED USE:

LEASE: Continued use and maintenance of a 10-story hotel, restaurant, lounge, hotel concessions, public pier, lagoon, footbridge, and public park.

SUBLEASE: Operation and maintenance of a 10-story hotel, restaurant, lounge, hotel concessions, public pier, lagoon, footbridge, and public park.

LEASE TERM:

LEASE/SUBLEASE: 45 years, beginning May 1, 2014.

CONSIDERATION:

Minimum annual rent in the amount of \$464,652 per year, against five and seven tenths percent (5.7%) of the Gross Revenue derived from all commercial activities on or within the lease premises, including any arising from and/or ancillary to any and all operations permissible under this lease. Effective July, 1 2038, the percentage rental amount shall increase to seven percent (7%).

SPECIFIC LEASE PROVISIONS:

Insurance: Liability coverage of no less than \$15,000,000 per occurrence

Bond: \$1,000,000 in a form acceptable to Commission staff

CALENDAR ITEM NO. **C49** (CONT'D)

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the upland adjoining the lease premises.
2. On July 6, 1972, the Commission authorized a title settlement and boundary line agreement (BLA 131) between the Commission and Anza Pacific Corporation. BLA 131 fixed the boundary between State sovereign lands and private uplands and provided for the issuance of 13 leases of State property to the Anza Pacific Corporation, including: Lease Nos. PRC 4689.1, 4690.1, and 4691.1. These leases are scheduled to expire on June 30, 2038. Subsequently, on March 24, 1983, the Commission authorized an assignment and amendment of these leases to Hometel Development Corporation for the development of a 360 room hotel with a restaurant, lounge, typical hotel concessions, and public park. The leases were later assigned to San Francisco International Airport Hometel (On-The-Bay) Limited Partnership. On October 17, 1995, the Commission authorized an assignment of Lease Nos. PRC 4689.1, 4690.1, and 4691.1 to FelCor/CSS Holdings, L.P. (FelCor), a Delaware limited partnership.
3. FelCor has now applied to terminate Lease Nos. PRC 4689.1, 4690.1, and 4691.1. and has made application for a new General Lease – Commercial Use and approval of a sublease. Although there are still 24 years left on the existing leases, for business purposes, FelCor is requesting a new lease with a longer term in order to have the certainty of use to warrant making the long-term capital investments in the property to keep it in good repair and competitive in the market. FelCor is currently in good standing on the leases. Staff updated various provisions of the lease to reflect current Commission practices. Staff is recommending that Lease Nos. PRC 4689.1, 4690.1, and 4691.1 be terminated and all leases be consolidated under a new Lease No. PRC 4691.1.
4. FelCor is treated as a real estate investment trust (REIT) for tax purposes. A REIT, due to current tax law restrictions, cannot operate a hotel business. In 1995, FelCor entered a Lease Agreement (sublease) with an affiliate DJONT Operations, LLC, a Delaware limited liability company (DJONT). In 1996, DJONT entered into an Embassy Suites License Agreement with Promus Hotels, Inc., a Delaware corporation (Promus), to operate the property as an Embassy Suites. In 2006, DJONT entered into a Management Agreement with Promus, to continue operating the hotel as an Embassy Suite. The Management Agreement was assigned to Embassy Suites Management LLC on October 24, 2007, pursuant to a

CALENDAR ITEM NO. C49 (CONT'D)

notice of Merger and of Affiliate Assignment from Hilton Hotel Corporation, dated October 22, 2007. The hotel currently operates under the name Embassy Suites San Francisco Airport – Waterfront.

5. A Master Agreement for the Extension of Management Agreements was made on January 1, 2009, between FelCor TRS Holdings, L.L.C., a Delaware limited liability company, for itself and its subsidiaries, and Embassy Suites Management LLC (ESM), Double Tree Management LLC, and Hilton Management LLC (collectively Managers or singularly Manager). An Extension and Amendment to Management Agreement dated July 31, 2009, between DJONT and ESM extended the term of the Management Agreement to March 31, 2016.
6. The lease premises encompass approximately 19.3 acres of filled and partially filled sovereign land and are improved with a 10-story hotel, restaurant, lounge, hotels concessions, public pier, footbridge, lagoon, and public park. The entire lease premises is maintained and operated by ESM. The property appears to be well maintained and in good condition based on a staff site inspection performed on January 5, 2012.
7. **New Lease:** The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

8. **Termination of Leases and Approval of Sublease:** The staff recommends that the Commission find that the subject termination of two leases and approval of a sublease do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with CEQA.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et

CALENDAR ITEM NO. **C49** (CONT'D)

seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Legal Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Termination of Leases and Approval of Sublease: Find that the subject termination of two leases and approval of a sublease are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize termination of Lease Nos. PRC 4689.1, 4690.1, and 4691.1, General Lease – Commercial Use, to FelCor/CSS Holdings, L.P., effective April 30, 2014, and consolidate under a new Lease No. PRC 4691.1.
2. Authorize issuance of a new General Lease – Commercial Use to FelCor/Holdings, L.P. beginning May 1, 2014, for a term of 45 years, for the continued use and maintenance of a 10-story hotel, restaurant, lounge, hotel concessions, public pier, footbridge, lagoon, and public park as described on Exhibit A attached and by this reference made a part hereof; and as shown on Exhibit B (for reference purposes only); minimum

CALENDAR ITEM NO. **C49** (CONT'D)

annual rent in the amount of \$464,652, against five and seven tenths percent (5.7%) of the Gross Revenue derived from all commercial activities on or within the lease premises, including any arising from and/or ancillary to any and all operations permissible under this lease; effective July, 1 2038, the percentage rental amount shall increase to seven percent (7%) as provided in the lease; liability insurance in an amount no less than \$15,000,000 per occurrence; and surety in the amount of \$1,000,000.

