

AN ORDINANCE

101618

AUTHORIZING THE EXECUTION OF A ONE (1)-YEAR LEASE AGREEMENT WITH A ONE (1)-YEAR RENEWAL OPTION BETWEEN THE CITY OF SAN ANTONIO AND LA MANSION DEL RIO FOR THE USE OF 98 SQUARE FEET OF SPACE LOCATED IN THE HENRY B. GONZALEZ CONVENTION CENTER IN CITY COUNCIL DISTRICT 1 WITH AN ESTIMATED ANNUAL REVENUE OF \$3,600.00.

* * * * *

WHEREAS, La Mansion Del Rio, Inc. ("La Mansion"), a Texas corporation, owns and operates the Watermark Spa and two (2) Watermark Restaurants located in downtown San Antonio; and

WHEREAS, La Mansion is seeking an area within the Henry B. Gonzalez Convention Center (the "Center") to promote its spa and restaurants during events held at the Center; and

WHEREAS, the City of San Antonio (the "City") has identified 98 square feet of space within the Center that could be used for such purpose; and

WHEREAS, La Mansion has agreed to lease said space and, by the terms of a Lease Agreement (the "Lease") with the City, pay a monthly rental fee of \$300.00; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Lease Agreement between the City of San Antonio and La Mansion Del Rio, Inc. for the use of approximately 98 square feet of space located in the Henry B. Gonzalez Convention Center in City Council District 1 are hereby approved. A copy of the Lease substantially in its final form is attached as "EXHIBIT A" and made a part of this ordinance. A final copy of the Lease will be attached when executed.

SECTION 2. The City Manager or the City Manager's designee is hereby authorized to execute a Lease Agreement with La Mansion Del Rio, Inc. for the use of 98 square feet of space located in the Henry B. Gonzalez Convention Center for a monthly base rent of \$300.00 or \$3,600.00 annually.

SECTION 3. The proceeds of the Lease will be deposited into Fund 29006000, entitled "Hotel Motel Tax Fund," Internal Order 242000000001, entitled "Convention Center," and General Ledger Account 4407231, entitled "Facility Rental Income."

SECTION 4. 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

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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 5. This ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 3rd day of NOVEMBER 2005.



M A Y O R

PHIL HARDBERGER

ATTEST:



ASSISTANT City Clerk

APPROVED AS TO FORM:


for City Attorney

LEASE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

KNOW ALL MEN BY THESE PRESENTS

This Lease Agreement (hereinafter referred to as "Lease") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "Landlord"), a Texas Municipal Corporation acting by and through its City Manager and La Mansion Del Rio Inc., a corporation formed in accordance with the laws of the State of Texas, (hereinafter referred to as "Tenant") for the lease of space located at 200 E. Market Street, San Antonio, Bexar County, Texas 78205 (hereinafter referred to as "Leased Premises").

I. LEASED PREMISES/USE

1.1 In consideration of the covenants and agreements contained herein, subject to (i) all laws, codes, rules, regulations and ordinances of any governmental or quasi-governmental entity (hereinafter referred to as "Laws") and to (ii) all matters of record which affect or relate to the Leased Premises (hereinafter referred to as "Permitted Exceptions"), Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord, ninety-eight (98) square feet of usable space in the Henry B. Gonzalez Convention Center (hereinafter referred to as the "Center") located at 200 E. Market Street, San Antonio, Bexar County, Texas 78205, to have and to hold for the Lease Term and any holdover or renewal periods, unless sooner terminated as hereinafter provided. The Leased Premises are more particularly designated and shown on site plan, **Exhibit "A"** attached hereto, which shows the Leased Premises as part of the entire premises.

1.2 The Leased Premises may be used by Tenant as an exhibit space to promote its Spa and two (2) restaurants. The permitted uses may be expanded by Tenant upon Landlord's written consent, which shall not be unreasonably withheld by Landlord.

1.3 Tenant will not occupy or use, nor permit any portion of the Leased Premises to be occupied or used for any business or purpose which is not the same as the purpose stated in Section 1.2 above or is unlawful in part or in whole or deemed to be disreputable in any manner, or is in violation of any Laws or Permitted Exceptions. Tenant must procure at its sole expense any permits and licenses required for the transaction of its business in the Leased Premises and otherwise comply with all Laws and Permitted Exceptions.

