

AN ORDINANCE **2009-06-25-0578**

AUTHORIZING A FIVE-YEAR LEASE AGREEMENT WITH PALACIO DEL RIO, INC. D/B/A HILTON PALACIO DEL RIO FOR RIVER WALK SPACE TO BE USED FOR OUTDOOR DINING FOR A MONTHLY RENT OF \$1,859.01.

* * * * *

WHEREAS, Palacio del Rio, Inc. d/b/a Hilton Palacio del Rio operates at 200 South Alamo Street, which is adjacent to the San Antonio River Walk; and

WHEREAS, the hotel will utilize 902.43 square feet (sf) of City-owned River Walk property for outdoor dining; and

WHEREAS, the monthly rent will be \$1,859.01 based on the rate for river level commercial space of \$2.06 per sf; and

WHEREAS, the rate will increase 5% each year; and

WHEREAS, the proposed term of the agreement begins July 1, 2009 and shall be for a term of 5 years; and

WHEREAS, in accordance with the City's long term objective of establishing agreed boundary lines with all properties located adjacent to the downtown segment of the San Antonio River, this ordinance authorizes the execution of a boundary line agreement legally establishing the location of City-owned River Walk property and adjacent privately-owned property; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Downtown Operations Department or her designee, is authorized to execute a five-year lease agreement with Palacio del Rio, Inc. d/b/a Hilton Palacio del Rio for River Walk space to be used for outdoor dining for a monthly rent of \$1,859.01. A copy of the lease agreement is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. The City Manager or her designee or the Director of the Downtown Operations Department or her designee, is authorized to execute a Boundary Line and Encroachment Easement Agreement with Palacio del Rio, Inc. d/b/a Hilton Palacio del Rio establishing the agreed boundary line between the City owned property and the adjacent privately owned property. A copy of the Boundary Line and Encroachment Easement Agreement is attached hereto and incorporated herein for all purposes as **Attachment II.**

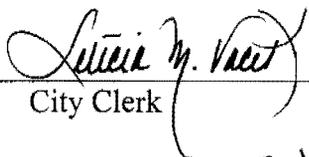
SECTION 3. Funds generated by this ordinance will be deposited as per the table below:

Amount	General Ledger	Fund	Internal Order
\$1,200.00	4407720	11001000	219000000009
Total Amount: \$1,200.00			

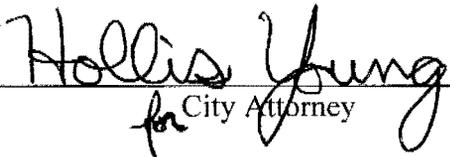
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 July 5, 2009.

PASSED AND APPROVED this 25th day of June 2009.

ATTEST: 
City Clerk


M A Y O R
JULIÁN CASTRO

APPROVED AS TO FORM: 
for City Attorney

Agenda Item:	28 (in consent vote: 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 20A, 20B, 21, 22, 23, 24, 25, 28, 29, 30, 32, 33, 34, 36A, 36B, 36C, 36D, 36E, 36F, 36G, 36H, 36I, 36J, 37, 39, 40, 41, 42A, 42B, 43, 44, 46, 47, 48, 49)						
Date:	06/25/2009						
Time:	10:15:24 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a five-year lease agreement with Palacio del Rio, Inc. d/b/a Hilton Palacio del Rio for River Walk space to be used for outdoor dining for a monthly rent of \$1,859.01. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julian Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10	x					

RIVER WALK LEASE AGREEMENT

This River Walk Lease Agreement (the "Lease Agreement") is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, as landlord (hereinafter referred to as "CITY"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____, passed and approved by the City Council on the ____ day of _____, 2009, and **PALACIO DEL RIO, INC., d/b/a HILTON PALACIO DEL RIO**, a Delaware Corporation and successor in interest to Palacio del Rio, LTD., a Texas limited partnership, as tenant (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

1. DEMISE OF PREMISES

1.1. **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** for the Term hereinafter set out, the real property owned by the **CITY** in the San Antonio River Walk Area (the "River Walk") as outlined on the drawing which is attached hereto as **Exhibit A** and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the "Leased Premises") are further described as follows:

1.1.1. *River Level Commercial Space:* Three (3) areas located on the River Walk adjacent to the building known as "Hilton Palacio del Rio Hotel" located at 200 South Alamo Street, San Antonio, Texas 78205, consisting of 902.43 total square feet and identified as Lease Area 4A consisting of 108.77 square feet; Lease Area 4B consisting of 411.64 square feet; and Lease Area 4C consisting of 382.02 square feet, each as described by metes and bounds on **Exhibits A-1, A-2 and A-3** attached hereto, and made a part hereof for all purposes.

2. USE OF PREMISES

2.1. **LESSEE** agrees that the Leased Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

2.2. In addition to the **CITY'S** Reservations set out in Article 15 and other Sections of this Lease Agreement, **CITY** reserves the right to a public right-of-way along the River Walk to follow a path designated by the **CITY** for safe passage by pedestrians (the "City Public Path") and further described by the diagram attached hereto and incorporated herein as **Exhibit B**. **LESSEE** shall keep said City Public Path reasonably free of obstructions in the form of either fixed or movable objects and, without first obtaining the written consent of **CITY**, shall not allow patrons to queue, or wait for entrance into **LESSEE'S** business establishment in said City Public Path. **LESSEE** shall comply with the **CITY'S** ordinances pertaining to queuing along the River Walk and the City Public Path restrictions described in this Section 2.2. Failure to reasonably comply with this Section may, at **CITY'S** option, constitute an Event of Default under this Lease Agreement.

3. TERM AND TERMINATION

- 3.1. The term ("Term") of this Lease Agreement is for a five (5) year period beginning on July 1, 2009 and ending on June 30, 2014. The right is expressly reserved to the CITY, acting through the City Council, to terminate this Lease Agreement for the following:
- 3.1.1. In the event this Lease Agreement is deemed to be inconsistent with the public use of the Leased Premises; or
 - 3.1.2. In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction; or
 - 3.1.3. In the event LESSEE shall default in the performance of any covenants or agreements contained herein and shall fail, following thirty (30) calendar days written notice of such default, to remedy same, save and except a ten (10) calendar day notice period will apply in the case of a default in the payment of Rent.
- 3.2. In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, the CITY shall give LESSEE notice in writing at least thirty (30) calendar days prior to the termination date.

