


CITY COUNCIL ACTION REQUEST

Department(s): Office of Economic Development and Cultural Affairs	CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.	Coordination: City Attorney's Office, City Manager's Budget Office, Planning, Building, and Code Enforcement Department, and Department of Public Works	Dept. Approval: /s/ Nanci Klein
Council District(s): 3			CMO Approval:  10/6/2023

SUBJECT: ACTIONS RELATED TO THE POTENTIAL TRANSFER OF TITLE OF THE PROPERTY COMMONLY REFERRED TO AS THE SIGNIA BY HILTON "SOUTH TOWER PROPERTY," LOCATED AT 170 S. MARKET ST.

RECOMMENDATION:

- (a) Adopt a resolution:
 - (1) Consenting to the transfer of title to the property currently owned by SC SJ Holdings, LLC, commonly referred to as the Signia by Hilton "South Tower Property" located at 170 S. Market St., to AG170, LLC;
 - (2) Consenting to the separation of the North Tower Property and the South Tower Property as referenced in the Lot Tie Agreement and Covenant Regarding Transfer and Certain Services dated March 15, 2002 between Light Tower Associates I, LLC and Light Tower Associates II, LLC and subsequent termination of the same Agreement by the Parties; and
 - (3) Authorizing the City Manager or designee to negotiate and execute any documents as necessary to memorialize the City's consent.
- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute an amendment to the Amended and Restated Revocable Encroachment Permit for the Operation and Maintenance of Underground Service Tunnel and Above-Ground Pedestrian Bridge dated March 20, 2002, and entered into by and among Light Tower Associates I, LLC, Light Tower Associates II, LLC, and the City to provide that the obligation to remove the above ground pedestrian bridge pursuant to the terms of the permit will rest solely with the owner of the South Tower Property, and its successors and assigns, and the obligation to remove the underground service tunnel pursuant to the terms of the permit will rest solely with the owner of the property commonly referred to as the Signia by Hilton "North Tower Property" located at 170 S. Market St., and its successors and assigns.

BASIS FOR RECOMMENDATION:

The property located at 170 South Market Street, commonly known as the "South Tower Property," is currently operated as part of the Signia by Hilton San José hotel in conjunction with the adjoining property, commonly known as the "North Tower Property," both of which are currently owned by SC SJ Holdings, L.L.C. SC SJ Holdings, L.L.C. now wishes to sell the South Tower Property to a developer, AG170, L.L.C.

In 2002, the previous property owners, known as Light Tower Associates I & Light Tower Associates II, owners of the North Tower Property and South Tower Property, respectively, entered into a Lot Tie Agreement and Covenant Regarding Transfer and Certain Services dated March 15, 2002 (Lot Tie Agreement), with one another which restricts the property owner's ability to sell or transfer the South Tower Property to any entity that does not hold 100% of the interest in the North Tower Property, unless they receive the prior written consent of the City of San José (City).

The Board of Trustees of the California State University, on behalf of San José State University, is currently contemplating a transaction where it would lease the South Tower Property from AG170, LLC, with the option to purchase the property in the future. San José State University would use the South Tower Property as university housing along with related and ancillary uses, and the property would no longer be an integrated part of the hotel operations on the North Tower Property. Although the City is not a party to the Lot Tie Agreement, it is an express beneficiary and is required to give consent to the separation and sale of the South Tower Property to any entity other than the owner of the North Tower Property. There are three retail parcels located on the ground floor of the South Tower Property. Third parties own the retail parcels, Greyson Valentine Holdings LLC and 170 South Market LLC, and they are not a part of AG170's acquisition or San José State University's lease of the South Tower Property.

A bridge above Paseo de San Antonio links the North Tower Property and South Tower Property, allowing hotel guests to access both buildings via the bridge, and a service tunnel for the North Tower Property runs under Paseo de San Antonio. In 2002, an Amended and Restated Revocable Encroachment Permit for the Operation and Maintenance of an Under-Ground Service Tunnel and Above-Ground Pedestrian Bridge was issued under Permit # 2000-986933-000-00 RV (Encroachment Permit), allowing for the underground service tunnel and above-ground pedestrian bridge to encroach upon Paseo de San Antonio, a public right-of-way. The Encroachment Permit obligates the property owner to remove the underground service tunnel and above-ground pedestrian bridge should the City ever determine that the encroachments interfere with the public right-of-way. Negotiating and executing an amendment to the Encroachment Permit to separate this obligation between the North Tower Property and South Tower Property would allow for the individual transfer of either property without inequitably burdening one property owner should the City require the removal of the underground service tunnel or above-ground pedestrian bridge. Since the underground service tunnel only benefits the North Tower Property, it is proposed that the North Tower Property owner would be obligated to remove the underground service tunnel should the City require it, and the South Tower Property owner would be obligated to remove the above-ground pedestrian bridge should the City require it. The North Tower Property and South Tower Property owners will enter into an easement agreement for their perspective improvements and divide the rights and obligations described above. The Amended Encroachment Permit would affirm that the rights granted by the Encroachment Permit remain in effect, notwithstanding the agreements and allocation of rights and obligations between the North Tower Property and South Tower Property owners.

If City Council approves the actions listed above, upon adoption of the resolution, the City will consent to the sale and transfer of the South Tower Property to AG170, LLC. The contemplated lease and sale of the property to San José State University will provide university housing benefiting downtown San José. The Lot Tie Agreement will be terminated by the North Tower Property and South Tower Property owners. An amendment to the Encroachment Permit will be negotiated and executed to split the rights and obligations of the underground service tunnel and the above-ground pedestrian bridge, clearing the way for the individual sale of either parcel.

COST AND FUNDING SOURCE:

The actions contemplated by this memorandum are not anticipated to result in any financial obligations for the City.

FOR QUESTIONS CONTACT: Kevin Ice, Senior Real Estate Manager, at kevin.ice@sanjoseca.gov.

Map of Area