3. Authorize a sublease from FelCor/CSS Holdings, L.P. to DJONT Operations, LLC, by sublease agreement, substantially in the same form as the previous sublease, which requires that the sublessee assumes all obligations of the lease and abides by lease terms and which provides for the effective administration of the lease property by the sublessee.

EXHIBIT A

PRC 4691.1

LAND DESCRIPTION

A parcel of State owned land lying in the City of Burlingame, County of San Mateo, State of California, described as follows:

Parcel "H", as shown on that certain Parcel Map entitled "Parcel Map Being a Resubdivision of Lots #2, & #3 Block No. 6, "Anza Airport Park Unit No. 6" and a Portion of the Lands of the State of California within Burlingame, San Mateo County, California", said map filed on January 29, 1996 in Volume 68 of Parcel Maps, Pages 93-95, Official Records of said County.

END OF DESCRIPTION

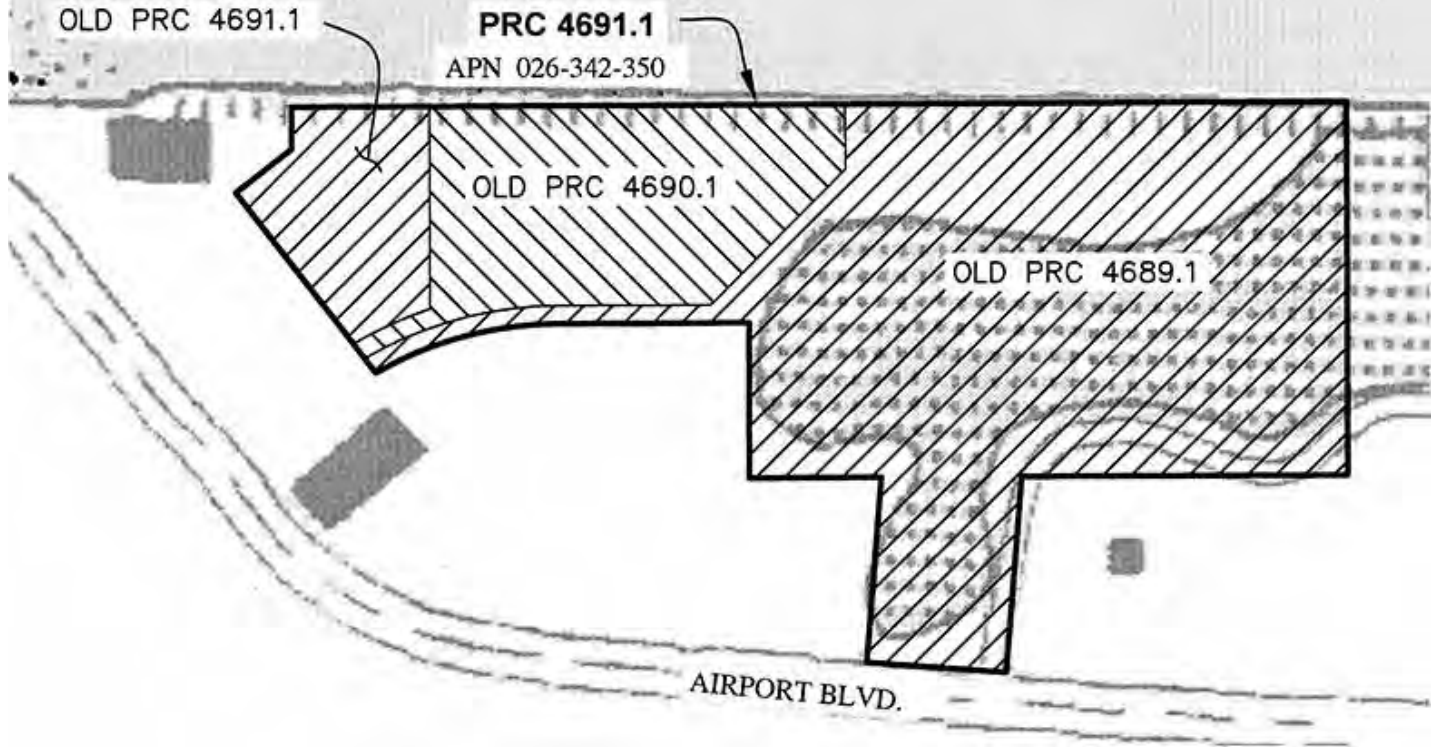
Prepared 4/15/2014 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

SAN FRANCISCO BAY



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 4691.1
 FELCOR / CSS HOLDINGS
 APN 026-342-350
 GENERAL LEASE -
 COMMERCIAL USE
 SAN MATEO COUNTY



DJP 4/17/14