

AN ORDINANCE 2017-09-21-0686

AUTHORIZING THE ASSIGNMENT OF A RIVERWALK LEASE AGREEMENT AND RIVERWALK USE FEE AGREEMENT FROM PASEO-LOSOYA, LTD. TO MCC RESORT SAN ANTONIO LLC FOR CONTINUED USE OF 485 SQUARE FEET OF RIVER WALK PATIO SPACE AND USE OF 149 SQUARE FEET OF RIVER WALK AIRSPACE.

* * * * *

WHEREAS, on May 22, 2003, City Council approved Ordinance 96740, which authorized the lease of 485 square feet of River Walk patio space and the use of 149 square feet of River Walk airspace to Paseo-Losoya, Ltd.; and

WHEREAS, on August 10, 2017, in accordance with provisions of the lease and use agreements, Paseo-Losoya, Ltd. submitted a written request asking that the City of San Antonio approve assignment of their agreements to MCC Resort San Antonio LLC; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:


SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute the assignment of a Riverwalk Lease Agreement and Riverwalk Use Fee Agreement from Paseo-Losoya, Ltd. to MCC Resort San Antonio LLC for continued use of 485 square feet of River Walk patio space and use of 149 square feet of River Walk airspace. A copy of the assignment in substantially final form is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. No fiscal impact therefore no Fiscal language required.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 21st day of September, 2017.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vadek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

Agenda Item:	22 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18A, 18B, 18C, 18D, 19, 20, 21, 22, 24A, 24B, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 38, 40, 41, 42, 43, 44, 45, 47, 50A, 50B, 51B, 52A, 52B, 52C, 52D, 52E, 52F, 52G, 52H)						
Date:	09/21/2017						
Time:	09:45:52 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the assignment of a Riverwalk Lease Agreement and Riverwalk Use Fee Agreement from Paseo-Losoya, Ltd. to MCC Resort San Antonio LLC for continued use of 485 square feet of River Walk patio space and use of 149 square feet of River Walk airspace. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

Attachment I

ASSIGNMENT AND ASSUMPTION OF CITY LEASES

This **ASSIGNMENT AND ASSUMPTION OF CITY LEASES** (this "**Assignment**") is made by and between **ZUNI, INC.**, a Texas corporation ("**Assignor**"), and **MCC RESORT SAN ANTONIO LLC**, a Delaware limited liability company ("**Assignee**") on September __, 2017 (the "**Execution Date**"), to be effective as of the Effective Date (as defined below).

WITNESSETH:

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of August 9, 2017 (the "**Agreement**"), Assignor and Assignee have agreed that Assignor shall assign unto Assignee, as of the Effective Date, all of Assignor's right, title, and interest in and to that certain (i) Riverwalk Lease Agreement dated June 9, 2003 but effective as of August 1, 2002, by and between the City of San Antonio (the "**City**"), as landlord, and Assignor (as successor in interest to Paseo-Losoya, Ltd.), as tenant (the "**Zuni Patio Lease**"); and (ii) Riverwalk Use Fee Agreement dated June 9, 2003 but effective as of August 1, 2002, by and between the City, as landlord, and Assignor (as successor in interest to Paseo-Losoya, Ltd.), as tenant (the "**Zuni Balcony Lease**", and together with the Zuni Patio Lease, the "**Zuni Leases**"), which Zuni Leases cover certain property in the City of San Antonio, as more particularly described in the Zuni Patio Lease and the Zuni Balcony Lease (collectively, the "**Property**").

NOW, THEREFORE, for and in consideration of TEN AND No/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignee and Assignor hereby agree as follows:

1. Effective Date. The terms, provisions and conditions of this Assignment shall become effective only upon the date (the "**Effective Date**"), if any, that the City Council of the City of San Antonio enacts a city ordinance that consents to the assignment of the Zuni Leases from Assignor to Assignee. In the event that the City Council of the City of San Antonio has not enacted a city ordinance that consents to the assignment of the Zuni Leases from Assignor to Assignee by March 1, 2018, then this Assignment shall be null and void and of no force or effect.