1.4 Tenant will maintain the Leased Premises in a clean and healthful condition and will comply with all Laws, with reference to use, conditions, or occupancy of the Leased Premises. Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb Landlord's business operations, Landlord's tenants or Landlord's Licensees.

II. TERM/RENEWAL

2.1 The Primary Term of this Lease shall be for a period of twelve (12) months, with a Commencement Date of October 1, 2005 and an Expiration Date of September 30, 2006 unless terminated earlier as provided herein.

2.2 Tenant may request an extension of the term of this Lease in writing and within thirty (30) days of the expiration of the Primary Term. Landlord, in his sole discretion, may renew the terms of this Lease for a period of time not to exceed twelve (12) months. If Landlord renews the terms of this Lease Agreement, then the monthly rent during the renewal term shall be negotiated between Landlord and Tenant.

2.3 Notwithstanding the provisions under this Article II, this Lease may be terminated by either party without cause at any time during the Initial Term or Extended Term upon written notice, provided that such notice is in writing and specifies an effective date for termination of not less than thirty (30) calendar days from the date such notice is mailed by certified mail, return receipt requested, by the other party.

III. SERVICES BY LANDLORD

3.1 Only Landlord may provide ordinary maintenance, repair and/or replacement on the Leased Premises and shall do so as necessary for proper upkeep of the building structure. However, should such maintenance, repair and/or replacement be necessary due to Tenants actions or inactions then Tenant shall be held financially responsible for such maintenance, repair and/or replacement subject to 4.1.a and 9.1 below.

3.2 The Leased Premises are currently serviced by the necessary utilities for the purposes stated in Section 1.2 of this Lease.

3.3 Landlord may provide telecommunication service to Tenant upon written request by Tenant and at Tenant's expense. Any installation or use of telecommunication services by Tenant other than that provided by Landlord is prohibited under this Agreement. Should Tenant request such service, Tenant agrees to pay all usage fees and charges when due.

3.4 Landlord shall provide common area maintenance and janitorial cleaning service to the Leased Premises as Landlord deems necessary for the proper upkeep of the building structure.

IV. SERVICES BY TENANT

4.1 Tenant agrees to provide and furnish the following services in reference to the Leased Premises during its occupancy:

- (a) Tenant shall keep Leased Premises neat and clean and shall notify Landlord of any damages to the Leased Premises, including but not limited to carpeting, when such damage occurs and shall mitigate said damage until Landlord can make all necessary repairs.
- (b) Tenant shall coordinate with Convention Facilities Department staff to schedule any necessary repairs.

V. RENT/TAXES

5.1 **Base Rent.** Tenant agrees to pay Landlord base rent ("Base Rent") in monthly installments beginning on the Commencement Date hereof and continuing thereafter on the 1st day of each month as follows:

<u>Monthly Base Rent</u>	<u>Monthly Base Rent Per S.F.</u>
\$300.00	\$3.06

The Base Rent shall be paid at the Office of the Director, Convention Facilities, at 200 E. Market Street, San Antonio, Bexar County, Texas 78205.

5.2 Should Tenant fail to pay the Base Rent on the 1st day of the month, Landlord may terminate this Lease, remove Tenant's property from the Leased Premises and store said property at Tenant's expense. The Director of Convention Facilities may, in writing and at his sole discretion, permit additional time for Tenant to pay the monthly Base Rent.

5.3 **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Leased Premises.

VI. ALTERATIONS AND ADDITIONS

6.1 No alterations or additions to the Leased Premises are permitted or will be performed by Tenant without the written consent of Landlord.

VII. ACCESS TO PREMISES

7.1 As long as a representative of Tenant is present and always accompanies Landlord or Landlord's authorized representatives, Landlord shall have the right to enter upon the Leased Premises during business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon. Further, Landlord shall have the right, without Tenant's consent, to enter upon the Leased Premises for emergency purposes, such as, but not limited to, curing plumbing or electrical problems.

