

AN ORDINANCE **98625**

TERMINATING AN EXISTING LICENSE AGREEMENT WITH SEVEN SEVENTEEN HB SAN ANTONIO CORPORATION, APPROVED BY ORDINANCE NO. 83636, ON FEBRUARY 22, 1996, AND GRANTING A NEW LICENSE AGREEMENT TO MSPA ACQUISITION II, L.P., A DELAWARE LIMITED PARTNERSHIP, FOR THE CONTINUED USE OF THE SUBSURFACE AREA OF SOLEDAD AND MARTIN STREETS PUBLIC RIGHTS OF WAY FOR TWO (2) EXISTING PEDESTRIAN TUNNELS WHICH SERVICE THE ABUTTING ADAM'S MARK HOTEL AT 111 EAST PECAN STREET AND THE BROADWAY NATIONAL BANK BUILDING AND ITS PARKING GARAGE AT 425 SOLEDAD STREET, IN NCBS 139 AND 140, FOR A TEN (10) YEAR TERM AND THE TOTAL CONSIDERATION OF \$30,176.00, CONTINGENT UPON THE CLOSING OF THE PURCHASE OF THE ADAM'S MARK HOTEL, AND THE BROADWAY NATIONAL BANK BUILDING ALONG WITH ITS PARKING GARAGE.

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WHEREAS, pursuant to Ordinance No. 83636 dated February 22, 1996, the City had previously approved a License Agreement with Seven Seventeen HB San Antonio Corporation, as Licensee, to use the subsurface areas of Soledad and Martin streets public rights-of-way ("Subject Property") for the purpose of maintaining and operating two existing pedestrian tunnels under and across those streets, which tunnels service the Adam's Mark Hotel at 111 E. Pecan Street and the Broadway National Bank Building and its Parking Garage at 425 Soledad; and

WHEREAS, Seven Seventeen HB San Antonio Corporation has entered into a purchase and sale agreement whereby MSPA Acquisition II, L.P., has agreed to purchase the Hotel, Bank Building and the Parking Garage, and since the existing License Agreement is not assignable, it will be necessary for the City to terminate the existing License Agreement and grant a new ten-year License Agreement with MSPA Acquisition II, L.P., as Licensee, for the continued use of the Subject Property for the existing pedestrian tunnels at a new License Fee of \$30,176.00, contingent on the closing of the purchase; **NOW THEREFORE;**

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

SECTION 1. The License Agreement with Seven Seventeen HB San Antonio Corporation, as Licensee, approved by Ordinance No. 83636 on February 22, 1996, to use the subsurface areas of Soledad and Martin streets public rights-of-way for the purpose of maintaining and operating two existing pedestrian tunnels under and across those streets is hereby terminated.

SECTION 2. A ten-year License Agreement is hereby granted to MSPA Acquisition II, L.P., a Delaware limited partnership, as Licensee, for the continued use of the subsurface area of Soledad and Martin streets public rights of way for the same two existing pedestrian tunnels which tunnels service the Adam's Mark Hotel at 111 E. Pecan St. and the Broadway National Bank Building and its parking garage at 425 Soledad for a total License Fee of \$30,176.00.

SECTION 3. The City Manager, or her designee, including the Director of the Department of Asset Management or her designee, in the instance of the Escrow Agreement, is hereby authorized to execute (1) a Termination of License Agreement and Release of Liability, (2) a new License Agreement and Memorandum of License Agreement, (3) an Escrow Agreement, and (4) any other documents, as first reviewed and approved by the City Attorney. Copies of the Termination of License Agreement and Release of Liability, (2) new License Agreement and Memorandum of License Agreement, (3) Escrow Agreement,, either in substantially final form or executed on behalf of MSPA Acquisition II, L.P., as Licensee, are affixed hereto as **Attachments I, II, and III**, respectively, and incorporated herein verbatim for all purposes.

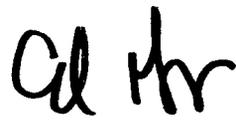
SECTION 4. The authority for execution of the above-referenced documents, and any other documents, as first reviewed and approved by the City Attorney, is contingent upon closing by December 31, 2003 of the purchase by MSPA Acquisition II, L.P. from Seven Seventeen HB San Antonio Corporation of the Adam's Mark Hotel at 111 E. Pecan Street, the Broadway National Bank Building and its parking garage at 425 Soledad. If the closing does not occur by December 31, 2003, unless otherwise extended by the parties, including the City as to termination of the existing License Agreement and granting of the new License Agreement, then the authority for execution of these documents and this ordinance will be deemed null, void and of no further force and effect. The Director of the Department of Asset Management is designated to execute any extension agreement on behalf of the City.

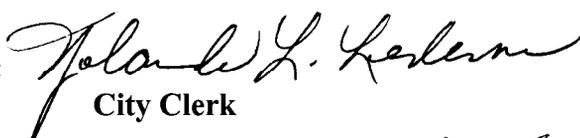
SECTION 5. The License Fee will be deposited into an escrow account at Commonwealth Land Title Insurance Company (Land America) until the closing of the purchase referenced in "SECTION 4." above and, upon receipt by the City, the License Fee shall be deposited into Fund 11-000 entitled "General Fund," Index Code 012732, entitled, "License Agreements - Use of ROW."

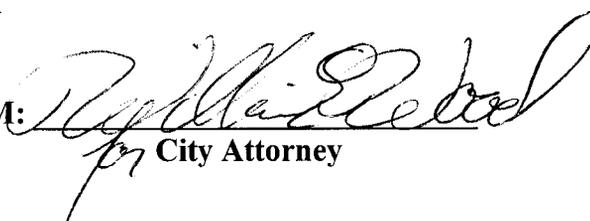
SECTION 6. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific Index Codes and Fund Number as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance shall take effect on the 28th day of December 2003.

PASSED AND APPROVED this 18th day of December, 2003.


M A Y O R
EDWARD D. GARZA

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney