

**A RESOLUTION
BY TRANSPORTATION COMMITTEE**

13-*R*-0020

A RESOLUTION AUTHORIZING THE MAYOR TO FULLY AMEND AND RESTATE THAT CERTAIN RESTATED AND CONSOLIDATED LEASE DATED DECEMBER 9, 1997, BY AND BETWEEN THE CITY OF ATLANTA AND KHUSHAL HOSPITALITY LLC RELATED TO THAT CERTAIN PARCEL OF LAND OWNED BY THE CITY OF ATLANTA LOCATED AT 1200 VIRGINIA AVENUE IN LAND LOTS 127 AND 130 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the “City”) owns and operates Hartsfield-Jackson Atlanta International Airport (“Airport”), which includes a 5.324 acres of real property located on Virginia Avenue in Hapeville, Georgia (“Land”); and

WHEREAS, the City leased the Land to Carousel Hotel Corporation (“Carousel”) pursuant to that certain Restated and Consolidated Lease Agreement dated December 9, 1997 (the “Lease”); and

WHEREAS, Carousel constructed certain improvements on the Land to include a 280+ room hotel and vehicle parking; and

WHEREAS, the Lease was assigned to the Diplomat Construction Corporation (“Diplomat”) on May 18, 1998, as authorized by Resolution 98-R-0720 and adopted by the Atlanta City Council April 20, 1998; and

WHEREAS, Diplomat entered into a Collateral Assignment to Secure Debt with Integrity Bank dated January 16, 2002; and

WHEREAS, Diplomat subsequently filed for protection under Chapter 11 of the United States Bankruptcy Code on April 3, 2009; and

WHEREAS, the Lease was placed in receivership on December 29, 2009; and Integrity Bank purchased the Lease, among other assets not owned by the City; and

WHEREAS, pursuant to a Collateral Assignment to Secure Debt the Lease was purchased by and assigned to the State Bank of Texas (“SBT”) on January 4, 2010; and

WHEREAS, Diplomat entered Chapter 7 of the United States Bankruptcy Code on May 21, 2010 and a Trustee was appointed to act on behalf of the Diplomat Estate; and

WHEREAS, Khushal Hospitality LLC (“KHL”) subsequently purchased the leasehold interest from SBT and the Trustee; and

WHEREAS, the assignment of the Lease from SBT to KHL was authorized by Resolution 12-R-0603 on May 7, 2012; and

WHEREAS, the City through its Department of Aviation has met with KHL regarding its plans for the further development and improvement of the Land and the improvements constructed thereon; and

WHEREAS, the City and KHL have agreed to fully amend and restate the Lease to include terms and conditions for improving the Land and the improvements constructed thereon that are in the best interests of the City and the Airport; and

WHEREAS, these terms have been memorialized in a Term Sheet dated August 22, 2012 , which is attached hereto as Exhibit A and incorporated herein by this reference (“Term Sheet”).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, that the Mayor or his designee be and hereby is authorized to execute on behalf of the City of Atlanta an agreement to fully amend and restate that certain Restated and Consolidated Lease Agreement dated December 9, 1997 to include the terms and conditions as outlined in the Term Sheet.

BE IT FINALLY RESOLVED that any amendment shall not become binding on the City and the City shall incur no liability under such an amendment until the agreement has been executed by the Mayor, attested to by the Municipal Clerk, and approved as to form by the City Attorney and delivered to the appropriate parties.

13-R-0020

Virginia Ave. Hotel Lease

Current Leasehold

- Property outlined in yellow is already owned by the City
- Property outlined in red is currently leased to the Hotel

Amended Leasehold

- Property outlined in yellow is already owned by the City
- Property outlined in red is the new leasehold for the Hotel
- Property outlined in blue is returned to the City

Current Leasehold

Parcels Owned by the City

Red Roof Inn
Leasehold

Dept of Aviation
0917/09

33°39'29.80"N 84°25'38.53"W

Jun 6, 2007



Amended Leasehold

Parcels Owned by the City

Red Roof Inn
Leasero
~1.7 AC (est)

Dept of Aviation
0917/09

© 2009 Table Atlas

33°39'29.80" N 84°25'38.53" W

Jun-6, 2007



CONDITION FOR APPROVAL FORM
(TO ACCOMPANY LEGISLATION)

COMMITTEE: Transportation

DATE: 1/16/13

ORDINANCE # _____ RESOLUTION # 13-R-0020

REQUESTED BY: CM Martin

DIRECTED TO: Aviation Gen. Mgr

NATURE OF CONDITION FOR APPROVAL:

The DOA to provide a
Plan of the property in
13-R-0020

WHEN IS THIS INFORMATION DUE, AND TO WHOM?

