

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA
ITEM NO. **26(B)**

TO: Sheryl Sculley, City Manager

FROM: Malcolm Matthews, Director, Parks and Recreation

SUBJECT: Ordinance authorizing execution of (2) a consent to assignments of a lease of public patio space along the Riverwalk for dining use.

DATE: March 2, 2006

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of (1) a consent to assignment of a lease of public patio space along the Riverwalk for Watermark dining use and providing for a \$1,000.00 assignment fee and (2) a consent to assignment of a lease of public patio space along the Riverwalk for La Mansion dining use and providing for a \$1,000.00 assignment fee; and authorizing delivery of various documents in connection with the pending sale of the La Mansion and Watermark Hotels.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Since 1979 the City of San Antonio has leased public space on the San Antonio Riverwalk used for outdoor dining purposes to the La Mansion Del Rio Hotel. Most recently, on December 9, 1999, through Ordinance No. 90983, City Council approved a lease agreement with La Mansion Del Rio, Inc. for the continued use of 1,536 square feet of public space for outdoor dining adjacent to the Las Canarias Restaurant. The lease agreement for Las Canarias Restaurant provided for an initial term of five (5) years, with four (4) automatic renewal options of five (5) years each. There currently remains nineteen (19) years in the term of this agreement. Additionally, through the same ordinance, City Council approved a lease agreement with La Mansion Hotels, Ltd. for public space on the San Antonio Riverwalk to be developed for outdoor dining purposes.

These leases were part of the comprehensive Crockett Street Development Project Agreements entered into between three property owners along the 200 block of West Crockett Street (Aztec-on-the-River, Ltd., La Mansion Development Company, Inc., and Jack H. Peterson) authorized by City Council through Ordinance No. 90984 on December 9, 1999. This development consisted of the excavation and reconstruction of the roadway, sidewalks, lighting, and related improvements along the Riverwalk to create retail development and connect the properties to the San Antonio Riverwalk.

La Mansion Hotels, Ltd. completed its portion of the development project with rehabilitation of the Watermark Hotel in December 2003, and began occupancy of 1,140 square feet of lease space on January 1, 2004 for use by Pesca Restaurant. The lease agreement for Pesca Restaurant provided for an initial term of five (5) years, with four (4) automatic renewal options of five (5) years each. As the initial term of the Pesca Restaurant started on January 1, 2004, there currently remains twenty three (23) years in the term of this agreement.

In February 2006 La Mansion Hotel, Ltd. informed the City their properties were to be sold to Omni Hotels, Inc. and requested the City's consent to assign leases for Las Canarias Restaurant and Pesca Restaurant as well as other license agreements with the City's Asset Management Department. La Mansion Hotel, Ltd. is in the process of selling the La Mansion del Rio Hotel to Omni La Mansion Corporation and the Watermark Hotel to the Riverwalk Hotel and Spa Corporation. The closing for both sales is scheduled to take place on March 16, 2006. The lease agreements with La Mansion Hotels, Ltd. allow for the assignment of each lease, with the consent of City Council.

POLICY ANALYSIS

This action is consistent with the City's policy of leasing public property along the San Antonio Riverwalk for outdoor dining purposes to adjacent property owners or businesses.

FISCAL IMPACT

The City collects \$1.38 per square foot per month for Las Canarias lease space. Monthly rental is \$2,115.28, with an annual rental of \$25,383.36. The City collects \$1.34 per square foot per month for Pesca Restaurant lease space. Monthly rental is \$1,526.65, with an annual rental of \$18,319.80. Both leases provide for an annual rental adjustment based on the U.S. Consumer Price Index.

The City has collected a \$1,000 assignment fee for each lease agreement, for a total of \$2,000. All revenues generated from these leases are placed in the Riverwalk Improvement Fund used for capital improvements on the Riverwalk.

COORDINATION

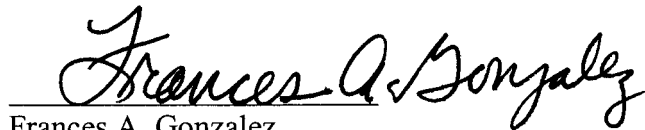
These lease assignments were coordinated with the City Attorney's Office and the Asset Management Department.

SUPPLEMENTARY COMMENTS

Executed Discretionary Contracts Disclosure Statements are attached.

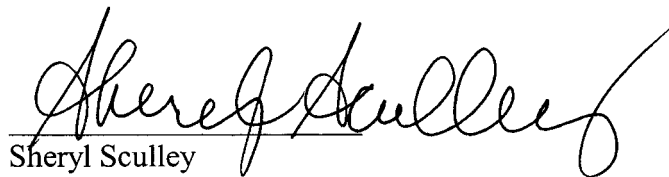


Malcolm Matthews
Director of Parks and Recreation



Frances A. Gonzalez
Assistant City Manager

Approved for Council Consideration:



Sheryl Sculley
City Manager

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:

Riverwalk Hotel and Spa Corporation

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;

OHO Corporation, Omni Hotels Corporation, TRT Development Company
and TRT Holdings, Inc.

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.

None

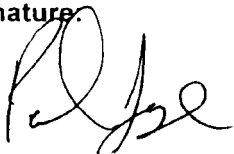
Political Contributions

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		

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: <i>Authorized Representative</i> Company: <i>Riverwalk Hotel and Spa Corporation</i>	Date: <i>2/13/06</i>

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

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 entity¹ that would be a party to the discretionary contract:

Omni La Mansion Corporation

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;

OHO Corporation, Omni Hotels Corporation, TRT Development Company
and TRT Holdings, Inc.

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.

None


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		

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: <i>Authorized Representative</i> Company: <i>Omni-La Morison Corporation</i>	Date: <i>2/13/04</i>

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

Consent to Assignment of Lease Agreement (Watermark Hotel—Riverwalk Patio Lease)

This Consent to Assignment of Lease Agreement is entered into among the City of San Antonio (City) and the Assignee and Assignor designated below.

Predicate Facts

Assignor is the Lessee under the below described Lease with City.

Assignor wishes to assign the Lease Agreement to Assignee, and City consents to the assignment on the terms and conditions of this instrument.

Rights and Obligations

Now therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Identifying Information.

Lease: Lease Agreement between City and Assignor relating to Lessee's use of 1140.35 sq. ft. of public patio space along the San Antonio Riverwalk, San Antonio, Texas, for outdoor dining authorized by the Ordinance Authorizing Original Lease, and attached as **Exhibit A**

Assignor: La Mansion Hotels, Ltd.

Assignor's Address: c/o Jack Hebdon, Jr., 112 E. Pecan, Suite 2810, San Antonio, Texas 78205-1570

Assignee: Riverwalk Hotel and Spa Corporation

Assignee's Address: 420 Decker Drive, Irving, Texas 75062

**Ordinance Authorizing
Original Lease
(No. & Date):** No. 90983, dated December 9, 1999

**Ordinance Authorizing
This Consent (No. & Date):**

**Assignment Fee
(City Code § 29-22):** \$1,000.00

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this Consent, when used in this instrument, have the meanings ascribed to them in the Lease.

3. Consent.

City consents to the assignment contemplated by this instrument, but the consent is dependent on fulfillment of the instrument's other terms.

4. No Default.

As a part of the inducement to City to execute and deliver this consent, Assignor represents to City and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. City is not in default under the Lease.
- c. Assignor has no offset or claim against City that would reduce or impair its obligations to City under the Lease.

5. Assumption of Lease.

Assignee assumes all liabilities of the Lessee under the Lease, whether relating to the period before assignment or after. City may hereafter deal with Assignee as if it were the original Lessee under the Lease, and Assignee will have no rights or defenses not available to the Assignor as to matters relating to the period before the assignment. City releases Assignor of all liabilities relating to the period after the assignment, but only as to such liabilities.

6. Assignment Fee.

The Assignment Fee must be paid to City before City executes and delivers this consent.

7. Scope of Agreement.

This instrument defines the rights and obligations of City as against Assignor and Assignee. As between themselves, Assignor and Assignee may define the rights and obligations between themselves differently. But City is a third party beneficiary of any retention by Assignor, in any agreement with Assignee, of liabilities arising out of or relating to this Lease.

8. Same Terms and Conditions.

This Consent to Assignment is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this consent to assignment, the Lease remains a comprehensive statement of the rights and obligations of City, Assignor, and Assignee under the Lease. City, Assignor, and Assignee reaffirm the Lease, as modified by this consent.

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

City:

City of San Antonio, a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Assignor:

La Mansion Hotels, Ltd.

By: LMDR, L.L.C., General Partner

By:  _____

Printed
Name: PATRICK J. KENNEDY

Title: PRESIDENT

Date: February 13, 2006

Assignee:

Riverwalk Hotel and Spa Corporation,
a Delaware corporation

By:  _____

Printed
Name: Paul A. Jorge

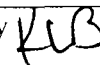
Title: Authorized Representative

Date: February 13, 2006

Attest:

City Clerk

Approved:

City Attorney 

Consent to Assignment of Lease Agreement **(La Mansion del Rio/Las Canarias Restaurant—Riverwalk Patio Lease)**

This Consent to Assignment of Lease Agreement is entered into among the City of San Antonio (City) and the Assignee and Assignor designated below.

Predicate Facts

Assignor is the Lessee under the below described Lease with City.

Assignor wishes to assign the Lease Agreement to Assignee, and City consents to the assignment on the terms and conditions of this instrument.

Rights and Obligations

Now therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Identifying Information.

Lease: Lease Agreement between City and Assignor relating to Lessee's use of 1536 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**

Assignor: La Mansión Hotels, Ltd.

Assignor's Address: c/o Jack Hebdon, Jr., 112 E. Pecan, Suite 2810, San Antonio, Texas 78205-1570

Assignee: Omni La Mansión Corporation

Assignee's Address 420 Decker Drive, Irving, Texas 75062

**Ordinance Authorizing
Original Lease
(No. & Date):** No. 90983, dated December 9, 1999

**Ordinance Authorizing
This Consent (No. & Date):**

Assignment Fee \$1,000.00
(City Code § 29-22):

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Printed
Name: _____

Title: _____

Date: _____

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By: LMDR, L.L.C., General Partner

By: 

Printed
Name: Patrick J. Kennedy

Title: PRESIDENT

Date: February 13, 2006

Assignee:

Omni La Mansión Corporation, a

Delaware corporation

By: 

Printed
Name: Paul A. Jorge

Title: Authorized Representative

Date: February 13, 2006

Attest:

City Clerk

Approved:

City Attorney KUB