VIII. ASSIGNMENT OR SUBLEASE

8.1 Tenant may not assign or sublease any part of the Leased Premises or any right or privilege connected therewith.

VIX. TENANT'S PROPERTY

9.1 Any property of Tenant located on the Leased Premises shall remain the property of Tenant and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its property which it may have installed in the Leased Premises. Tenant, at its sole cost and expense, shall immediately pay for any repair or damage occasioned to the Leased Premises by reason of the removal of any such property and upon expiration or earlier termination of this Lease shall leave the Leased Premises in a neat and clean condition, normal wear and tear excepted. The parties hereto agree that any property or other items, if not removed by Tenant from the Leased Premises on or before thirty (30) days after the termination or expiration of this Lease, shall be deemed to become the property of Landlord, and may be removed by Landlord at Tenant's expense.

X. RESERVED

XI. QUIET ENJOYMENT

11.1 Landlord hereby covenants that Tenant, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on part of Tenant, shall and may peacefully and quietly have, hold and enjoy the Leased Premises, subject to the Laws and Permitted Exceptions. Landlord agrees to use good faith efforts to protect Tenant from interference or disturbance by third persons.

XII. DESTRUCTION OF LEASED PREMISES

12.1 If the Leased Premises are partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover or renewal periods, this Lease Agreement shall terminate.

XIII. INSURANCE

13.1 Prior to the commencement of this Lease, Tenant shall furnish an original completed Certificate(s) of Insurance to Landlord and the City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to Landlord. Landlord shall have no duty to allow Tenant to occupy the Leased Premises until such certificate has been delivered to Landlord and the City Clerk's Office, and no officer or employee, other than Landlord's Risk Manager, shall have authority to waive this requirement.

13.2 Landlord reserves the right to review the insurance requirements of this article during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by Landlord's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Lease, but in no instance will any modification be allowed whereupon Landlord may incur increased risk.

13.3 Subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by Landlord, Tenant shall obtain and maintain in full force and effect for the duration of this Lease, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Commercial General (public) Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations *b. Independent contractors c. Personal Injury d. Contractual liability *e. Explosion, collapse, underground f. Broad form property damage, to include fire legal liability 	Bodily Injury and Property Damage of \$1,000,000 per occurrence, with a \$2,000,000 General Aggregate, or its equivalent, in umbrella or excess liability coverage
2. Property Insurance for physical damage to the property of Tenant including improvements and betterments to the Leased Premises	Coverage for a minimum of the replacement costs of Tenant's improvements and betterments

*If applicable

13.4 Landlord shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Landlord, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by Landlord, Tenant shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

13.5 Tenant agrees that, with respect to the above required insurance, all insurance agreements and Certificate(s) of Insurance will contain the following required provisions.

Name Landlord and its officers, employees, volunteers and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under agreement with Landlord, with the exception of the professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to Landlord where Landlord is an additional insured shown on the policy;

13.6 Tenant shall notify Landlord in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to Landlord at the following address:

City of San Antonio
Convention Facilities Department
P.O. Box 1809
San Antonio, Texas 78296

13.7 If Tenant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, Landlord may obtain such insurance, and increase the Base Rent in Section 5.1 of this Lease in order to pay the premiums for such insurance; however, procuring of said insurance by Landlord is an alternative to other remedies Landlord may have, and is not the exclusive remedy for failure of LICENSEE to maintain said insurance or secure such endorsement. In addition to any other remedies Landlord may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Landlord shall have the right to terminate this Lease.

13.8 Nothing herein contained shall be construed as limiting, in any way, the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from *Tenant's* performance under this Lease.

XIV. INDEMNITY

14.1 **TENANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY** and the elected officials, employees, officers, directors, volunteers and authorized representatives of **CITY**, individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature: (1) arising out of or in connection with **TENANT's** use of the Leased Premises; and (2) arising out of any act or omission of **TENANT** or any of **TENANT's** employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to : (a) **TENANT** or **TENANT's** employees exhibitors, contractors, representatives, patrons, guests or invitees and their respective officers, agents, employees, directors and representatives, or (b) **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of **CITY**.

14.2 The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

14.3 **IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.**

14.4 **TENANT** shall promptly advise **CITY** in writing of any claim or demand against **CITY** or **TENANT** known to **TENANT** related to or arising out of **TENANT's** or **CITY's** activities under this

Agreement. Further, TENANT shall see to the investigation and defense of any such claim or demand against TENANT or CITY at TENANT'S sole cost until such time as CITY is found to be negligent by a court of competent jurisdiction. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

14.5 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XV. DEFAULT AND REMEDIES – TENANT'S DEFAULT

15.1 An Event of Default in the Lease shall occur should Tenant neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Tenant's part to be performed or in any way observed and if such neglect or failure should continue for a period of ten (10) days after receipt by Tenant of written notice of such neglect or failure except for the failure or neglect to pay any installment of rent or additional rent wherein such neglect or failure must be cured within three (3) days after receipt by Tenant of written notice of such neglect or failure. However, if more than ten (10) days shall be required because of the nature of the Event of Default, Tenant shall be allowed to cure if within said ten (10) day period Tenant commences and thereafter diligently proceeds to cure such Event of Default but under no circumstances shall the period of notice and cure exceed thirty (30) days from the date of such Event of Default by Tenant. Landlord is not responsible to notify Tenant of any monetary default.

15.2 Upon an Event of Default and failure of Tenant to cure as stated above, Landlord may terminate this Lease by written notice to Tenant.

XVI. DEFAULT AND REMEDIES - LANDLORDS DEFAULT

16.1 A "Landlord Default" shall occur should Landlord fail to perform any of its covenants or obligations hereunder after the Commencement Date of this Lease. In the event of a Landlord Default, Tenant shall have the right to terminate this Lease; however, Tenant shall not exercise Tenant's right to terminate unless and until (1) Tenant gives written notice of such default (which notice shall specify the exact nature of said default with particularity and how the same may be cured) to the Landlord, and (2) said Landlord fails to cure or cause to be cured said default within thirty (30) days from the receipt of such notice from Tenant. However, if more than thirty (30) days shall be required because of the nature of the Landlord Default, Landlord shall be allowed to cure if within said thirty (30) day period Landlord commences and diligently proceeds to cure said Landlord Default, but in no event shall such date extend later than sixty (90) days after the date of the Landlord Default.

16.2 With the exception of construction activities associated with the Convention Center Hotel Project and any other construction activities Landlord may deem necessary to perform, if Landlord fails to perform its obligations under the Lease and such failure (a) is the result of a condition within the Landlord's control, (b) materially and adversely interferes with the normal use of the Leased Premises and/or other common areas by Tenant as allowed herein, (c) continues for more than ten (10) consecutive business days, then the rental shall be proportionately abated until such interference is eliminated or the Leased Premises are otherwise rendered tenantable again.

XVII. EFFECT OF WAIVER

17.1 Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. Landlord's acceptance of rent installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the rent installment or installments accepted.

XVIII. CONFLICT OF INTEREST

18.1 Tenant acknowledges that it is informed that the Charter of the City of San Antonio ("City" and Tenant herein) and City's Ethics Code prohibit City or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his or her parent, child or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Tenant warrants and certifies, and this Lease is made in reliance thereon, that it, its officers and employees are neither officers nor employees of City.

XIX. SEVERABILITY CLAUSE AND INTERPRETATION

19.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The caption of each article and section hereof is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XX. ENTIRE AGREEMENT

20.1 This Lease constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXI. PARTIES BOUND

21.1 This Lease shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns except as otherwise expressly provided herein.

XXII. NOTICE

22.1 Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended, or by hand delivery (courier or otherwise) with signature from the receiving party, to be given at the following address:

Landlord: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966
and
Director of Convention Facilities
Henry B. Gonzalez Convention Center
200 E. Market Street
San Antonio, Texas 78205

Tenant: La Mansion Del Rio, Inc.
112 Pecan Street, Suite 2810
San Antonio, TX 78205
Attn: Jack Hebdon

XXIII. COUNTERPARTS, ONE AGREEMENT

23.1 This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one agreement. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXIV. LEGAL AUTHORITY

24.1 The signer of this Lease for Tenant represents, warrants, assures and guarantees that he has full legal authority to execute this Lease on behalf of Tenant and to bind Tenant to all of the terms, conditions, provisions and obligations herein contained.

XXV. TEXAS LAW TO APPLY

25.1 This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

The EFFECTIVE DATE shall be the Commencement Date set forth in Section 2.1.

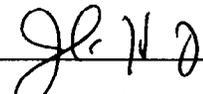
EXECUTED this 6 day of October, 2005.

CITY OF SAN ANTONIO
A Texas Municipal Corporation

LA MANSION DEL RIO, INC.
A Texas Corporation

BY: _____

J. Rolando Bono
City Manager

BY:  _____

Jack C. Hebdon, Jr.
Executive Vice President

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

