

AN ORDINANCE 2014 - 06 - 12 - 0431

**AUTHORIZING AMENDMENT NO. 1 TO THE RIVER WALK
LEASE AGREEMENT BETWEEN THE CITY OF SAN
ANTONIO AND PALACIO DEL RIO, INC. D/B/A HILTON
PALACIO DEL RIO TO EXTEND THE LEASE AGREEMENT
TERM THROUGH JUNE 30, 2039 AND PROVIDING FOR AN
OPTION TO RENEW FOR AN ADDITIONAL TWENTY-FIVE
YEAR PERIOD THEREAFTER.**

* * * * *

WHEREAS, Ordinance #2009-06-25-0578 authorized a River Walk Lease Agreement with Hilton Palacio Del Rio for use of 902.43 square feet of outdoor patio space along the River Walk that will expire June 30, 2014; and

WHEREAS, Hilton Palacio Del Rio requested that the Agreement's term be extended through June 30, 2039 in order to secure capital financing for planned improvements and renovations; and

WHEREAS, this ordinance will authorize Amendment No. 1 to extend the Agreement through June 30, 2039 with an option to renew for an additional twenty-five year period thereafter; and

WHEREAS, Hilton Palacio Del Rio will pay a rate of \$2.63 per square foot per month for the first year of the extended term with an annual increase of 3.00%; and

WHEREAS, market adjustments to this rate through the extended term may occur at five year intervals; and

WHEREAS, should Hilton Palacio Del Rio sell the adjacent hotel property to an entity other than a parent, subsidiary or similarly affiliated entity, the Agreement shall automatically terminate;
NOW THEREFORE:

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

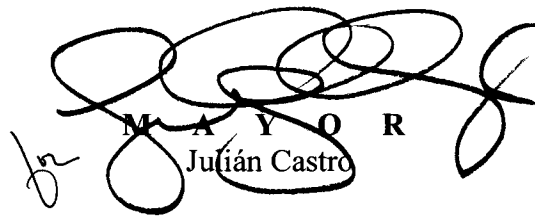
SECTION 1. The City Manager or her designee or the Director of the Center City Development Office or his designee, is authorized to execute Amendment No. 1 to the River Walk Lease Agreement between the City of San Antonio and Palacio Del Rio, Inc. d/b/a Hilton Palacio Del Rio to extend the lease agreement term through June 30, 2039 and providing for an option to renew for an additional twenty-five year period thereafter. A copy of the amendment in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29093000, WBS Element OR-00001-01-01-01 and General Ledger 4407711.

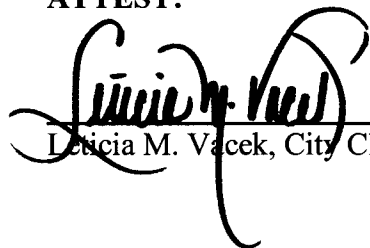
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 12th day of June, 2014.

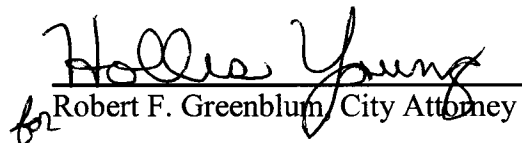

MAYOR
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Robert F. Greenblum, City Attorney

Agenda Item:	26 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41)						
Date:	06/12/2014						
Time:	09:30:08 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing Amendment No. 1 to the River Walk Lease Agreement between the City of San Antonio and Palacio Del Rio, Inc. d/b/a Hilton Palacio Del Rio to extend the lease agreement term through June 30, 2039 and providing for an option to renew for an additional twenty-five year period thereafter. [Carlos Contreras, Assistant City Manager; Lori Houston, Director; Center City Development and Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

FIRST AMENDMENT TO
RIVER WALK LEASE AGREEMENT

This Amendment No. 1 to the River Walk Lease Agreement ("Agreement") is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____ passed and approved on the _____ day of _____ 2014 (hereinafter referred to as "CITY"), and Palacio Del Rio, Inc., d/b/a Hilton Palacio Del Rio, a Delaware Corporation and successor in interest to Palacio Del Rio, Ltd. a Texas limited partnership, (hereinafter referred to as "LESSEE"), acting by and through its duly authorized officers, WITNESSETH.