2. Assignment and Assumption of Zuni Leases. Effective as of the Effective Date, Assignor hereby assigns and conveys unto Assignee, and Assignee hereby acknowledges receipt of, all rights, titles and interests of Assignor in and to the Zuni Leases. Assignee hereby assumes and agrees that, from and after the Effective Date, Assignee shall be responsible to the City for all of the duties and obligations of tenant under the Zuni Leases which are required to be performed on or after the Effective Date. Assignee shall indemnify and hold harmless Assignor from any and all damages, costs, claims, expenses, losses and liabilities (including court costs and reasonable attorneys' fees) arising from and after the Effective Date on account of any default or alleged default by the tenant under the Zuni Leases on or after the Effective Date. Assignor shall indemnify and hold harmless Assignee from any and all damages, costs, claims, expenses, losses and liabilities (including court costs and reasonable attorneys' fees) arising prior to the Effective Date on account of any default or alleged default by the tenant under the Zuni Leases prior to the Effective Date.

2. Disclaimer. Except for the express representations by Assignor expressly set forth in Section 3.1 of the Agreement, but subject to the limitations set forth in Section 3.1 of the Agreement (collectively, the "**Express Representations**"), Assignor hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property and Zuni Leases, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Assignee may elect to

conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property and the Zuni Leases or the operation of the Property and the Zuni Leases with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT FOR THE EXPRESS REPRESENTATIONS, IN CONNECTION WITH THE ASSIGNMENT AND CONVEYANCE OF THE ZUNI LEASES AS PROVIDED FOR HEREIN, ASSIGNOR HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE ZUNI LEASES OR THE PROPERTY, THE SUITABILITY OF THE ZUNI LEASES OR THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH ASSIGNEE MAY CONDUCT THEREON, COMPLIANCE BY THE ZUNI LEASES OR THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, ASSIGNOR DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Assignee agrees to accept the Zuni Leases at closing with the Zuni Leases and Property being in their present AS IS condition WITH ALL FAULTS.

3. Use of Property. Nothing herein shall be deemed to grant to Assignee the right to use and/or occupy the Property until the Effective Date; nor shall anything herein be interpreted as Assignor preventing Assignee from using and/or occupying the Property during the Interim Period (as defined below). Notwithstanding the foregoing or anything herein to the contrary, Assignee shall indemnify and hold harmless Assignor and its owners, partners, officers, directors, employees and agents from any and all actual damages, costs, claims, causes of action, expenses, losses and liabilities (including court costs and reasonable attorneys' fees) arising during the Interim Period (as defined below) (i) related to damage to the Property (including any improvements located thereon) or injury or death to persons caused by Assignee's use and/or occupancy of the Property; and/or (ii) on account of any default or alleged default by the tenant under the Zuni Leases resulting from the actions of Assignee (including, without limitation, Assignee's use and/or occupancy of the Property). As used herein, the "**Interim Period**" shall mean the period commencing on the Execution Date and ending on the Effective Date.

4. Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

5. Governing Law. This Assignment shall be construed under and enforced in accordance with the laws of the State of Texas.

6. Counterparts. This instrument may be executed in counterparts, each of which shall be deemed an original. Signatures delivered by PDF or any other electronic means shall be sufficient to bind the parties hereto.

7. Further Assurances. From and after the date hereof, Assignor and Assignee agree to reasonably cooperate in connection with any additional documents, in form and substance reasonably

acceptable to each of Assignor and Assignee, required to consummate the terms of this Assignment. In addition, any amounts payable by Assignor under the Zuni Leases shall be prorated as of the Effective Date, with Assignor liable to Assignee therefor to the extent such items relate to any time period up to and including the day prior to the Effective Date and Assignee liable to Assignor therefor to the extent such items relate to any time period commencing on or after the Effective Date. The amount of such prorations owed by Assignor or Assignee pursuant to this Assignment shall be paid to Assignee by Assignor, or to Assignor by Assignee, as the case may be, within ten (10) business days following receipt of written request (together with reasonable evidence supporting the requested amount to be reimbursed) by either party, as applicable. If current payments with respect to items to be prorated pursuant to this paragraph 6 are not ascertainable on the Effective Date, such payments shall be prorated on the basis of the most recently ascertainable bill therefor and shall be re-prorated between Assignor and Assignee within fifteen (15) days of receipt of actual invoices for such amounts, and a cash settlement shall be made promptly thereafter on an item by item basis.

[Signatures on Next Page]

EXECUTED effective as of the Effective Date.

ASSIGNOR:

ZUNI, INC.,
a Texas corporation

By: _____
Name: Joseph Cosniac
Title: President

[Signatures continue on next page]

ASSIGNEE:

MCC RESORT SAN ANTONIO LLC,
a Delaware limited liability company

By: _____
Name: Marc A. Buehler
Title: Authorized Representative