4. RENTAL

- 4.1. The monthly rental ("Rent") shall increase by a rate of five percent (5%) per square foot per year, commencing upon the anniversary of the Effective Date of each remaining year during the Term. Rent may be paid in one (1) annual lump sum in advance on the Effective Date of this Lease Agreement and each annual anniversary thereafter or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:
- 4.1.1. For the period 7/1/2009 – 6/30/2010: (\$2.06 per square foot per month):
\$22,308.07 payable in one lump sum in advance per year or \$1,859.01 per month.
 - 4.1.2. For the period 7/1/2010 – 6/30/2011: (\$2.16 per square foot per month):
\$23,391.00 payable in one lump sum in advance per year or \$1,949.25 per month.
 - 4.1.3. For the period 7/1/2011 – 6/30/2012: (\$2.27 per square foot per month):
\$24,582.19 payable in one lump sum in advance per year or \$2,048.52 per month.
 - 4.1.4. For the period 7/1/2012 – 6/30/2013: (\$2.38 per square foot per month):
\$25,773.40 payable in one lump sum in advance per year or \$2,147.78 per month.
 - 4.1.5. For the period 7/1/2013 – 6/30/2014: (\$2.50 per square foot per month):
\$27,072.90 payable in one lump sum in advance per year or \$2,256.08 per month.
- 4.2. Payment shall be submitted to:

City of San Antonio
Revenue Division
P. O. Box 839975
San Antonio, Texas 78283-3975

ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LEASE AGREEMENT.

- 4.3. A twenty dollar (\$20.00) late charge will be assessed on any Rent payment received on the eleventh (11th) day of the applicable month or any day thereafter. All past due Rent under the terms of this Lease Agreement shall bear interest at the lesser of (a) the rate of 12% per annum from the date due until paid in full by **LESSEE**, or (b) the highest rate allowed by law.
- 4.3.1. The ten (10) day period before the twenty dollar (\$20.00) late charge is applied should not be considered a "**GRACE PERIOD**;" nor shall the late charge provision be considered as an "option" for Rent to be made late. All Rent payments are considered late if not received in the **CITY'S** Treasury office by the close of business on the first day of each calendar month during the Term.
- 4.3.2. At any time during the Lease Term if more than two (2) insufficient funds checks are presented to the **CITY** in payment of Rent or other payments due to **CITY** during a twenty-four (24) month period, **LESSEE** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made.
- 4.3.3. At any such time, should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of Rent and/or insufficient funds checks, which may be contrary to the terms stated in subsections 4.3.1 – 4.3.2 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LESSEE** of any such change(s) in advance.
- 4.3.4. Notwithstanding anything to the contrary set forth in this Lease Agreement, if **LESSEE** shall fail to make the timely payment of Rent or any additional charges due the **CITY** from **LESSEE** under the terms of this Lease Agreement, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a "Repeated Event of Default".
- 4.3.5. In the event of a Repeated Event of Default, **CITY**, without giving **LESSEE** any notice and without affording **LESSEE** an opportunity to cure the default, may terminate this Lease forthwith without notice to **LESSEE**.
- 4.4. Payment shall be made in a manner consistent with Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks.

5. ACCEPTANCE AND CONDITION OF PREMISES

- 5.1. **LESSEE** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE'S** taking possession of the Leased Premises shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.

- 5.2. **LESSEE** agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LESSEE** unless the same are contained herein or made a part hereof by specific reference herein.

6. UTILITIES

- 6.1. **LESSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, which may be necessary for its operations as authorized herein on the Leased Premises. **LESSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LESSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY**.

7. IMPROVEMENTS

- 7.1. **LESSEE** shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall **LESSEE** make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to, the Historic and Design Review Commission.
- 7.2. **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on, or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY** in connection with such liens.

8. MAINTENANCE OF PROPERTY

- 8.1. **LESSEE** shall, at all times, maintain the sidewalks adjacent to the Leased Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk free and clear of any tables or other personal property placed by **LESSEE** on such Leased Premises. **LESSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Leased Premises; however, **LESSEE'S** use may at no time obstruct the City Public Path.
- 8.2. **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall comply with all applicable garbage, sanitary and health regulations of the **CITY**.
- 8.3. **LESSEE** shall, at its sole expense, keep the Leased Premises in good order, repair, and leasable condition at all times during the Term hereof and shall promptly repair all damage to the Leased Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the written approval of the **CITY** through the **DIRECTOR** and any and all other applicable departments, boards, or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission. If **LESSEE** does not promptly make such repairs and replacements after receiving approval from the **CITY**, **CITY** may, but is not required to, make such repairs and replacements and the costs

paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

- 8.4. **LESSEE** will, at the termination of this Lease Agreement, return the Leased Premises to **CITY** in as good condition as at the commencement of the Term hereof, usual wear and tear, acts of God, or unavoidable accidents only excepted.
- 8.5. **LESSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other personal property of **LESSEE** during the Term of this Lease Agreement and remaining on the Leased Premises after **LESSEE** vacates the Leased Premises. If said signs, goods and any other personal property placed by **LESSEE** upon the Leased Premises are not removed within thirty (30) calendar days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

9. TAXES AND LICENSES

- 9.1. **LESSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted on the Leased Premises, or upon any of **LESSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LESSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the **CITY**.

10. ASSIGNMENT AND SUBLETTING

- 10.1. Except as to the parent, subsidiary or similarly affiliated entity, **LESSEE** shall not assign this Lease Agreement or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.
- 10.2. Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease Agreement and in the Leased Premises referred to herein; and, to the extent that such assignee assumes in writing all of **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 10.3. The receipt by the **CITY** of rent from an assignee or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and or an acceptance of the assignee, or occupant as a lessee, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

11. DEFAULT AND REMEDIES

- 11.1. The following events shall be deemed to be events of default ("Events of Default") by **LESSEE**

under this Lease Agreement:

- 11.1.1. **LESSEE** shall fail to pay any installment of Rent as provided in this Lease Agreement and such failure shall continue for a period of ten (10) calendar days.
- 11.1.2. **LESSEE** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of Rent, and shall not cure such failure within thirty (30) calendar days after receipt of written notice thereof from **CITY**, unless **LESSEE** has undertaken to effect such cure within such thirty (30) calendar day period and is diligently prosecuting the same to completion in the **CITY'S** sole judgment.
- 11.2. Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term hereof; or **CITY**, its agents or attorney may, at its option, take possession of the Leased Premises and re-let the same for the remainder of the Term for the best rent **CITY**, its agents or attorney may obtain for the account of **LESSEE** without relieving **LESSEE** of any liability hereunder as to Rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency.
- 11.3. Any termination of this Lease Agreement as herein provided, shall not relieve **LESSEE** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LESSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LESSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained. Notwithstanding anything to the contrary in this Lease Agreement, in no event shall **LESSEE** be liable for punitive, special or consequential damages in connection with a breach or default under this Lease Agreement or for any criminal acts of third parties.
- 11.4. Upon any such expiration or termination of this Lease Agreement, **LESSEE** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LESSEE** and remove **LESSEE** and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Leased Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Leased Premises by **LESSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

12. INDEMNIFICATION

- 12.1. **LESSEE** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually and 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 CITY directly or indirectly arising out of, resulting from or related to LESSEE'S activities under this Lease Agreement, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Lease Agreement. The indemnity provided for in this Section 12.1 shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR 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 LAW.

- 12.2. The provisions of this INDEMNITY 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. LESSEE shall promptly advise the CITY in writing of any claim or demand against the CITY known to LESSEE related to or arising out of LESSEE'S activities under this Lease Agreement and shall see to the investigation and defense of such claim or demand at LESSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this Section 12.2.

13. INSURANCE REQUIREMENTS

- 13.1. Upon request, LESSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY'S Downtown Operations Department, which shall be clearly labeled "Hilton Palacio del Rio Lease Agreement" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to perform under this Lease Agreement until such Certificate and endorsements have been received and approved by the CITY'S Downtown Operations Department. No officer or employee, other than the CITY'S Risk Manager, shall have authority to waive this requirement.
- 13.2. The CITY reserves the right to review the insurance requirements of this Article during the Term of this Lease Agreement and any extension or renewal hereof and, upon at least sixty (60) days prior written notice to LESSEE, to modify the insurance coverage requirements when deemed reasonably necessary and prudent by CITY'S Risk Manager based upon changes in statutory law, court decisions, or regulations materially affecting this Lease Agreement. In no instance will CITY allow modification whereupon CITY may incur a materially increased risk. Notwithstanding the foregoing provision, LESSEE shall be required to comply with subsequent changes and additions in insurance coverage requirements of CITY only if such changed or additional coverage is commercially reasonably available to LESSEE.

13.3. **LESSEE'S** financial integrity is of interest to the **CITY**. **LESSEE** shall obtain and maintain in full force and effect for the Term of this Lease Agreement, and any extension hereof, at **LESSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount shown:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000.00 Aggregate, or its equivalent.
3.	Property Insurance: For physical damage to the property of LESSEE , including improvements and betterment to the Leased Premises.	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of LESSEE'S property
4.	Liquor Liability	\$1,000,000 per occurrence, aggregate of \$3,000,000

** If Applicable.

13.4. The **CITY** shall be entitled, upon written request to **LESSEE** no more than one time in each twelve(12) month period, and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, 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 **CITY**, the **LESSEE** shall exercise commercially reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. If the **CITY** requests a copy of any Insurance policy, **LESSEE** may prominently mark those portions of the policy it regards as confidential. In the event a third party makes an open records request under the Texas Public Information Act, or other applicable public information law, asking to view or copy the policy, the **CITY** shall submit the material to the Texas Attorney General ("AG") for an opinion regarding the release of said information. **LESSEE** and **CITY** agree that the **CITY** will be bound by the AG opinion. The **CITY** will also comply under a court order or a litigation discovery rule which requires disclosure of the information.

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

13.5.1. Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

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

13.5.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

13.6. LESSEE shall notify the CITY in the event of receipt of any notice of cancellation, non-renewal or material change in coverage not less than thirty (30) calendar days prior to the change, or ten (10) calendar 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 the CITY at the following address:

City of San Antonio
Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

13.7. If LESSEE fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, the CITY may, at its option, terminate this Lease Agreement, provided CITY has delivered written notice to LESSEE and the noncompliance identified remains uncured for more than ten (10) calendar days after delivery of such notice. Alternatively, the CITY shall have the right to order LESSEE to cease use of the Leased Premises until LESSEE demonstrates to CITY compliance with the requirements of this Section 13.

13.8. All personal property placed in the Leased Premises shall be at the sole risk of LESSEE. CITY shall not be liable, and LESSEE waives all claims against CITY for any damage either to the person or property of LESSEE or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; (iii) from any act or omission of employees, or other authorized occupants of the Leased Premises, or (iv) due to any accident in or about the Leased Premises, unless any of the aforementioned damages are caused by the gross negligence or willful misconduct of CITY or its elected officials, employees, officers, directors, volunteers and/or representatives).

13.9. It is agreed that LESSEE'S insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Lease Agreement.

14. RULES AND REGULATIONS AND PROHIBITED USES

14.1. LESSEE shall observe and comply with all applicable laws and ordinances of the CITY affecting LESSEE'S business, including but not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses on the River Walk in the Downtown Central Business District.

14.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Leased Premises without the prior written approval of the CITY through the Director, Downtown Operations Department, or his or her designee, and any and all other applicable departments, boards or commissions of the CITY, including, but not limited to, the Historic and Design Review Commission. LESSEE agrees to remove all signs from the Leased Premises when LESSEE

vacates the Leased Premises.

- 14.3. **LESSEE** shall be allowed to place chairs, tables, umbrellas, hostess stations, and/or any other furnishings approved by **CITY** and all applicable boards and/or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission (HDRC).
- 14.4. Encroachment beyond the Leased Premises or into the City Public Path is not permitted.
- 14.5. No activity or method of operation shall be allowed in, on or about the Leased Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
 - 14.5.1. Nudity means total absence of clothing or covering for the human body.
 - 14.5.2. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
 - 14.5.3. Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.
- 14.6. The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.
- 14.7. Discrimination because of race, color, sex, age, handicap, or national origin in employment or in the use of or admission to the Leased Premises is prohibited.
- 14.8. **LESSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.
- 14.9. **LESSEE** shall not place speakers or amplified music on or near the patio of the Leased Premises or in any other location outside the enclosed building on any side of the Leased Premises that can be seen from the San Antonio River. **LESSEE** agrees to comply with any requests by the **CITY'S** park police, police officers, noise abatement officers, or other **CITY** representative to close the windows and doors of **LESSEE'S** business establishment after the hour of 11:00 p.m., except as necessary for entry to and exit from the business establishment.
- 14.10. **LESSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in, vending on the Leased Premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to **LESSEE'S** customers seated at tables within the Leased Premises.
- 14.11. **LESSEE** shall abide by Vending Requirements and Regulations as set forth in Section 16-236 of the City Code of the City of San Antonio and Section 35-679 of the Unified Development Code or other comparable Codes hereinafter enacted.
 - 14.11.1. Notwithstanding the preceding, **LESSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis are employees of **LESSEE** and the Mariachis are not allowed to engage in solicitation of business to **LESSEE'S** customers or any other persons on the Leased Premises.

15. RESERVATIONS: CITY

- 15.1. **CITY** reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LESSEE** shall not be entitled to an abatement or reduction of Rent because of such entry, nor shall said entry be deemed an actual or constructive eviction of **LESSEE** from the Leased Premises. Should construction or other activity by **CITY** prevent **LESSEE'S** use of the Leased Premises for the purposes outlined herein for longer than ten (10) consecutive calendar days, then **LESSEE** shall be entitled to an abatement of Rent under this Lease Agreement for such period of time and, at **LESSEE'S** option, this Lease Agreement may be terminated or extended for the same number of days **LESSEE'S** use of Leased Premises was denied.
- 15.2. No provision of this Lease Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments or amusements, or River Walk parades for the benefit of the public.
- 15.3. **CITY** park police, police, and other public safety personnel shall have the right of entry on and into the Leased Premises as reasonably needed to investigate circumstances, conditions, or person(s) that appear to be suspicious. **LESSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons on the River Walk. **LESSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LESSEE'S** personal property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

16. HOLDING OVER

- 16.1. Should **LESSEE** hold over in the Leased Premises, or any part thereof, after the expiration or termination of the Term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to one-hundred twenty-five percent (125%) of the amount of the Rent paid for the last month of the Term of this Lease Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LESSEE** to hold over.

17. QUIET ENJOYMENT

- 17.1. **CITY** covenants and agrees, subject to the provisions of this Lease Agreement, that **LESSEE**, on paying the Rent and any other charges provided for in this Lease Agreement and observing and performing the covenants, agreements and conditions of this Lease Agreement on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the Term without hindrance or molestation of any kind whatsoever.

18. CONFLICT OF INTEREST

- 18.1. **LESSEE** acknowledges that it has been informed that the Charter of the **CITY** and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **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 **CITY** 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 CITY officer or employee or entity above listed is a subcontractor on a CITY contract, or a partner or a parent or subsidiary business entity.

- 18.2. **LESSEE** warrants and certifies, and this Lease Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

19. SEPARABILITY

- 19.1. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part of this Lease 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.

20. NOTICES

- 20.1. Notices to CITY required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, First Class mail, postage prepaid, addressed to:

City of San Antonio
Downtown Operations Department
Contract Services 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

or to such other address as CITY may designate in writing to LESSEE.

Notices to LESSEE shall be deemed sufficient if in writing and mailed, First Class mail, postage prepaid, addressed to LESSEE at:

Palacio del Rio, Inc.
200 South Alamo Street
San Antonio, Texas 78205
Attn: Mr. Robert Thrailkill

Palacio del Rio, Inc.
310 South St. Mary's Suite 2400
San Antonio, Texas 78205
Attn: Mr. Murray Johnston, Jr.

or to such other address as LESSEE may designate in writing to CITY.

21. PARTIES BOUND

- 21.1. If there shall be more than one party designated as LESSEE in this Lease Agreement, they shall each be bound jointly and severally hereunder.
- 21.2. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and assigns.

22. TEXAS LAW TO APPLY

- 22.1. **THIS LEASE 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.**

23. LIEN FOR RENT

- 23.1. Intentionally deleted.

24. RELATIONSHIP OF PARTIES

- 24.1. 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.

25. GENDER

- 25.1. Words of gender used in this Lease Agreement 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.

26. CAPTIONS

- 26.1. The captions contained in this Lease Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease Agreement.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1. This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties.
- 27.2. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 27.3. It is understood that the Charter of the CITY requires that all agreements, and any amendments thereto, with the CITY be in writing and adopted by ordinance.

28. AUTHORITY

- 28.1. **LESSEE and CITY** each hereby represent and warrant to the other that the signer for each party has full authority to execute this Lease Agreement on behalf of **LESSEE and CITY**, respectively.

[Signatures on following page]

This Lease Agreement is dated effective _____, 2009 (the "Effective Date").

LESSOR:

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

By: _____
City Manager

ATTEST:

City Clerk

LESSEE:

**PALACIO DEL RIO, INC.,
a Delaware corporation
d/b/a Hilton Palacio del Rio**

By: Charles E Ebron

Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

Exhibits:

- Exhibit A -- Depiction of River Walk Property
- Exhibits A-1, A-2 and A-3 -- Metes and Bounds Property Descriptions
- Exhibit B -- City Public Path

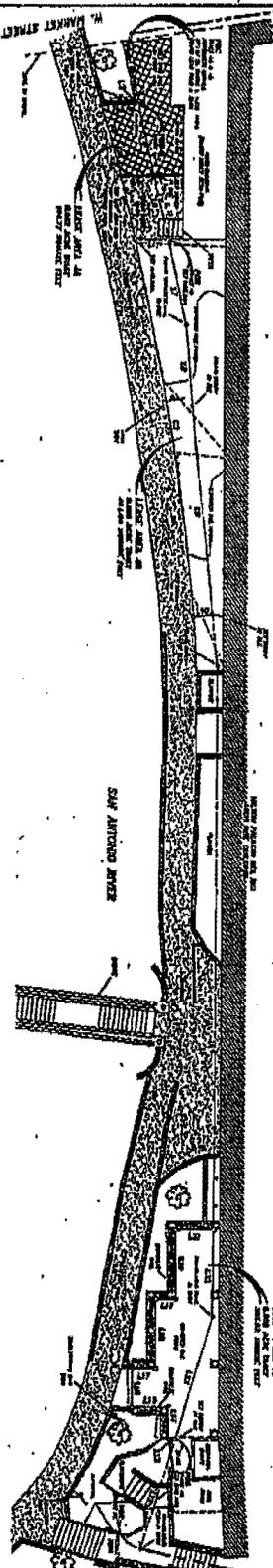
EXHIBIT A
DEPICTION OF RIVER WALK PROPERTY

[See the attached]



NO.	DESCRIPTION	DATE	BY
1	PREPARED FOR THE CITY OF SAN ANTONIO	1962	AWA
2	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
3	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
4	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
5	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
6	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
7	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
8	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
9	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
10	FOR THE SAN ANTONIO RIVERWALK	1962	AWA

NO.	DESCRIPTION	DATE	BY
1	PREPARED FOR THE CITY OF SAN ANTONIO	1962	AWA
2	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
3	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
4	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
5	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
6	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
7	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
8	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
9	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
10	FOR THE SAN ANTONIO RIVERWALK	1962	AWA



FOR THE SAN ANTONIO RIVERWALK
 AND SAN ANTONIO AVENUE
 AND SAN ANTONIO AVENUE
 AND SAN ANTONIO AVENUE
 AND SAN ANTONIO AVENUE



THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS SUBJECT TO THE APPROVAL OF THE CITY OF SAN ANTONIO AND THE STATE OF TEXAS. THE CITY OF SAN ANTONIO AND THE STATE OF TEXAS ARE NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE ENGINEER ASSUMES NO LIABILITY FOR ANY DAMAGES OR LOSSES ARISING FROM THE USE OF THIS PLAN.



WICKREY & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 1001 Broadway Building, San Antonio, Texas 78202
 Telephone: 541-1111

LEASE AREA 4A, 4B, AND 4C, SAN ANTONIO RIVERWALK,
 SAN ANTONIO, BEXAR COUNTY, TEXAS

PREPARED FOR
 THE CITY OF SAN ANTONIO

WICKREY & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 1001 Broadway Building, San Antonio, Texas 78202
 Telephone: 541-1111

NO.	DESCRIPTION	DATE	BY
1	PREPARED FOR THE CITY OF SAN ANTONIO	1962	AWA
2	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
3	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
4	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
5	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
6	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
7	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
8	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
9	FOR THE SAN ANTONIO RIVERWALK	1962	AWA
10	FOR THE SAN ANTONIO RIVERWALK	1962	AWA

EXHIBIT A-1
METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4A
0.002 OF AN ACRE (108.77 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.002-acre (108.77 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.002-acre lease area being more particularly described as follows:

