

First Amendment of Riverwalk Lease Agreement

(Omni La Mansion Corporation)

This First Amendment of the Riverwalk Lease Agreement is between Omni La Mansion Corporation LESSEE and the City of San Antonio ("LESSOR"), pursuant to this Ordinance authorizing modifications to terms of the current agreement, termination of existing lease rental term, establishing new lease rental term and replacing current rental amounts with defined dates and rates.

1. Identifying Information.

Lessee: Omni La Mansion Corporation

Lessee's Address: 4001 Maple Avenue, Suite 500, Dallas, TX 75219

Lease: Lease Agreement between City of San Antonio and Omni La Mansion Corporation for use of 1,536 sq. ft. of public space along the San Antonio Riverwalk, San Antonio, Texas, for outdoor dining authorized by the Ordinance Authorizing Original Lease, and attached as Exhibit A

Ordinance Authorizing

Original Lease: 90983, dated December 9, 1999

Ordinance Authorizing

Consent of Assignment: 2006-03-02-0275

Ordinance Authorizing

First Amendment:

2. Defined Terms.

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.

3. Modification of Lease Term.

3.1 TERM. The term of the Lease is scheduled to expire on December 31, 2024. Effective the last day of the month that this ordinance is executed by the CITY, the remaining term of the Lease shall be hereby terminated, and a new five (5) year base term shall commence the following day. Commencement of new term is to be identified through separate instrument after City Council approval. As of the Effective Date, the term "Lease Year" shall mean a period of twelve (12) consecutive full calendar months commencing each January 1st.

3.2 RENEWAL OPTIONS. CITY hereby grants to LESSEE three (3) administrative renewal options to extend the Lease term for additional consecutive term(s) of five (5) years each, on the same terms, conditions and covenants set forth in the Lease, subject to the terms of this amendment and provided that LESSEE is not in default at the expiration of the base term or respective extended term of the Lease. To

exercise the renewal option, **LESSEE** shall notify City in writing at least ninety (90) days before the date of expiration of the current term.

3.3 **TERMINATION:** The right is expressly reserved to the CITY to terminate this Lease Agreement for the following reasons:

- 3.3.1 In the event a court of competent jurisdiction makes a final determination that **LESSEE'S** use of the Leased Premises is inconsistent with the use authorized by the Ordinance Authorizing the Original Lease; or
- 3.3.2 In the event a court of competent jurisdiction makes a final determination that **LESSEE'S** use of the Leased Premises is unlawful and a public nuisance; or
- 3.3.3 In the event **LESSEE** shall default in the performance of any covenants or agreements contained herein and shall fail to remedy same following thirty (30) calendar days' written notice of such default, save and except a ten (10) business days' notice period will apply in the case of default in the payment of rent.
- 3.3.4 In the event City terminates the Lease pursuant to this Section 3.3, **CITY** shall give **LESSEE** notice in writing at least thirty (30) calendar days prior to the termination date, during which period **LESSEE** shall have the opportunity to cure any existing defaults.

4. Rental.

Section 4.1 of the Agreement is deleted in its entirety and replaced with the following:

The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:

Term	Year	Monthly Amount	Annual Amount
Base Term	Year 1	\$ 3,826.56	\$ 45,918.73
	Year 2	\$ 3,903.09	\$ 46,837.10
	Year 3	\$ 3,981.15	\$ 47,773.84
	Year 4	\$ 4,060.78	\$ 48,729.32
	Year 5	\$ 4,141.99	\$ 49,703.91
*commencement date to be identified through separate instrument after City Council approval			

Current rent and increases in rental rate are based on the current market rate. City retains the option to escalate the renewal rate to greater than 2.0% based on future market appraisal reports.

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 renewal.

6. Insurance Requirements

Section 13 "INSURANCE REQUIREMENTS" of the original lease is deleted in its entirety and replaced with the following language:

- 13.1 No later than 30 days before the scheduled lease agreement, **LESSEE** must provide a completed Certificate(s) of Insurance to **CITY'S Center City Development & Operations Department**. The certificate must be:
- 13.1.1 clearly labeled with the legal name of the event in the Description of Operations block;
 - 13.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
 - 13.1.3 properly endorsed and have the agent's signature, and phone number,
- 13.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by **CITY'S Center City Development & Operations Department**. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 13.3 The City's Risk Manager reserves the right to modify the required insurance coverages and limits during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an substantial increase to the City's risk exposure.
- 13.4 **LESSEE** shall obtain and maintain in full force and effect for the duration of this Agreement, at **LESSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the **LESSEE** claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Occupational Accident and Injury	\$1,000,000 per occurrence
2. Broad form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its

a. Premises/Operations b. Independent Contractor LESSEEs c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by LESSEE	equivalent in Umbrella or Excess Liability Coverage f. \$100,000
3. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate
4. Property Insurance	On a replacement cost basis

