

# **Third Amendment of Fairmount Hotel Ground Lease Agreement**

**(401 South Alamo)**

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This 3<sup>rd</sup> Amendment of Ground Lease Agreement, between Lessee and the City of San Antonio (“Lessor”), extends the term pursuant to the Ordinance Authorizing 3<sup>rd</sup> 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  
2<sup>nd</sup> 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 1<sup>st</sup> through December 31<sup>st</sup>. 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)

<b>Minimum Rent - Escalation Schedule</b>			
<b>Years</b>	<b>Rent Period</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
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 9/12<sup>th</sup> of the amount indicated to reflect that the 25<sup>th</sup> 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