

ORDINANCE

2018-09-20-0737

APPROVING THE THIRD AMENDMENT OF THE FAIRMOUNT HOTEL GROUND LEASE AGREEMENT FOR THE CONTINUED USE OF THE REAL PROPERTY LOCATED AT 401 SOUTH ALAMO STREET BY FAIRMOUNT INVESTMENTS, LLC, FOR AN ADDITIONAL 25 YEAR TERM.

* * * * *

WHEREAS, the City of San Antonio owns the real property upon which the Fairmount Hotel was developed in accordance with a ground lease originally authorized by Ordinance 60113, dated January 17, 1985; and

WHEREAS, pursuant to the conditions of the ground lease, the initial term was for a period of 25 years with the right to renew for an additional 25 years at specified annual rental amounts for the extended lease term; and

WHEREAS, this ordinance will extend the term of the ground lease for 25 years, expiring September 30, 2042; **NOW THEREFORE:**

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease amendment with Fairmount Investments, LLC, which is attached hereto and incorporated herein for all purposes as **Exhibit I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000025 and General Ledger 4401110.

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 passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

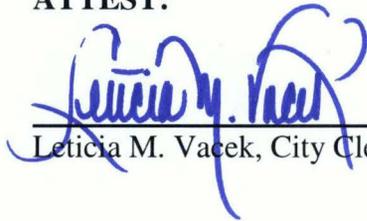
LC
09/20/18
Item No. 10

PASSED and APPROVED this 20th day of September, 2018.



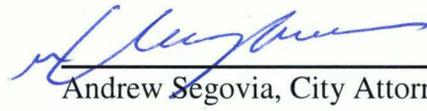
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	10 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26)						
Date:	09/20/2018						
Time:	09:35:36 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving the Third Amendment of the Fairmount Hotel Ground Lease Agreement for the continued use of the real property located at 401 South Alamo Street by Fairmount Investments, LLC, for an additional 25 year term. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x			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				

LC
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Exhibit I

Third Amendment of Fairmount Hotel Ground Lease Agreement
(401 South Alamo)

This 3rd Amendment of Ground Lease Agreement, between Lessee and the City of San Antonio ("Lessor"), extends the term pursuant to the Ordinance Authorizing 3rd Amendment.

1. Identifying Information.

**Ordinance Authorizing
3rd Amendment:**

Lessor: City of San Antonio

Lessor's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Center City Development & Operations
Department)

Lessee: Fairmount Investments, LLC, a Texas limited liability
company

Lessee's Address: 23645 US HWY 281 N
San Antonio, Texas 78258-7318

Lease: Fairmount Hotel Ground Lease Agreement between
Lessor and Lessee pertaining to certain real property
located in San Antonio, Bexar County, Texas, and
more specifically described as Lot 6, New City Block
155, authorized by the Ordinance Authorizing Original
Ground Lease

**Ordinance Authorizing
Original Lease:** 60113, January 17, 1985

**Ordinance Authorizing
2nd Amendment &
Assignment of Lease:** 76424, September 3, 1992, as amended by Ordinance
76699 on October 15, 1992

**Beginning of Extended
Lease Term:** October 1, 2017

**Expiration of Extended
Lease Term:** September 30, 2042

2. Define Terms.

2.01. All terms used in this instrument and not otherwise defined herein but defined in the Lease or any previous amendment to it have the meanings previously ascribed to them. References to "Lease" in this Amendment include the original Fairmount Hotel Ground Lease Agreement and all previous amendments.

2.02. Lessee's "fiscal year" is defined as a calendar year, January 1st through December 31st. As such, all references to "fiscal year" in this Third Amendment, Lease and any previous amendments shall mean a calendar year.

3. Renewal, Extension.

In accordance with Article 2, "Lease Term", Section 2.02, the term of the Lease is extended from the Beginning of Extended Lease Term through and including the Expiration of Extended Lease Term. There are no further rights to renew this Lease.

4. Rent.

During the renewed term of this agreement and in accordance with Article 3, "Rent", Section 3.02(2)(g) of the Lease, as amended, the following annual rental amounts shall be due and owing:

[1] For period January 1, 2018 through December 31, 2018 and each calendar year thereafter of the Extended Lease Term, Lessee shall pay a total sum of rent to Lessor each year equal to the greater of:

- (i) 2% of Annual Gross Revenues up to \$2,000,000.00 PLUS
 3% of Gross Revenues from \$2,000,000.01 to \$3,000,000.00 PLUS
 5% of Gross Revenues from \$3,000,000.01 to \$4,000,000.00 PLUS
 8% of Gross Revenues in excess of \$4,000,000.00

OR

(ii)

Minimum Rent - Escalation Schedule			
Years	Rent Period	Annual Rent	Monthly Rent
1 - 5	From: October 1, 2017 To: September 30, 2022	\$40,000.00	\$3,333.33
6 - 10	From: October 1, 2022 To: September 30, 2027	\$45,000.00	\$3,750.00
11 - 15	From: October 1, 2027 To: September 30, 2032	\$50,000.00	\$4,166.67
16 - 20	From: October 1, 2032 To: September 30, 2037	\$55,000.00	\$4,583.33
20 - 25	From: October 1, 2037 To: September 30, 2042	\$60,000.00	\$5,000.00

During the final year of the Extended Lease Term the formula outlined in (i) above will be adjusted to reflect amounts that are 9/12th of the amount indicated to reflect that the 25th year of the Extended Lease Term is for a period of 9 calendar months. For the 2017 calendar year the formulas shall be as provided in Article 3, subsection (f) of the Lease, as amended.

5. No Default.

Neither Lessor nor Lessee is in default under the Lease, and neither party is aware of a cause of action against the other arising out of or relating to the period before this amendment.

6. Counterparts.

This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

7. Non-Discrimination.

Lessee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

8. Same Terms and Conditions.

This Amendment is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this Amendment, the Lease remains a comprehensive statement of the rights and obligations of Lessor and Lessee. Lessor and Lessee reaffirm the Lease as modified by this agreement and represent to each other that no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion. If this Amendment conflicts with the Lease, this Amendment controls.

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9. Public Information.

Lessee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

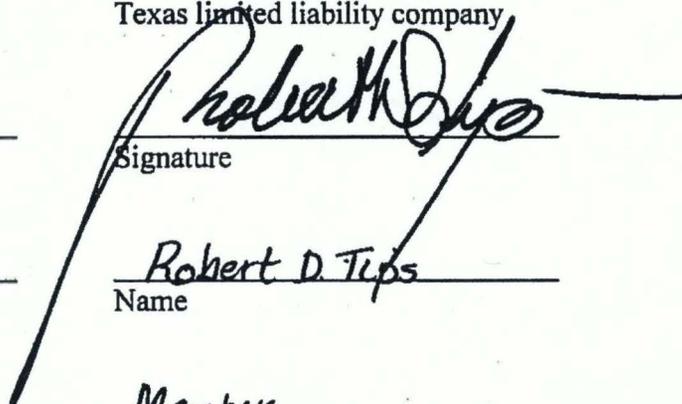
Lessor

Lessee

City of San Antonio, a Texas
municipal corporation

Fairmount Investments, LLC, a
Texas limited liability company

Signature



Signature

Name

Robert D. Tips

Name

Title

Member

Title

Date

August 17, 2018

Date

Approved as to Form:

City Attorney

Attest:

City Clerk