COMMENCING at a found lead-plug & tack on the southwest right-of-way line of W. Market Street and on southeast line of said San Antonio River Property, same point also being the at the most northerly corner of Lot 15, Block 9, New City Block 14016, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, South 15°45'31" West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 13.67 feet to a set MAG nail in rock wall, South 09°06'06" West, continuing along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 1.58 feet to a point on the south edge of a rock wall and the edge of a brick patio, for the **POINT OF BEGINNING** and most easterly corner of the herein described lease area;

Thence; South 09°06'06" West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said brick patio, a distance of 15.11 feet to a set screw in tile, on the southwest edge of said tile patio and the northeast edge of a pebble rock patio, for the most southerly corner of the herein described lease area;

Thence; North 68°54'36" West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, along the southwest edge of said brick patio and the northeast edge of said pebble rock patio, a distance of 6.91 feet to a set ½" iron rod with cap stamped "VICKREY PROP. COR.," at a non-tangent point on curve to the left, on the east edge of a pebble rock sidewalk adjacent to the San Antonio River, same point also being the most westerly corner of said tile patio and most northerly corner of said concrete patio, for the most westerly corner of the herein described lease area;

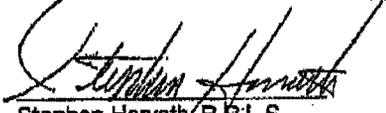
Thence; along said curve to the left and generally along said pebble rock sidewalk and the west line of said tile patio, a distance of 15.41 feet, with a radius of 220.00 feet, a central angle of 04°00'46", a chord bearing and distance of North 06°10'54" East, 15.40 feet to a point at the southwest corner of said rock wall, for the most northerly corner of the herein described lease area;

Thence; South 68°39'24" East, departing the east line of said pebble rock sidewalk, along the southwest edge of said rock wall and a north edge of said tile patio, a distance of 7.99 feet to the **POINT OF BEGINNING**, containing 0.002 of an acre (108.77 square feet), more or less.



Job No. 1535-017
RA m&b0.002ac
April 21, 2008

Certified this 21st day of April, 2008



Stephen Horvath, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vokrey & Associates, Inc.



EXHIBIT A-2
METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4B
0.009 OF AN ACRE (411.64 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.009-acre (411.64 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.009-acre lease area being more particularly described as follows:

COMMENCING at a found lead plug & tack on the southwest right-of-way line of W. Market Street and on southeast line of said San Antonio River Property, same point also being the most northerly corner of Lot 15, Block 9, New City Block 14016, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, South 15°45'31" West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 13.67 feet to a set MAG nail in rock wall, South 09°08'06" West, continuing along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 30.23 feet to a set MAG nail, at the southwest edge of a pebble rock patio, and northeast edge of a tile patio, for the **POINT OF BEGINNING** and most easterly corner of the herein described lease area;

Thence; along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, the following three (3) courses:

South 09°08'06" West, a distance of 18.42 feet to a found concrete nail in tile, for a corner of the herein described lease area;

South 16°38'19" West, a distance of 17.13 feet to a found screw in tile, for a corner of the herein described lease area;

South 15°42'06" West, a distance of 43.55 feet to a set screw in tile, for the most southerly corner of the herein described lease area;

Thence; North 75°48'06" West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, a distance of 3.81 feet to a set screw in tile, at a non-tangent point on curve to the left, on the east edge of a pebble rock sidewalk adjacent to the San Antonio River, for the most westerly corner of the herein described lease area;

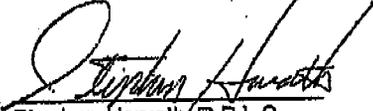
Thence; along said curve to the left and generally along said pebble rock sidewalk and the west line of said tile patio, a distance of 80.00 feet, with a radius of 692.00 feet, a central angle of 08°37'27", a chord bearing and distance of North 12°22'40" East, 79.96 feet to a set MAG nail, at the southwest corner of said pebble rock patio and northwest corner of said tile patio, for the most northerly corner of the herein described lease area;

Thence; South 67°51'02" East, departing the east line of said pebble rock walk, along the southwest edge of said tile pebble rock patio and the northeast edge of said tile patio, a distance of 6.65 feet to the **POINT OF BEGINNING**, containing 0.009 of an acre (411.64 square feet), more or less.



Job No. 1535-017
RA m&b0.009ac
April 21, 2008

Certified this 21st day of April, 2008



Stephen Horvath, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



EXHIBIT A-3
METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4C
0.009 OF AN ACRE (382.02 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.009-acre (382.02 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.009-acre lease area being more particularly described as follows:

COMMENCING at a found lead plug & tack on the southeast line of said San Antonio River Property, same point also being the most westerly corner of Lot 15, Block 9, New City Block 14016, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, and the most northerly corner of San Antonio Conservation Society Tract, recorded in Volume 2835, Page 500, Official Public Records of Real Property of Bexar County, Texas, North 38°23'09" East, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 24.36 feet to a set MAG nail, for the **POINT OF BEGINNING** and most southerly corner of the herein described lease area;

Thence; North 68°57'25" West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 1.32 feet to a point at a corner of concrete wall, same point also being on the edge of a tile patio, for a corner of the herein described lease area;

Thence; along edge of said concrete wall and edge of tile patio, the following two (2) courses:

North 21°02'35" East, a distance of 6.97 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 68°50'17" West, a distance of 7.57 feet to a point at a corner of said concrete wall, for the most westerly corner of the herein described lease area;

Thence; North 21°42'06" East, departing said edge of concrete wall, across said tile patio, a distance of 7.94 feet to a point at a corner of a concrete wall, same point being at the edge of said tile patio, for a corner of the herein described lease area;

Thence; along edge of said concrete wall and edge of tile patio, the following five (5) courses:

South 67°58'35" East, a distance of 4.90 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 21°43'08" East, a distance of 14.69 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

South 68°07'01" East, a distance of 4.02 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 21°37'24" East, a distance of 14.69 feet to a point at a corner of said concrete wall, for the most northerly corner of the herein described lease area;



South 68°16'49" East, a distance of 7.77 feet to a point at edge of concrete wall on the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, for the most easterly corner of the herein described lease area;

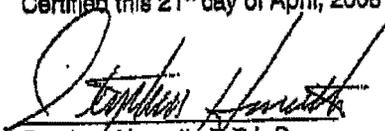
Thence; along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, the following two (2) courses:

South 21°44'19" West, a distance of 18.51 feet to a found lead plug and tack, for a corner of the herein described lease area;

South 38°23'09" West, a distance of 26.78 feet to the POINT OF BEGINNING, containing 0.009 of an acre (382.02 square feet), more or less.

Job No. 1535-017
RA m&b0.009ac
April 21, 2008

Certified this 21st day of April, 2008



Stephen Horvath, P.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



EXHIBIT B
CITY PUBLIC PATH

[See the attached]

VICKREY & ASSOCIATES, Inc.

CONSULTING ENGINEERS

**METES & BOUNDS DESCRIPTION
FOR
AGREED BOUNDARY LINE**

Between the northwest line of Lot 15, Block 9, New City Block 14016, City of San Antonio, Bexar County, Texas, as recorded in Volume 5700, Page 284, Deed and Plat Records of Bexar County, Texas and a southeast line of the San Antonio River Property, said line being more particularly described by metes and bounds as follows:

BEGINNING: at a found lead plug and tack at the southwestern corner of said Lot 15, said point also being on an easterly line of said San Antonio River property and at the northwest corner of Lot 10, New City Block 142, as recorded in Volume 2835, Page 500, Deed and Plat Records of Bexar County, Texas;

THENCE; along said northwest line of Lot 15 and said easterly line of San Antonio River property, and along the agreed boundary line, the following six (6) courses;

North 38° 23' 09" East, a distance of 51.14 feet to a found lead plug and tack;

North 21° 44' 19" East, a distance of 136.26 feet to a found screw in tile,

North 15° 42' 06" East, a distance of 54.44 feet to a found screw in tile;

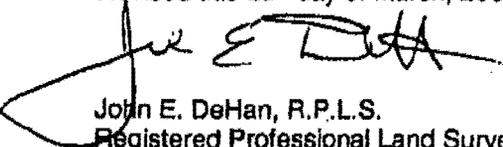
North 16° 38' 19" East, a distance of 17.13 feet to a found nail in tile;

North 09° 06' 06" East, a distance of 48.65 feet to a set concrete nail;

North 15° 45' 31" East, a distance of 13.67 feet to the northwest corner of said Lot 15, on the south right of way line of Market Street, for the POINT OF ENDING of this boundary line agreement.

Job No. 1535-017-105

Certified this 30th day of January, 2009
Revised this 25th day of March, 2009


John E. DeHan, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6042
Vickrey & Associates, Inc.





SCALE: 1"=40'

LEGEND

— AGREED BOUNDARY LINE

● FOUND CORNER

○ SET CONCRETE NAIL

LINE TABLE			
LINE	LENGTH	BEARING	
L1	51.14'	N38°23'08"E	FIELD
	51.60'	N38°26'05"E	PLAT
L2	136.26'	N21°44'19"E	FIELD
	136.10'	N21°55'40"E	PLAT
L3	54.44'	N15°42'08"E	FIELD
	54.30'	N16°10'40"E	PLAT
L4	17.13'	N16°38'19"E	FIELD
	17.18'	N16°55'44"E	PLAT
L5	48.65'	N09°06'06"E	FIELD
	48.67'	N10°10'49"E	PLAT
L6	13.67'	N15°45'31"E	FIELD
	13.67'	N16°24'51"E	PLAT

NOTES:

- 1) ALL IMPROVEMENTS ARE NOT SHOWN.
- 2) BEARING REFERENCE FOR THIS SURVEY IS BASED ON TEXAS STATE PLANE COORDINATES SYSTEM NAD 83 SOUTH CENTRAL ZONE HOLDING SAN ANTONIO CORRS STATION TXAN AND AUSTIN CORRS STATION TXAU.

TXAN

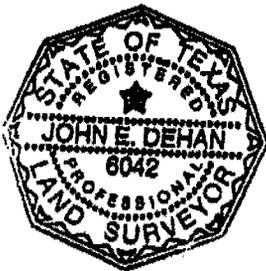
TXAU

Lat- N 29°29'28.34308"
Long- W 98°34'35.88078"

Lat- N 30°18'42.08806"
Long- W 97°43'22.71306"

- 3) SURVEY WAS REVISED 3/25/09, HOWEVER THE BOUNDARY WAS NOT UPDATED.

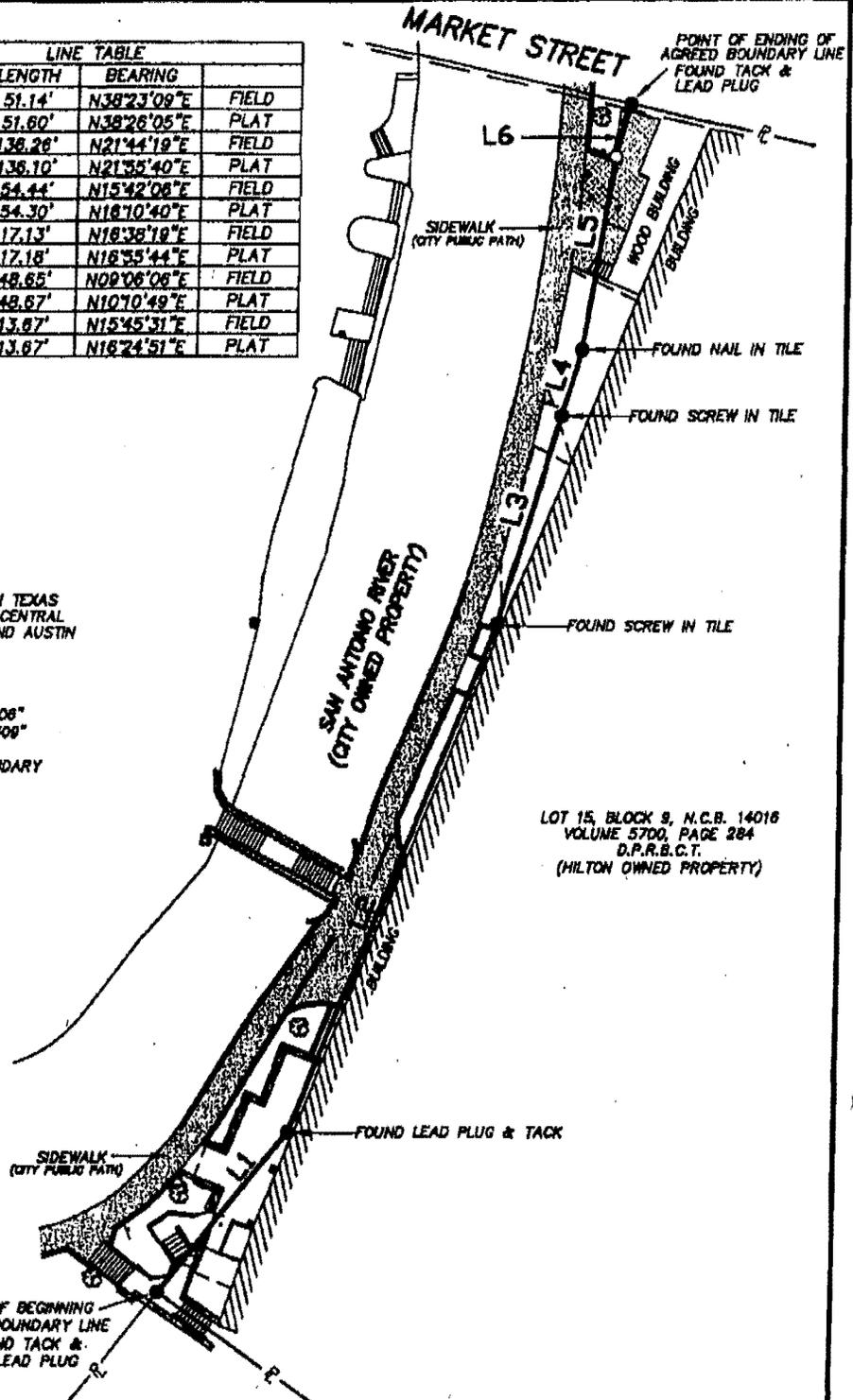
SURVEY OF AGREED BOUNDARY LINE
BETWEEN LOT 15, BLOCK 9, N.C.B.
14016 AND THE SAN ANTONIO RIVER,
CITY OF SAN ANTONIO, BEXAR
COUNTY, TEXAS.



I, JOHN E. DEHAN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS IS A TRUE, COMPLETE AND CORRECT SURVEY OF THE DESCRIBED BOUNDARY LINE SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, WHICH SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1B, CONDITION 1 SURVEY.

JOHN E. DEHAN, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 8042
VICKREY & ASSOCIATES, INC.

1.30.09



LOT 15, BLOCK 9, N.C.B. 14016
VOLUME 5700, PAGE 284
D.P.R.B.C.T.
(HILTON OWNED PROPERTY)

LOT 10, N.C.B. 142
VOLUME 2835, PAGE 500
D.R.B.C.T.

(OWNER: SAN ANTONIO CONSERVATION SOCIETY)

SHEET 2 OF 2



VICKREY & ASSOCIATES, INC.
CONSULTING ENGINEERS
12940 Country Parkway San Antonio, Texas 78218
Telephone: (210)348-3271

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BOUNDARY LINE AND ENCROACHMENT EASEMENT AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: _____, 2009

Hilton: Palacio del Rio, Inc., a Delaware corporation, and successor in interest to Palacio del Rio, Ltd., a Texas limited partnership ("Hilton")

Hilton Mailing Address for Notice: 200 South Alamo Street
San Antonio, Texas 78205

City: THE CITY OF SAN ANTONIO, a Texas municipal corporation ("City")

City's Mailing Address for Notice:

CITY OF SAN ANTONIO
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: City Clerk 2nd Floor, City Hall

Consideration: The sum of TEN AND NO/100 DOLLARS (U.S. \$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each party to the other.

Definition of Terms used in this Boundary Line and Encroachment Easement Agreement ("Boundary Agreement"):

1. **City Owned Property:** For all purposes "City Owned Property" shall mean The San Antonio River and all other real property on the San Antonio River side of the Agreed Boundary Line (defined below); but specifically excluding any portion of the Hilton Owned Property (defined below). Such City Owned Property shall include (without implied limitation) all (i) improvements, buildings structures, and fixtures on such City Owned Property, and (ii) all subsurface, surface, and air rights, in, on, under, and over such City Owned Property subject only to (i) air, property and space rights ("Air Rights") previously granted by the City to Palacio del Rio, Inc., a Texas corporation, as a predecessor in interest to Hilton (a) as described in a Special Warranty Deed executed November 13, 1967 and recorded in Volume 5863, Page 633 of the Deed Records of Bexar County, Texas ("Special Warranty Deed") and (b) pursuant to Ordinance 35917 passed and approved by the City on November 9, 1967 ("Ordinance") and (ii) any Air Rights associated with improvements, buildings,

structures and fixtures of Hilton constructed or to be constructed in, on, under, and over such City Owned Property expressly granted herein. Copies of the Special Warranty Deed and Ordinance are attached hereto as **Exhibit "A"** to this Boundary Agreement and made a part hereof for all purposes

2. **Agreed Boundary Line:** For all purposes, the "Agreed Boundary Line" shall be that certain boundary line between the Hilton Owned Property (defined below) and the City Owned Property (defined above), as described by metes and bounds and depicted on Boundary Line Survey prepared by Vickrey & Associates, Inc. dated January 30, 2009, attached hereto as **Exhibit "B"** and made a part hereof for all purposes.
3. **Existing Air Space Improvements:** "Existing Air Space Improvements" is defined as those improvements, together with any approved additions, replacements and/or repairs thereto, which are identified on that certain Balcony and Roof Overhang Survey conducted by Vickrey & Associates, Inc. dated August 28, 2008, attached hereto as **Exhibit "C"** and made a part hereof for all purposes. Although the parties acknowledge the Existing Air Space Improvements are encroaching on, over or under City Owned Property, the Existing Air Space Improvements are owned by Hilton and the parties expressly agree no interest in the Existing Air Space Improvements is now or hereafter transferred to City under this Boundary Agreement or otherwise.
4. **Additional Air Space Improvements:** "Additional Air Space Improvements" is defined as those improvements, together with any additions, replacements and/or repairs thereto, which are subsequently constructed by Hilton and approved by City which encroach on, over or under City Owned Property. Any other Additional Air Space Improvements shall require the approval of the City Council of the City of San Antonio through passage of an appropriate ordinance.
5. **Hilton Owned Property:** For all purposes "Hilton Owned Property" shall mean all of that certain real property owned by Hilton known as Hilton Palacio del Rio Hotel, 200 South Alamo Street, New City Block 14016, Lots 15 and 16, Block 9, City of San Antonio, Bexar County, Texas, which is located directly contiguous to the City Owned Property (separated by the Agreed Boundary Line), all as depicted on **Exhibit "B"**, attached hereto; such Hilton Owned Property shall include without limitation all buildings, structures, balconies, overhangs, fire escapes, awnings, light stands, signage and other improvements and fixtures located on such Hilton Owned Property (including any existing easements benefiting the Hilton Owned Property). Hilton and City expressly agree no interest in the Hilton Owned Property is now or hereafter being transferred to City under this Boundary Agreement or otherwise.

Boundary Agreement: Hilton and City hereby agree, acknowledge and stipulate for all purposes that the boundary line between the Hilton Owned Property and the City Owned Property as shown on **Exhibit "B"** shall be the Agreed Boundary Line. This Boundary Agreement (including all Exhibits attached hereto and incorporated herein) is being entered

in to solely for the purpose of establishing such Agreed Boundary Line and to establish the rights and obligations of the parties respective to such Agreed Boundary Line and each party's respective rights and obligations regarding the City Owned Property and the Hilton Owned Property and the Encroachment Easement.

Mutual Conveyance of Interests

Grant by Hilton:

To the extent Hilton may have had or may have any claims, rights, title or interests in the City Owned Property, and expressly subject to the Encroachment Easement hereinafter described, Hilton hereby, for the consideration, GRANTS, BARGAINS, and CONVEYS (without any warranty whatsoever) unto the City, any and all claims, rights, title or interests which Hilton may have had or may have, in, on, under, or over the City Owned Property, together with all and singular the rights and appurtenances thereto in any wise belonging, TO HAVE AND TO HOLD the City Owned Property unto the City and its successors and assigns, forever.

Hilton acknowledges and affirms the following: (i) Hilton has no fee simple ownership interest in all or any portion of the City Owned Property; and (ii) Hilton, for itself, its successors and assigns, acknowledges that it has no right, title or interest in any access or other easements (whether prescriptive, legal or equitable) on, over or in the City Owned Property except for the Encroachment Easement granted and affirmed herein, it being understood that this Boundary Agreement supersedes and replaces any such other easement rights in their entirety.