Recital: CITY and LESSEE entered into a River Walk Lease Agreement ("Lease" or "Agreement" or "Lease Agreement") pursuant to Ordinance No. 2009-6-25-0578, passed and approved on June 25, 2009. The LESSEE has requested that the Agreement be extended for 25 years past the initial termination date of June 30, 2014. The City is agreeable to this request and the parties hereby agree to amend the Agreement as follows:

1. Section 3.1 of the Agreement hereby amended to extend the lease term to June 30, 2039. The period from July 1, 2014 — June 30, 2039 shall be referred to as the First Extended Term. If (1) LESSEE is not in default hereunder AND (2) subject to the prior approval of the San Antonio City Council, as evidenced by passage of a CITY Ordinance, LESSEE may renew for additional twenty-five (25) year lease period ("Second Extended Term"), under the same terms and conditions of this Lease, if still in effect, except rent and insurance which may be adjusted as provided herein, and provided however, that LESSEE shall notify CITY in writing no earlier than one year prior to the expiration date of the First Extended Term and at least six (6) months before the expiration date of the First Extended Term, of its intent to exercise option as herein provided.
2. The rental rate shall be \$2.63 per square foot per month or \$31.56 per square foot for the first lease year of the First Extended Term. This rental rate shall increase by a rate of three percent (3%) ("Escalation Rate") for each following year of the First and Second Extended Terms. However, at no shorter than five (5) year intervals, City may adjust, up or down, the rental rate to the "fair market rate" for comparable properties at that time. Before making such adjustment, City shall have a market rental study done by a MAI-certified appraiser selected by City. CITY shall provide copy of study to LESSEE within 120 calendar days of the end of the term, who shall have 30 calendar days to notify the CITY in writing if LESSEE does not agree with appraiser's fair market rate. If LESSEE notifies CITY in writing within 30 calendar days from date of receipt of study that LESSEE does not agree with

proposed fair market rate, LESSEE shall have 60 calendar days from the date of LESSEE's notification to CITY to provide to CITY and CITY's appraiser a market rental study conducted by a MAI-certified appraiser (at LESSEE's expense) that shall identify a fair market rate for LESSEE's space on the River Walk. CITY's appraiser and LESSEE's appraiser shall have 30 calendar days from date of CITY's receipt of LESSEE's appraiser's study to reach consensus on a fair market rate for LESSEE's space on the River Walk. If CITY's appraiser and LESSEE's appraiser are unable to reach consensus within 30 calendar days, both appraisers shall identify a third appraiser to conduct a market rental study and identify a fair market rate for LESSEE's space on the River Walk. The third appraiser's fair market rate shall be averaged with the closer of the rates from the CITY's or LESSEE's appraisers to establish a new rental rate. The cost of the third appraiser's services shall be paid equally by the CITY and LESSEE. During the period of a dispute regarding the fair market rate, LESSEE shall pay according to the last agreed rental rate until the dispute is resolved as agreed above. Upon such resolution of that dispute, LESSEE shall be credited or charged as appropriate for the difference between the resolved fair market rate and the last agreed rental rate that was being paid during the period of dispute. Within 30 calendar days of receiving written notice of any amount so charged, LESSEE shall pay in full such amount charged.

3. Section 4.3 of the Agreement is hereby amended to read as follows:

A fifty dollar (\$50.00) late charge will be assessed on any Rent payment received on the eleventh (11th) day of the applicable month or any day thereafter. All past due Rent under the terms of this Lease Agreement shall bear interest at the lesser of (a) the rate of 12% per annum from the date due until paid in full by LESSEE, or (b) the highest rate allowed by law. This Section 4.3 shall not apply to amounts determined to be due to CITY under the fair market rate appraisal process set forth in Paragraph 2 of the First Amendment to River Walk Lease Agreement.

4. Section 10.1 of the Agreement is hereby amended to include the following second paragraph:

Notwithstanding the preceding, if at any time during the First or Second Extended Terms LESSEE sells the adjacent hotel property to any entity other than a parent, subsidiary or similarly affiliated entity this Agreement shall automatically terminate. CITY covenants and agrees it shall enter into good faith negotiations with the new hotel owner for use of the Premises.

5. All other terms and conditions of the Agreement shall remain in full force and effect.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2014.

LESSOR:

CITY OF SAN ANTONIO
A Texas Municipal Corporation

By: _____
City Manager

LESSEE:

Palacio Del Rio, Inc.
a Delaware corporation
d/b/a Hilton Palacio del Rio

By: Warren A. Stokes
Name: Warren A. Stokes
Title: Vice President

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney