

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PUBLIC WORKS DEPARTMENT**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Assistant City Manager; Peter Zaroni, Acting Director of Office of Management and Budget; Rebecca Waldman, Director of Asset Management; Milo D. Nitschke, Director of Finance; Andrew Martin, City Attorney; Jason Cosby, P.E., Assistant Director of Public Works, File

SUBJECT: License Agreement for La Mansión Del Rio, Inc., for the use of 125 reserved parking spaces for valet parking of motor vehicles at the Mid-City Parking Garage

DATE: February 12, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a License Agreement with La Mansión Del Rio, Inc., as Licensee, for an initial term of 25 years for the use of 125 reserved parking spaces at the Mid-City Parking Garage for valet parking of motor vehicles. These include 30 spaces on the third level, 30 spaces on the fourth level and 65 spaces on the fifth level. A monthly License Fee of \$180.00 per space will be charged commencing February 2004. An additional monthly labor charge of \$650.00 and any necessary reimbursement for sums expended to provide signs or other markings designating the parking spaces will also be charged.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The Watermark Hotel & Spa, located in the re-created old Saddlery Building/Karotkin's Furniture Store on West Commerce Street, became the City's only five-star quality luxury hotel and spa, when it opened for business in January. No on-site parking is available, thus La Mansión Del Rio, Inc. has requested a license to use 125 parking spaces in the Mid-City Parking Garage for valet parking of the motor vehicles of patrons and assigned staff of hotels managed by La Mansión Del Rio, Inc., Licensee, including the Watermark Hotel. The License Agreement will be for an Initial Term of 25 years, and will provide for the right to renew the Term for three (3) additional 10-year periods. All renewals require mutual consent and are subject to approval by the City Council. This is similar to an agreement with Hotel Valencia San Antonio Riverwalk, L.P. approved by Ordinance No. 92541 on September 21, 2000.

POLICY ANALYSIS

The Parking Fund was established as a self-sustaining enterprise fund. This ordinance is consistent with the City's policy to promote downtown economic development by providing adequate parking facilities. The Parking Fund is an enterprise fund and this ordinance will assist in providing a guaranteed revenue stream.

FISCAL IMPACT

Revenues generated by this License Agreement for FY 2003-2004 are estimated at \$185,200, calculated as follows:

License Fees February - September 2004	125 spaces @ \$180 per space times eight months	\$180,000
Labor Maintenance Fee February- September 2004	\$650/month times eight months	\$5,200
		\$185,200

Additionally, as deemed necessary, Licensee will reimburse the Parking Division for all amounts expended to provide signs or other markings, which designate parking spaces to be used by the Watermark Hotel & Spa.

The License fee will be adjusted for the third year through the twenty-fifth year by an amount which is consistent with rate increases approved for other City owned or operated garages in the downtown area or an amount equal to the increase from year to year in the gross revenues realized by the city per parking space in the Mid-City Garage, whichever is greater.

COORDINATION

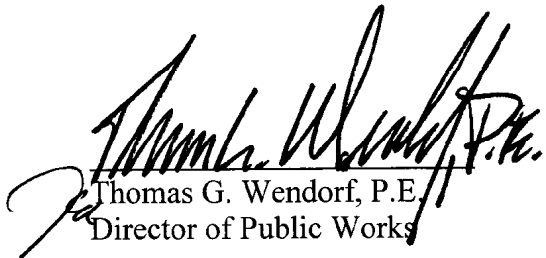
This request has been coordinated with the City Attorney's Office, Risk Management, Asset Management.

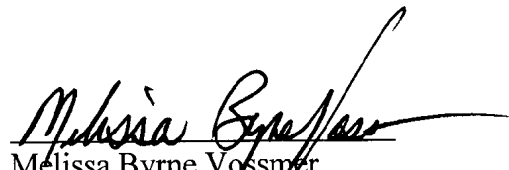
SUPPLEMENTARY COMMENTS

The Discretionary Contract Disclosure Form required by the Ethics Ordinance is attached.

ATTACHMENTS

1. Proposal
2. Discretionary Contracts Disclosure Form

 1/29/04
Thomas G. Wendorf, P.E.
Director of Public Works


Melissa Byrne Vossmer
Assistant City Manager

Approved:


Terry M. Brechtel
City Manager

Mid-City Parking Garage
Watermark Hotel and Spa

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into by and between the **City of San Antonio**, a Texas Municipal Corporation (hereinafter called the "**LICENSOR**"), acting by and through its City Manager or designee, pursuant to Ordinance No. _____, dated _____, 2004, and **LA MANSIÓN DEL RIO, INC.**, a Texas Corporation (hereinafter referred to as the "**LICENSEE**").

I. GRANT OF LICENSE

1.1 LICENSOR, for and in consideration of the payment of the License Fees hereinafter set forth and the covenants and agreements hereinafter contained, does hereby grant to **LICENSEE** the right to use a total of one hundred twenty-five (125) reserved Parking Spaces ("Parking Spaces") within an existing structure commonly known as the Mid-City Parking Garage, having a street address of 240 E. Houston Street, San Antonio, Texas, legally described as being a 0.646 acre (28,139.76 sq. ft.) tract of land out of Block 21, New City Block 406 and being the east 5 feet of Lot 5, and all of Lots 6, 7, and 8 out of Block 21, New City Block 406, in the City of San Antonio, Bexar County, Texas ("Licensed Premises"). Thirty (30) of the one hundred twenty-five (125) spaces will be designated and located on the third level of the structure. An additional thirty (30) spaces will be designated and located on the fourth level of the structure. The remaining sixty-five (65) spaces will be designated and located on the fifth level of the structure. All designated spaces shall be reserved for **LICENSEE** but **LICENSEE**'s use of the common areas of the structure shall be in common with other users of the structure. For purposes of this agreement, "common areas" shall mean drives, ramps, elevators, stairs and all other portions or amenities in the structure not designated as one of the one hundred twenty-five (125) designated spaces or reserved for other particular uses or patrons or assigned staff.

1.2 Overflow Parking: From time to time during the Initial Term or any Renewal Term of this Agreement **LICENSEE** may request the short term daily use of additional Parking Spaces from **LICENSOR**. Subject to availability, **LICENSOR** may grant **LICENSEE** the use of additional spaces in the Mid-City Parking Garage or in the Riverbend Garage located at 210 N. Presa Street. Licensee agrees to make additional License Fee payments for these spaces as described in **Section 5.6**. These spaces will not be reserved and **LICENSEE** understands and agrees that these spaces will be available on a day to day basis only.

1.3 Within the first twenty-four months after this Agreement becomes effective the **LICENSOR** and the **LICENSEE** may change the number of parking spaces covered by this Agreement by mutual agreement.

II. USE

2.1 **LICENSEE** shall have the right to use one hundred twenty-five (125) reserved Parking Spaces, which includes thirty (30) Parking Spaces on the third level, thirty (30) Parking Spaces on the fourth level and sixty-five (65) Parking Spaces on the fifth level, all within the Licensed Premises, solely for the purpose of valet parking of motor vehicles of the **LICENSEE's** patrons or assigned staff.

2.2 **LICENSEE** agrees and specifically understands that this License is confined to the privilege to use Parking Spaces within the Licensed Premises and that the permission herein given does not grant **LICENSEE** any interest or estate in the Parking Spaces or the Licensed Premises, or the Mid City Parking Garage, but is a mere personal privilege to do certain acts of a temporary character upon the Licensed Premises. **LICENSOR** retains dominion, possession, and control of said Licensed Premises, including access thereto, at all times, **LICENSOR** reserves the right to enforce all reasonable, necessary and proper rules for the management and operation of the Licensed Premises, and may eject from the Licensed Premises, any person or persons it reasonably deems objectionable.

2.3 **LICENSEE** shall insure that those under its control or otherwise authorized by it to use said Parking Spaces shall in no way obstruct ingress or egress or limit accessibility to the Licensed Premises by **LICENSOR** or the general public or by others having licenses, leasehold interests, or other interests in or about the Licensed Premises.

2.4 **LICENSEE** agrees that those under its control or otherwise authorized by it to use said Parking Spaces shall abide by, conform to and comply with all applicable laws, ordinances, rules and regulations and will not do or permit to be done anything in violation thereof. If the attention of **LICENSEE** is called to any such violation, **LICENSEE** or those under its control or otherwise authorized by it to use said Parking Spaces, will immediately desist from and correct such violation.

III. ACCEPTANCE AND CONDITION OF PREMISES

3.1 **LICENSEE** has had full opportunity to examine the Licensed Premises, in its present "AS IS, WHERE IS, WITH ALL FAULTS" condition, and **LICENSEE** acknowledges that there is in and about said premises nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE's** use of the Licensed Premises in its "AS IS, WHERE IS, WITH ALL FAULTS" condition shall be conclusive evidence of

LICENSEE's acceptance thereof in good order and satisfactory condition and **LICENSEE** hereby accepts the Licensed Premises in its present, "AS IS, WHERE IS WITH ALL FAULTS" condition from **LICENSOR** as suitable for **LICENSEE's** intended use as stated herein.

3.2 **LICENSEE** agrees that no representations respecting the condition of the Licensed Premises and no promises to decorate, alter, repair, or improve the Licensed Premises, either before or after the execution hereof, have been made by **LICENSOR**, or its agents, to **LICENSEE**. **LICENSOR** specifically disclaims any and all warranties whatsoever of suitability of the premises for **LICENSEE's** intended use.

IV. TERM AND RENEWAL

4.1 The Initial Term of this Agreement shall be effective for a period of twenty-five (25) years, commencing on February 1, 2004, ("Commencement Date") and terminating on the last day of the same month in the twenty-fifth (25th) year thereafter, unless renewed, canceled or terminated under the provisions contained herein. Upon expiration, cancellation or termination, **LICENSEE** and those under its control or otherwise authorized by it to use said Parking Spaces shall vacate said Licensed Premises and remove said **LICENSEE's**, or said other persons' effects, therefrom at **LICENSEE's**, or said other persons' sole cost and expense.

4.2 As long as **LICENSEE** is not in default of any of the provisions contained herein, and subject to approval of the City of San Antonio City Council, as evidenced by passage of an ordinance for each period, this Agreement may be renewed and extended for three (3) additional ten (10) year periods (each designated as a "Renewal Term"), on such terms and conditions as may be agreed to by the parties in accordance with **Section 5.4**. This renewal and extension provision shall not be construed as vesting in **LICENSEE** any greater rights, title or interest whatsoever in the Mid-City Parking Garage or land thereunder, then the limited personal privilege to use granted to **LICENSEE** under this Agreement, as detailed in **Section 2.2**. If **LICENSOR** and **LICENSEE** agree to continue the transaction into any Renewal Term but do not adopt different terms and conditions pertaining to the renewal, then the terms and conditions of this Agreement will remain in full force and effect upon each renewal, save and except the License Fee, which shall be subject to renegotiation.

4.3 **LICENSEE** shall notify **LICENSOR**, in writing, in accordance with **Section 13.1**, of its request to renew, at least ninety (90) days prior to the expiration of the previous Initial Term or Renewal Term, unless this Agreement is terminated or canceled prior thereto. If such occurs, there shall be no right of renewal and extension.

4.4 LICENSEE understands and agrees that all personal property placed by **LICENSEE** or those under its control or authorized by it to use said Parking Spaces, upon the Licensed Premises, is at the sole risk and expense of **LICENSEE** and said other persons and that **LICENSOR** shall not be liable to **LICENSEE** or to any other person or persons for loss, theft, vandalism, damage or injury of any kind to person or property.

V. CONSIDERATION

5.1 LICENSEE hereby covenants and agrees that, in consideration for the license granted hereby, **LICENSEE** shall pay **LICENSOR**, during the Initial Term and each Renewal Term thereafter, the following sums, as a License Fee for the use of Parking Spaces in said Licensed Premises:

5.1.1 For and during the first and second year of the Initial Term, **LICENSEE** shall pay a License Fee of one hundred-eighty dollars and no cents (\$180.00) per designated Parking Space for the one hundred twenty-five (125) Parking Spaces (subject to the possible adjustment of number of spaces by mutual agreement of the parties as set forth in **Section 1.3** of this Agreement) per month, on or before the first day of each and every month, during the first and second year of the Initial Term, beginning on the Commencement Date established herein.

5.1.2 For and during the third year of the Initial Term **LICENSEE** shall pay a License Fee equal to the amounts established in **Section 5.1.1** above per Parking Space, per month, on or before the first day of each and every month of the Initial Term, PLUS the greater of (1) an increase which is consistent with rate increases, if any, approved for other CITY OF SAN ANTONIO owned or operated parking garages (hereafter "CITY" garages) in the downtown area, with such increase to be measured as the difference, expressed as a percentage, between the per space annual gross parking revenues for said "CITY" garages for the most recently completed City of San Antonio Fiscal Year for which increased rates were approved compared to the next most recently completed City of San Antonio Fiscal Year, or (2) an increase equal to the increase from year to year, if any, in the annual gross parking revenues realized by **LICENSOR** per Parking Space in the Mid-City Garage, other than annual gross parking revenues received from **LICENSEE** for the use of Parking Spaces in the Mid-City Garage, as set forth in this Agreement, with such increase to be measured as the difference, expressed as a percentage, between the per space annual gross parking revenues for the Mid-City Parking Garage for the most recently completed City of San Antonio Fiscal Year compared to the next most recently completed City of San Antonio Fiscal Year. For example, if the third year of the Initial Term commences on February 1, 2006, then the increase under (1) shall be measured as the difference, expressed as a percentage increase, between the per space annual gross parking revenues for

said "CITY" garages for City of San Antonio Fiscal Year 2004-2005 compared to the per space annual gross parking revenues for said "CITY" garages for City of San Antonio Fiscal Year 2003-2004. Any increase, whether the greater of (1) or (2), will be payable by **LICENSEE** beginning February 1, 2006. **LICENSEE** understands that the License Fee will not be decreased for the third year of the Initial Term of the Agreement.

5.1.3 For and during each successive one year period of the Initial Term the License Fee paid by **LICENSEE** shall be adjusted to include the amount due for the previous period PLUS the greater of: (1) an increase which is consistent with rate increases, if any, approved for other CITY OF SAN ANTONIO owned or operated parking garages (hereafter "CITY" garages) in the downtown area with such increase to be measured as the difference, expressed as a percentage, between the per space annual gross parking revenues for said "CITY" garages for the most recently completed City of San Antonio Fiscal Year for which increased rates were approved compared to the next most recently completed City of San Antonio Fiscal Year, or (2) an increase equal to the increase from year to year, if any, in the annual gross parking revenues realized by the **LICENSOR** per Parking Space in the Mid-City Garage, other than annual gross parking revenues received from **LICENSEE** for the use of Parking Spaces in the Mid-City Garage as set forth in this Agreement, with such increase to be measured as the difference, expressed as a percentage, between the per space annual gross parking revenues for the Mid-City Parking Garage for the most recently completed City of San Antonio Fiscal Year compared to the next most recently completed City of San Antonio Fiscal Year. Any increase, whether the greater of (1) or (2), will be payable by **LICENSEE** beginning February 1, 2007 and on February 1 of each successive one year period of the Initial Term of the Agreement thereafter. **LICENSEE** understands that the License Fee will not be decreased for the fourth year or any successive one year period of the Initial Term of the Agreement.

5.1.4 The License Fee during each month of each Renewal Term, if such extension and renewal is granted, shall be determined as indicated in **Section 4.2** and **Section 5.3**.

5.2 The License Fees to be paid hereunder are to be paid to the City of San Antonio, Public Works Department, Parking Division at 243 N. Center St. Suite 200, San Antonio, Texas 78202.

5.3 License Fees to be paid for one or more Renewal Term shall be negotiated and agreed to by the parties at least sixty (60) days prior to the end of the last year of the Initial Term or the end of the last year of any prior Renewal Term, as the case may be. This Agreement shall terminate at the end of its then current term, whether Initial Term

or a Renewal Term, if the parties cannot reach a mutual agreement regarding the fees to be paid for the use of the Licensed Premises during any subsequent Renewal Term.

5.4 Additional Consideration. In addition to all other sums due, **LICENSEE** shall pay **LICENSOR** a Labor Charge of six hundred fifty dollars (\$650.00) per month for reimbursement for labor costs provided under this Agreement and **LICENSEE** shall reimburse the **LICENSOR** for any and all sums expended by **LICENSOR** to provide signs or other markings which designate Parking Spaces to be used by **LICENSEE** under this Agreement. The designated Labor Charge shall be adjusted on an annual basis proportionately to the adjustments in salary and benefits for City of San Antonio employees in the pay classifications utilized in the operation of the Mid-City Parking Garage.

5.5 The Labor component of the Additional Consideration charge shall be paid by **LICENSEE** on or before the first day of each month concurrently with the monthly payments. As **LICENSOR** incurs sign expenses throughout the Initial Term and each Renewal Term of this Agreement **LICENSOR** shall compute and issue a statement to **LICENSEE** for the sign reimbursement component of the Additional Consideration charge and the amount shall be paid to **LICENSOR** concurrently with, but in addition to, the other monthly fees on the first of the next calendar month after **LICENSEE** received the statement.

5.6 If **LICENSEE** has requested and **LICENSOR** has provided Overflow Parking as provided in **Section 1.2** above, then **LICENSOR** shall provide a statement of the additional License Fee to **LICENSEE** as soon as practical after such use for the Overflow Parking at the public daily parking rate or the flat/event parking rate, whichever is applicable, for such use. **LICENSEE** shall pay the invoiced amount for Overflow Parking upon receipt of the invoice.

5.7 A five percent (5%) late fee shall also be due and payable on any amount due to, but not received by, **LICENSOR** under the terms of this Agreement on or before the tenth of any month. The late payment fee is in addition to any other amount due hereunder.

5.8 If the **LICENSEE**'s parking spaces are relocated to another parking facility owned or operated by **LICENSOR** for whatever reason which is authorized by this Agreement and if the **LICENSEE** no longer uses spaces within the Mid-City Parking Garage, then the computations (such as, but not limited to, adjustments to payments and changes in annual gross parking revenues) set out in this **ARTICLE V**, shall be based upon the parking facility to which the **LICENSEE**'s parking spaces have been relocated.

VI. INSURANCE REQUIREMENTS

6.1 LICENSEE shall furnish an original completed Certificate(s) of Insurance to the City of San Antonio Public Works Department, Parking Division, at the address provided herein and City Clerk's Office, as a precondition to occupancy of the parking spaces. The Certificate 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 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 the City of San Antonio ("**LICENSOR**"). **LICENSOR** shall have no duty to pay or perform under this License Agreement until such certificate shall have been delivered to the **LICENSOR'S** Public Works Department and the City Clerk's Office and no officer or employee shall have authority to waive this requirement.

6.2 LICENSOR reserves the right to review the insurance requirements of this **ARTICLE VI.** during the effective period of the Agreement, including any extension or renewal hereof and to reasonably amend or modify insurance coverage and its limits when deemed necessary and prudent by the **LICENSOR'S** Risk Manager based upon changes in statutory law, court decisions, the claims history of the industry as well as the **LICENSEE** and/or circumstances surrounding this License Agreement, but in no instance will the **LICENSOR** allow modification whereupon the **LICENSOR** may incur increased risk.

6.3 LICENSEE'S financial integrity is of interest to the **LICENSOR**, therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **LICENSOR**, and also without limiting **LICENSOR's** rights to indemnification, **LICENSEE** shall obtain and maintain in full force and effect for the term of this Agreement, including any extension or renewal hereof, insurance coverages 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 the **LICENSOR**, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
	Statutory
1. Workers' Compensation or an approved alternate plan	
Employers Liability or an approved alternate plan	\$500,000 per category

TYPEAMOUNT

- | | |
|--|---|
| 2. Commercial General (public)
Liability Insurance to include
coverage for the following:
a. Premises/operations
*b. Independent contractors
c. Products/completed operations
d. Personal Injury
e. Contractual liability
f. Broad form property damage
to include fire legal liability | For Bodily Injury and Property
Damage of \$1,000,000 per
Occurrence with a \$2,000,000 Aggregate
or its equivalent in Umbrella or excess
liability coverage |
| 3. Business Automobile Liability
a. Owned/leased vehicles
b. Non-owned vehicles
c. Hired vehicles | Combined Single Limit for Bodily
Injury and Property Damage of
\$1,000,000 per occurrence or its
Equivalent |
| 4. Garagekeeper's Legal
Liability | Combined Single Limit for Bodily
Injury and Property Damage of
\$1,000,000 per occurrence or its
equivalent. |

Any alternate plan for Workers' Compensation and Employer's Liability must be approved in advance by **CITY's** Risk Manager. **LICENSEE's** Alternate Plan as presented to **CITY's** Risk Manager has been approved.

6.4 LICENSOR 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 the **LICENSOR**, 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 the **LICENSOR**, the **LICENSEE** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

6.5 LICENSEE agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance, excepting policies for Workers' Compensation and Employer's Liability, will contain the following required provisions.

- Name the **LICENSOR** and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this License Agreement with the **LICENSOR**, with the exception of the workers' compensation policy;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **LICENSOR** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **LICENSOR**.
- "It is agreed that any insurance or self-insurance provided by **LICENSEE** is primary to any insurance or self-insurance maintained by the CITY OF SAN ANTONIO." or, in the alternative:
"It is agreed that any insurance or self-insurance maintained by the CITY OF SAN ANTONIO shall apply in excess of, or not contribute with, insurance provided by this policy."

6.6 **LICENSEE** shall notify the **LICENSOR** 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 **LICENSOR** at the following address:

City of San Antonio
Public Works Department, Parking Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

VII. INDEMNITY

7.1 **LICENSEE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **LICENSOR** and the elected officials, employees, officers, directors, volunteers and representatives of the **LICENSOR**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **LICENSOR** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities or **LICENSOR's** activities or the acts of other parties, under this Agreement, in, on or

about the Licensed Premises and the building in which said premises are located or in connection with LICENSEE'S use of the Licensed Premises and said building, or from any condition of the Licensed Premises and said building caused by LICENSEE, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement., all without, however, waiving any governmental immunity available to the LICENSOR under Texas law and without waiving any defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF LICENSOR, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE LICENSOR OF CITY, UNDER THIS AGREEMENT. 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. LICENSEE shall promptly advise the LICENSOR in writing of any claim or demand against the LICENSOR or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S activities or LICENSOR'S activities or other party's acts or omissions as noted herein under this Agreement, and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. Notwithstanding any condition imposed by a policy of insurance to which LICENSEE and LICENSOR are named, LICENSOR shall retain the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of LICENSEE under this ARTICLE without relieving LICENSEE of any of its obligations under this ARTICLE.

7.2 It is the EXPRESS INTENT of the parties to this LICENSE, that the INDEMNITY provided for in this ARTICLE is an INDEMNITY extended by LICENSEE to INDEMNIFY, PROTECT and HOLD HARMLESS LICENSOR from the consequences of LICENSOR'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this ARTICLE SHALL APPLY only when the NEGLIGENT ACT of LICENSOR is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of LICENSOR is the sole active cause of the resultant injury, death, or damage. LICENSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE LICENSOR AND IN THE NAME OF THE LICENSOR, any claim or litigation brought against the LICENSOR and its elected officials, employees, officers, volunteers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

VIII. ASSIGNMENT

8.1 LICENSEE shall not assign or transfer any interest in this Agreement to any other person or entity without **LICENSOR's** prior written consent, which shall not be unreasonably withheld. If **LICENSEE** subcontracts the valet parking function to another entity, **LICENSEE** shall immediately notify **LICENSOR** of the subcontract. **LICENSOR** may, using reasonable judgment, permit the subcontractor to operate the valet parking operation if,

- a. **LICENSEE** remains fully responsible to **LICENSOR** for all actions and failures to act of the potential subcontractor;
- b. **LICENSEE** requires the potential subcontractor to abide by all of the terms and conditions hereof;
- c. the potential subcontractor provides evidence of insurance to **LICENSOR** in the same amounts and coverages as required under **ARTICLE VI.** hereof; in substitution of insurance coverage otherwise required to be maintained by **LICENSEE** pursuant to this agreement,
- d. the potential subcontractor provides reasonable evidence of experience and reputation in the business to operate a first-class, safe valet parking operation; and
- e. **LICENSEE** is not then in default in any provision of this Agreement.

8.2 If **LICENSEE** desires to assign its interest in this Agreement, **LICENSEE** shall submit a written request for permission to assign its interest in all of this Agreement to any non-affiliated third party. This requirement applies to all transfers or outright sale of the Watermark hotel property or any master lease transaction that amounts to the transfer of the property or to transfers of a controlling interest in a corporation or partnership that controls the property. **LICENSOR** may only deny consent to the assignment if **LICENSEE** is then in default or if, in its reasonable business and governmental judgment, it finds that the proposed transferee or grantee does not possess the same financial or managerial stability as **LICENSEE** or if the proposed transfer or conveyance would provide a lower quality hotel operation than the operation under **LICENSEE**.

8.2.1 This agreement may not be sub-contracted or partially assigned for less than the entire number of spaces and/or the entire remaining Initial Term or then current Renewal Term, as the case may be.

8.2.2 Subsequent requests for assignments after one or more prior assignments shall be subject to the same review and standards of review as set out herein for an assignment by **LICENSEE** except that consent to the subsequent assignment may only be denied by **LICENSOR** if **LICENSEE** is then in default or if, in its reasonable business and governmental judgment, it finds that the proposed transferee or grantee does not possess the same financial or managerial stability as

the entity then currently operating the hotel property (the proposed Transferor) or if the proposed transfer or conveyance would provide a lower quality hotel operation than the operation existing immediately prior to the request for the assignment.

8.2.3 Each proposed assignee must provide documentary evidence of its financial and business operations reasonably sufficient to allow **LICENSOR** to adequately review its proposed operations.

8.2.4 Upon consent by **LICENSOR** to any assignment of this Agreement by any **LICENSEE** and consummation of such assignment, the assignor under such assignment shall be released from all further liability under this Agreement, provided that the assignee under such assignment must assume all obligations of the assignor under this Agreement after the date of such assignment. Nothing herein shall relieve any assignor of any obligations that accrue prior to the date of any assignment.

8.2.5 Notwithstanding the foregoing this Agreement may not, subject to the following, be assigned to any party that acquires **LICENSEE'S** hotel by a foreclosure or a conveyance in lieu of foreclosure without the prior consent of **LICENSOR**. Such assignment is subject to the prior cure of then existing defaults by **LICENSEE** or by any prior **LICENSEE** if the rights have been previously assigned. Further, the proposed assignee must possess the same financial or managerial stability as the entity then currently operating the hotel property (the proposed Transferor) and the proposed assignee must not provide a lower quality hotel operation than the operation existing immediately prior to the first notice of default from the affected lender to the prior **LICENSEE**. **LICENSOR** consents to **LICENSEE** pledging all of **LICENSEE'S** rights under this Agreement to any lender of **LICENSEE** holding a lien against **LICENSEE'S** hotel. **LICENSEE** agrees to execute upon request an agreement in form acceptable to **LICENSOR** confirming that this Agreement will survive the foreclosure or conveyance in lieu of foreclosure of any lien granted to any such lender of **LICENSEE**.

8.3 Any attempt at transfer or assignment of this Agreement, other than as set out above, shall be considered grounds for termination by **LICENSOR** and shall not confer any rights upon any third person.

8.4 Under no circumstances may **LICENSEE** allow any person or entity other than its own patrons or assigned staff to utilize the Parking Spaces at any time.

IX. FIRE AND OTHER DAMAGE

9.1 In the event the Licensed Premises are damaged by fire or other casualty, and **LICENSOR**, in its sole discretion, determines the damage is so extensive that repair or rebuilding is not feasible, this Agreement shall terminate immediately and both parties shall be released from any liability thereafter accruing under this Agreement.

9.2 In the event the damage to the Licensed Premises are so extensive as to render said Premises unusable but **LICENSOR** intends to repair or rebuild and continue this Agreement, **LICENSOR** shall notify **LICENSEE** of such intention within sixty (60) days after the date of the damage,

9.3 In the event the Licensed Premises are partially damaged by fire or other casualty, fees due hereunder shall abate in such proportion as that part of the Licensed Premises thus destroyed or rendered unusable. However, if the Licensed Premises shall be so slightly injured by any such casualty as not to be rendered unfit for use, the fee required hereunder shall not cease or be abated during any repair period.

X. EMINENT DOMAIN AND REDEVELOPMENT

10.1 In the event the Licensed Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Agreement shall terminate and expire as of the date of such taking and both **LICENSOR** and **LICENSEE** shall thereupon be released from any liability thereafter accruing hereunder.

10.2 In the event the Licensed Premises are taken under the power of eminent domain, **LICENSOR** shall be entitled to the entire award or compensation from such proceedings; and **LICENSEE** hereby expressly waives all rights to any proceeds of such condemnation.

10.3 In the event that **LICENSOR** desires to redevelop the Mid-City Parking Garage to another use, it may do so upon twelve (12) months prior notice to **LICENSEE** and **LICENSOR** shall not be liable to **LICENSEE** for monetary or other damages, except that it shall abide by the provisions of **Section 10.4** below.

10.4 In the event this Agreement is terminated pursuant to **ARTICLE IX.** or **ARTICLE X.**, **LICENSOR** shall use reasonable efforts to relocate **LICENSEE's** Parking Spaces to another parking facility operated by **LICENSOR**, which is mutually acceptable to **LICENSEE** and **LICENSOR** on the same terms and conditions as set forth in this Agreement.

XI. TERMINATION

11.1 **LICENSOR** shall have the right to terminate this Agreement, in whole or in part, in the event **LICENSEE** neglects or fails to observe or perform any of the terms, conditions, or covenants contained in this Agreement; or in the event **LICENSEE** violates any rule, regulation or law to which it is bound under this Agreement. **LICENSOR** reserves the right to seek any remedy which now is or may be provided by law or equity, upon a breach of this License Agreement. No waiver by **LICENSOR** of a breach or violation on the part of **LICENSEE** shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

11.2 The License hereby granted is irrevocable during the initial twenty-five year term of this Agreement or any subsequent renewal term except to the extent that such License is terminated pursuant to the express terms of this Agreement.

XII. DEFAULT

12.1 Failure of **LICENSEE** to pay any amount due to **LICENSOR** under the terms of this Agreement when due shall be a Default under the terms of this Agreement. If such default in making a payment is not cured within ten (10) days of the date the payment was due, then **LICENSOR**, in **LICENSOR's** sole discretion, may take one or more of the following actions in addition to any actions set out elsewhere in this document without waiving its right to collect all sums due:

12.1.1 Remove any signs designating spaces for the use of **LICENSEE**.

12.1.2 Initiate action in a court of appropriate jurisdiction to collect all sums, plus, costs of suit and attorney's fees.

12.1.3 Deduct any sums due from any funds or accounts held by **LICENSOR** in the name of **LICENSEE** or any of its subordinates or affiliates.

12.1.4 Cease to accept any type of **LICENSEE'S** validation for discounted or free parking from **LICENSEE'S** patrons, employees ("assigned staff"), affiliates or subcontractors.

12.2 **LICENSOR** agrees to give to **LICENSEE** and, upon the written request of **LICENSEE**, to **LICENSEE'S** lender, written notice of any default by **LICENSEE** under this Agreement. **LICENSEE** or **LICENSEE'S** lender shall have the opportunity to cure a default other than the payment of money due hereunder during a period of thirty (30) days following the giving of such written notice prior to **LICENSOR** exercising any

of **LICENSOR's** rights and remedies by reason of such default. **LICENSEE** or **LICENSEE'S** lender shall have the opportunity to cure a default involving the payment of money due hereunder during a period of ten (10) days following the giving of such written notice prior to **LICENSOR** exercising any of **LICENSOR's** rights and remedies by reason of such default in payment.

12.3 Interest shall accrue on all unpaid amounts due to **LICENSOR** set forth hereunder from the date the payment is due until the date payment is made at the rate of ten percent per annum, or the highest rate allowed by Texas law, if ten percent is deemed usurious.

XIII. NOTICE

13.1 Any notice hereunder shall be in writing and shall be deemed duly served if mailed by certified mail, return receipt requested, addressed to the party at the address designated below:

LICENSOR

City Clerk, City of San Antonio
P.O. Box 839966, San Antonio, TX 78283-3966

AND to

City of San Antonio Public Works
Department, Parking Division
243 Center Street, Suite 200
San Antonio, Texas 78202

LICENSEE

La Mansión Del Rio, Inc.
C/o Jack C. Hebdon, Jr., CPA
Executive Vice President
112 East Pecan Street Suite 2810
San Antonio, Texas 78205-1570

XIV. CONFLICT OF INTEREST

14.1 **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City of San Antonio ("City" and "**LICENSOR**" herein) officer or employee, as the terms "officer" and "employee" are defined in Part B, Section 10 of City's 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. **LICENSEE** warrants and certifies, and this Agreement is made in reliance thereon, that

LICENSEE, **LICENSEE's** officers, employees and agents are neither officers nor employees of City. **LICENSEE** further warrants and certifies that, if required to do so, is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City Ethics Code.

XV. RELATIONSHIP OF PARTIES

15.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of Licensor and Licensee.

XVI. SUBORDINATION TO SCHEDULED EVENTS

16.1 **LICENSEE** acknowledges and agrees that **LICENSOR** will from time to time accommodate various functions or events that may require temporary street closures, controlled or limited access to the Licensed Premises and/or temporary closures of access to, or temporary closure of, the Licensed Premises. In such events **LICENSOR** shall notify **LICENSEE** and then **LICENSOR** and **LICENSEE** shall cooperate with each other and **LICENSOR** shall provide alternative parking spaces which are mutually acceptable to both parties. If such alternative parking spaces are provided then **LICENSEE** waives any and all claims for damages which **LICENSEE** may suffer as a result of any such event.

16.2 **LICENSOR** agrees to notify **LICENSEE**, as soon as practicable, of any such need for a temporary street closure, controlled or limited access to the License Premises and/or temporary closures of access to, or temporary Closure of, the Licensed Premises.

XVII. LEGAL CONSTRUCTION

17.1 **THIS AGREEMENT 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 Parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought hereunder.

XVIII. SEVERABILITY

18.1 If one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable

provision had never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement 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.

XIX. CAPTIONS

19.1 The Captions contained in this Agreement are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

XX. AUTHORITY

20.1 The signer of this Agreement for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **LICENSEE**.

XXI. ENTIRE AGREEMENT

21.1 This Agreement, together with its authorizing ordinance, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that neither the **LICENSEE** nor **LICENSOR** shall be bound by any term, condition or representation not herein written.

LICENSOR

**CITY OF SAN ANTONIO, A TEXAS
MUNICIPAL CORPORATION**

By: _____

Name: _____

Title: _____ City Manager

LICENSEE

**LA MANSIÓN DEL RIO, INC.,
A TEXAS CORPORATION**

By:  _____

Jack C. Hebdon, Jr., CPA,
Executive Vice President

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

None

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

La Mansion del Rio, Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

None

¹ A **business entity** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Jane E. Macon

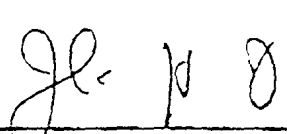
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None	None	None

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature: 	Title: Executive Vice President Company: La Mansion del Rio, Inc.	Date: 11/20/03

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a sinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.