13.5 **LESSEE** must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of **LESSEE** and provide a certificate of insurance and endorsement that names **LESSEE** and **CITY** as additional insureds. Respondent shall provide **CITY** with subcontractor certificates and endorsements before the subcontractor starts work

13.6 **LESSEE** must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of **LESSEE** and provide a certificate of insurance and endorsement that names **LESSEE** and **CITY** as additional insureds. Respondent shall provide **CITY** with subcontractor certificates and endorsements before the subcontractor starts work.

13.7 If a loss results in litigation, then the **CITY** is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. **LESSEE** must comply with such requests within 10 days by submitting the requested insurance documents to the **CITY** at the following address:

City of San Antonio
Attn: Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

13.8 **LESSEE'S** insurance policies must contain or be endorsed to contain the following provisions:

13.8.1 Name **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed

under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.

- 13.8.2 Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- 13.8.3 Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- 13.8.4 Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 13.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, **LESSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend **LESSEE'S** performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 13.10 In addition to any other remedies CITY may have upon **LESSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order **LESSEE** to stop work and/or withhold any payment(s) which become due to **LESSEE** under this Agreement until **LESSEE** demonstrates compliance with requirements.
- 13.11 Nothing contained in this Agreement shall be construed as limiting the extent to which **LESSEE** may be held responsible for payments of damages to persons or property resulting from **LESSEE'S** or its subcontractors' performance of the work covered under this Agreement.
- 13.12 **LESSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 13.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 13.14 **LESSEE** and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

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, except as expressly stated in this instrument, 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.

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.

Remainder of Page Left Intentionally Blank

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

Lessor

City of San Antonio, a Texas municipal Corporation

Signature

Printed Name

Title

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Lessee

Omni La Mansion Corporation

Signature

Printed Name

Title

Date

Thanks for updated lease draft and other information.

Rather than turn the lease again, we thought it might be more effective for me to list our comments and requested changes. I will, however, provide separately revisions to Section 7.07 related to the sidewalk landscape improvements.

Here goes:

- Sec. 4.05: Adjust the tax provision to address the “cash basis” issue we had discussed, including the limited survival of the payment obligation.
- Sec. 5.01: Clarify that the reps and warranties contained in the last sentence of the first paragraph include systems and equipment such as MEP, fire-life safety, HVAC (even if it exclusively serves the premises), and elevators (including the freight elevator).
- Sec. 9.02:
 - My client reiterates its position that Landlord, not Tenant, be responsible for maintaining, repairing or replacing/modernizing the freight elevator (whether or not it exclusively serves the premises). If the freight elevator does not go the 2nd floor, my client might consider taking on those obligations provided that its financial obligation is limited to the amortized cost (based on the length of remaining term) of replacing/modernizing the elevator (whether due to failure or obsolescence, including Tenant’s inability to readily source parts for repairs).
 - Expand the reps and warranties contained in the last sentence of the first paragraph to include the HVAC that exclusively serves the premises and the freight elevator (assuming it too exclusively serves the premises).
- Exhibit B/Work Letter:
 - Art. II, Sec. 3: Refer to Exhibit G for the façade changes.
 - Art. IV: Use “Primary Cause” instead of “solely” in connection with Tenant’s inability to satisfy a condition because of Landlord’s failure.
- Exhibit C/Building RRs:
 - Sec. 7: Exclude Tenant’s use of the Dedicated Loading Dock from any restrictions or approvals. With regard to any other loading docks or common areas, please provide for 24-48 hour prior notice.

A few missing details and nits too:

- Sec. 1.14: I believe you mentioned that Building Service Hours from 9 - 9 were acceptable. Please delete the parenthetical.
- Sec. 7.01: Add to the list of building services: maintenance of the Sidewalk Landscape Improvements. Provide Exhibit E.
- Sec. 7.06: Include the Dedicated Loading Dock number (other than loading dock 4) and provide Exhibit F-1. Please include in clause (iv) that the roof HVAC units are located with the Common Areas and provide Exhibit F-2. Get
- Sec. 11.03: In the first sentence, insert the missing “)” after the phrase “sublease of the Premises.” Delete the highlighted NTD.
- Sec. 4.02, 14 and 20: Delete the highlighted NTD.
- Sec. 21: Please use as Exhibit G the exterior drawings I forwarded to you last week. → Laura + Ann Signage

Please let us know if any further discussion is needed.