ASAP - Council Staff

WILL THIS RESULT IN AN AMENDMENT TO THE LEGISLATION?

YES (X) NO ()

WILL THIS RESULT IN A SUBSTITUTE TO THE LEGISLATION?

YES () NO (X)

HAS THIS INFORMATION BEEN RECEIVED? YES () NO ()

DATE OF RECEIPT: _____

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the City to Amend and Restate a Restated and Consolidated Lease By and Between the City of Atlanta and Khushal Hospitality LLC.

2. Please provide background information regarding this legislation.

The City owns roughly 5.324 acres of real property located in Land Lots 127 and 130 in the 14th District of Fulton County. This land is just to the south of Virginia Avenue and located at the intersection of Virginia Avenue and Toffie Terrace. This property has been under lease to various entities since as early as 1959 to include a lease between the City and Lenox Equities, Inc. in 1984 and a lease with the Resolution Trust Corporation dba as Atlanta Airport Motel Inc. in 1993.

In December of 1997, the City entered into a Restated Consolidated Lease Agreement with the Carousel Hotel Corporation ("Carousel") for the entire 5.324 acres. At the time the lease was executed, a Red Roof Hotel had been constructed on the land and the City had agreed to accept payment for the lease of the land in the form of a percentage of the hotels' gross revenues as opposed to the typical cost per square foot lease arrangement. The lease contained provisions requiring the hotel to pay a minimum rent if gross sales fell below certain levels and also contained provision for the rent to escalate in four (4) ten year increments as follows:

- Initial ten years - 2.0% share of gross sales or a minimum of \$47,053.51
- 1) Beginning 2004 - 2.5% share of gross sales or a minimum \$58,816.89
- 2) Beginning 2014 - 3.0% share of gross sales or a minimum of \$70,580.27
- 3) Beginning 2024 - 3.5% share of gross sales or a minimum of \$94,107.04.

The lease is scheduled to terminate in 2034.

In May of 1998, the lease was acquired by The Diplomat Construction Company ("Diplomat") through financing provided by Integrity Bank of Georgia in the amount of roughly \$10.5 million dollars. The Diplomat changed the brand of the hotel from a Red Roof Inn to a lower grade brand which negatively impacted its business. Revenues paid to the City under the revenue sharing provision fell to the minimum amounts outlined in the lease which were below the expectation of the City when the original lease with Carousel was executed. The Airport met with Diplomat officials in an effort to address quality issues on the property and the revenue issues that were occurring as a result of the poor performance of the hotel but no progress was made.

In 2009, Diplomat declared Chapter 11 bankruptcy still owing a significant amount on the financing provided Integrity Bank. Shortly thereafter, Integrity Bank was taken into receivership by the FDIC and the State Bank of Texas subsequently purchased Integrity's interest in the ground lease. In May of 2010, The Diplomat bankruptcy was converted to Chapter 7 and a Trustee was appointed to liquidate the Diplomat estate.

Khushal Hospitality LLC ("KHL") purchased the State Bank of Texas' interest in the lease and immediately met with the Department of Aviation regarding its acquisition of the leasehold interest. During this initial meeting and in several subsequent meetings, KHL outlined its plan to make a substantial investment in the property to upgrade the brand/identity of the hotel. Also discussed during these meetings were changes necessary to the Restated and Consolidated Lease to facilitate these improvements. The Department of Aviation and KHL have agreed to specific terms for an amendment to the Restated and Consolidated Lease and have executed a Term Sheet outlining these terms.

The Department of Aviation is now seeking approval from the City Council to execute an amendment to the Restated and Consolidated Lease.

3. If Applicable/Known:

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract: Through 2044**

4. Fund Account Center (Ex. Name and number):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: Example: Local Assistance Grant

6. Fiscal Impact: None

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery: N/A

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: David Sellers

**CITY OF ATLANTA
DEPARTMENT OF AVIATION
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

**TERM SHEET FOR THE AMENDMENT TO THAT CERTAIN RESTATED
CONSOLIDATED LEASE AGREEMENT**

Date: August 22, 2012

The following are the proposed general terms for the amendment and modification of that certain Restated Consolidated Lease Agreement dated as of December 9, 1997, by and between the City of Atlanta, a municipal corporation of the State of Georgia ("City") and Khushal Hospitality, LLC, a Georgia limited liability company ("KHL"), as successor-in-interest to the leasehold rights of (i) The State Bank of Texas; and (ii) the Chapter 7 Trustee (Case No. 09-68613-MGD), which parties are the successors-in-interest to Diplomat Construction, Inc., as modified by that certain Amendment to Restated Consolidated Lease Agreement ("Amendment," the Amendment and Lease are collectively herein referred to as "Lease") assigned to KHL, as authorized by Resolution 12-R-0603 adopted by the Council of the City on May 7, 2012, for the lease of the Leased Premises (as hereinafter defined) located at 1200 Virginia Avenue in Land Lots 127 and 130 of the 14th District of Fulton County, Georgia.

Each party acknowledges that this Term Sheet is not intended to create or constitute a legally binding obligation between the City and KHL. This Term Sheet consists of general terms that exist to provide an outline and structure for drafting an amendment to the Lease ("Definitive Agreement") to be executed by and between the parties and neither the City nor KHL will have any liability to the other with respect to this Term Sheet. If a Definitive Agreement is not prepared, authorized, executed or delivered for any reason, neither the City nor KHL will have any liability to the other based upon, arising from, or relating to this Term Sheet. The parties acknowledge that until this Term Sheet has been legislatively approved by the City no City employee, representative or legal counsel is authorized to execute this Term Sheet on behalf of the City or bind the City to contractual obligations related thereto. However, the parties understand that the Department of Aviation has generally approved the terms outlined herein and will recommend that the City finally approve the Definitive Agreement which will incorporate such general terms.

Each party acknowledges that should a fully integrated, Definitive Agreement be duly executed by the parties, the parties' rights and obligations with respect to the matters described in this Term Sheet shall be governed by the Definitive Agreement without reference to this term sheet.

The Leased Premises consists of four parcels of land known herein as Tracts 1, 2, 3 and 4. Each Tract of land within the Leased Premises is further described in a survey prepared by Terramark and certified by William Wohlford for the benefit of Khushal Hospitality, LLC, on or about December 2010.

KHL is the tenant and owner of a leasehold interest in Tracts 1 and 4 under the Lease. KHL is under contract to purchase the leasehold interest rights of Tract 2 and Tract 3 pursuant to a sale under Bankruptcy Code Section 363 in that certain case styled In Re Diplomat Construction, Inc., Case Number 09-68613-MGD in the United States Bankruptcy Court for the Northern District of Georgia - Atlanta Division. The entire Leased Premises is owned, in fee simple, by the City.

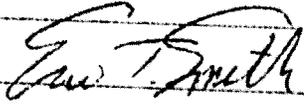
1. The term of the existing lease shall be extended by 10 years but the Leased Premises shall be limited to part of Tract 1, as further discussed herein. The rental rate terms shall remain the same, however for the extension of term the base rent will increase on January 1, 2035 by 4.0% from the previous rental rate adjustment, and on January 1, 2040 by 4.5% from previous rental rate adjustment.
2. KHL shall convey its leasehold interest to the City in: (i) Tracts 2, 3, 4 and, (ii) portions of Tract 1 (metes and bounds to be further determined) located in the south east corner of the property, approximately 30,000 square feet (64 parking spots), taking into account that the zoning and the fire safety codes and all other codes are satisfied and KHL is not in any way affected in its ability to operate a hotel on the Property after such conveyance.
3. Tract 4 shall be maintained by City in keeping with State and local laws, codes and ordinances.
4. KHL shall pave and create a minimum of 65 additional parking spots on Tract 2 (creating at least 146 parking spots in the aggregate across all tracts) and KHL will be entitled to reimbursement (not to exceed \$100,000.00) for reasonable actual construction costs associated with the creation of such 65 additional spaces. Such reimbursement shall be via rent abatement/reductions at a later date.
5. On Tract 2, City will grant to KHL a license (the term of such license shall be concurrent with the term of ground lease KHL has with City for Tract 1 as amended) to use 65 dedicated parking spaces on Tract 2 that are closest to the hotel on Tract 1 and 65 other spots will be utilized by KHL in a non-exclusive basis shared with Ruby Tuesday's. Ruby Tuesday's has a license to use 65 parking spots on a non-exclusive basis on Tract 2 pursuant to a License Agreement, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

6. KHL shall pay to the City the same annual rate currently paid by Ruby Tuesday for the use of the Tract 2 (i.e., \$21,775.00) and such rental rate may, at City's discretion, readjust upwards every two years, beginning on October 1, 2015, by greater of 5% or change in the CPI index as defined and calculated by the Bureau of Labor Statistics.
7. The signage for the hotel on Tract 3 shall remain as is, and City shall grant access to KHL to maintain and upgrade the signs on Tract 3.
8. City is the owner of a tract of land adjoining the Property on the eastern most side of tracts 3 and 1. The City plans to assemble and combine portions of tract 1 and tract 3 and the adjoining land. This new parcel assembled shall be subject to a restrictive covenant, which will prevent the development of the property as a hotel/motel, extended stay, apartment or lodging facility.
9. City shall maintain all landscaping and the parking lots in keeping with State and local laws, codes and ordinances.
10. KHL shall maintain insurance on all properties it has interest in per City's then current required insurance standards.
11. City reserves the right to further develop or improve the Airport, aviation facilities in general, roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit.
12. Conveyance of portion of Tract 1 will be subject to fulfillment of terms 4 and 5 above. Any easements for use of hotel or serving the hotel, over any of the tracts shall be reserved to KHL, including ingress/egress, utilities, and signage.
13. KHL agrees to invest a minimum of \$3 million in the hotel by October 1, 2015. It is acknowledged that KHL has already invested \$500,000.00 as of this date and that such investment will be credited toward the required \$3 million aggregate investment. The parties agree that in the event KHL fails to make such required investment (subject to force majeure and delays beyond the control of KHL, except in no event shall the failure to obtain or pay monies be deemed to be a force majeure event), that the rental charges for the property shall be subject to change and that such rates shall be at the then-current per square foot market rates and subject to future upward adjustment equal to the greater of 5% per annum or the change in the CPI Index.
14. Above terms to be memorialized in a Definitive Agreement and the parties agree to proceed reasonably and in good faith to accomplish same.

IN WITNESS WHEREOF, KHL and City have agreed to the terms and conditions contained herein provided KHL successfully purchases the leasehold interest to Tracts 2 and 3.

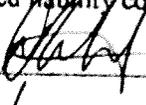
CITY:
City of Atlanta, a municipal corporation of the
State of Georgia

By: 

Print Name: ERIC T. SMITH

Title: Attorney

KHL:
Khushal Hospitality, LLC,
a Georgia limited liability company

By: 

Print Name: NILESH PATEL

Title: MANAGER

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TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 12/28/12

Anticipated Committee Meeting Date(s): 1/15/13

Anticipated Full Council Date: 1/22/13

Legislative Counsel's Signature: Jonathan Hunt

Commissioner's Signature: [Signature]

Chief Financial Officer: N/A

Chief Information Officer Signature (for IT Procurements) N/A

Chief Procurement Officer Signature: N/A

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO FULLY AMEND AND RESTATE THAT CERTAIN RESTATED AND CONSOLIDATED LEASE DATED DECEMBER 9, 1997, BY AND BETWEEN THE CITY OF ATLANTA AND KHUSHAL HOSPITALITY LLC RELATED TO THAT CERTAIN PARCEL OF LAND OWNED BY THE CITY OF ATLANTA LOCATED AT 1200 VIRGINIA AVENUE IN LAND LOTS 127 AND 130 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: 12.18.12
(date)

Reviewed by: [Signature]
(date)

Submitted to Council: _____ (date)