This conveyance is made and accepted WITHOUT EXPRESS OR IMPLIED WARRANTY (as to title, physical condition or otherwise). All warranties that might arise by common law and the warranties in Section 5.023 of the Texas Property Code (or its successor) are disclaimed. CITY ACCEPTS THE CITY OWNED PROPERTY AS IS" AND "WHERE IS", WITH ALL FAULTS, AND CITY AGREES THAT, NEITHER HILTON NOR ANY OF HILTON'S REPRESENTATIVES, ATTORNEYS AND AGENTS (THE "HILTON RELATED PARTIES"), HAVE MADE OR GIVEN ANY WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WRITTEN OR ORAL, EXPRESS OR IMPLIED, REGARDING ANY MATTER RELATING TO THE CITY OWNED PROPERTY.

Grant by City:

To the extent City may have had or may have any claims, rights, title or interests in the Hilton Owned Property, City, for the consideration, GRANTS, BARGAINS AND CONVEYS (without any warranty whatsoever) unto Hilton any and all claims, rights, title or interests of any kind which City may have had or may have in, on, under, or over the Hilton Owned Property, except any easements or other rights which have been previously dedicated, platted or recorded, which the City does not convey.

City acknowledges and affirms the following: City has no ownership interest of any kind, including without limitation any fee simple ownership interest, in all or any portion of the Hilton Owned Property. This conveyance is made and accepted WITHOUT EXPRESS OR IMPLIED WARRANTY (as to title, physical condition or otherwise). All warranties that might arise by common law and the warranties in Section 5.023 of the Texas Property Code (or its successor) are disclaimed. HILTON ACCEPTS THE HILTON OWNED PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS, AND HILTON AGREES THAT, NEITHER CITY NOR ANY OF CITY'S REPRESENTATIVES, ATTORNEYS AND AGENTS (THE "CITY RELATED PARTIES"), HAVE MADE OR GIVEN ANY WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WRITTEN OR ORAL, EXPRESS OR IMPLIED, REGARDING ANY MATTER RELATING TO THE HILTON OWNED PROPERTY, EXCEPT FOR THE ENCROACHMENT EASEMENT.

Encroachment Easement for Existing Air Space Improvements

The grant by Hilton is made and accepted expressly subject to an encroachment easement granted and affirmed by City as set forth in **Exhibit "D"**, attached hereto and incorporated herein by reference for all purposes (the "Encroachment Easement").

Miscellaneous

1. The following **Exhibits "A", "B", "C" and "D"** to this Boundary Agreement are attached hereto and incorporated herein for all purposes:

- Exhibit A** – Special Warranty Deed and City Council Ordinance
- Exhibit B** – Agreed Boundary Line Description
- Exhibit C** – Balcony and Roof Overhang Survey
- Exhibit D** – Encroachment Easement

Payment of current and future ad valorem taxes, if any, on the City Owned Property and Hilton Owned Property is assumed by City and Hilton, respectively.

2. When the context requires, singular nouns and pronouns include the plural.

3. The terms of this Boundary Agreement are binding upon and will inure to the benefit of Hilton and City and their respective successors and assigns. If any clause or provision of this Boundary Agreement is determined to be illegal, invalid or unenforceable under present or future laws effective during the term of this Boundary Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Boundary Agreement shall not be affected thereby, and it is also the intention of the parties to this Boundary Agreement that in lieu of each clause or provision of this Boundary Agreement that is illegal, invalid or unenforceable, there be added as a part of this Boundary 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.

4. This Boundary Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. This Boundary Agreement may only be amended by an instrument in writing and executed by all parties hereto or their successors and assigns. It is understood that the Charter of the City requires that all agreements, and any amendments thereto, with the City be in writing and adopted by ordinance.

5. This Boundary Agreement and all other documents and instruments executed in connection herewith shall be governed by the laws of the State of Texas and shall be performed in Bexar County, Texas.

6. Notices required or appropriate under this Boundary Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to the addresses given above or to such other address as may have been designated in writing by a party from time to time.

[Signature and Acknowledgment pages immediately following]

EXECUTED AND ACCEPTED this BOUNDARY LINE AND ENCROACHMENT
EASEMENT AGREEMENT this ____ day of _____, 2009.

HILTON:

PALACIO DEL RIO, INC.,
a Delaware corporation

By: Charles E. Ebrom

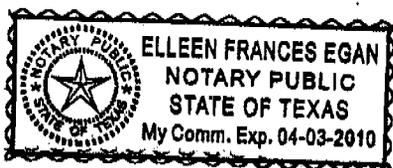
Name: Charles E. Ebrom

Title: President

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 9 day of June, 2009,
by Charles E. Ebrom, President, of PALACIO DEL RIO,
INC., a Delaware corporation, on behalf of said corporation.



Elleen Frances Egan
Notary Public, State of Texas

EXECUTED AND ACCEPTED this BOUNDARY LINE AND ENCROACHMENT EASEMENT AGREEMENT this ____ day of _____, 2009.

CITY:

THE CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By: _____

Name: _____

Title: _____

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the ____ day of _____, 2009,
by _____ of THE CITY OF SAN ANTONIO,
a Texas municipal corporation, on behalf of said Municipal Corporation.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

CITY OF SAN ANTONIO
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: City Attorney
City Hall

EXHIBIT A

**SPECIAL WARRANTY DEED CONVEYING AIR AND SPACE RIGHTS ABOVE THE
SAN ANTONIO RIVER WALK AREA, PASSED AND APPROVED BY CITY COUNCIL
ON NOVEMBER 7, 1967 THROUGH ORDINANCE 35917**

[See attached Special Warranty Deed and City Council Ordinance]

101g 11/1/67

NSY-20-67 604047 LS - I
S.P. #137

3.50

857775

D E E D

STATE OF TEXAS |
COUNTY OF BEXAR |

KNOW ALL MEN BY THESE PRESENTS:

That the CITY OF SAN ANTONIO, hereinafter called "Grantor" acting by and through Ernest C. Shunkel, Jr., Assistant City Manager, pursuant to Ordinance No. 35917, passed and approved by the City Council on November 9, 1967, for and in consideration of the sum of EIGHT THOUSAND NINE HUNDRED TWENTY-NINE AND 60/100 DOLLARS (\$8,929.60) to it in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, and in further consideration of the reversion agreement by Grantee hereinafter contained, has granted, sold and conveyed unto PALACIO DEL RIO, INC., a Texas Corporation, all of the following air, property and space, situated in the City of San Antonio, County of Bexar, State of Texas, at and above elevation 686 feet and extending to elevation 831 feet, a vertical distance of 165 feet, within and bounded by the surface formed by projecting vertically upward from the surfaces of the earth the boundaries of those certain places or parcels of land bounded and described by metes and bounds as follows:

1. BEGINNING at a point in the East line of the San Antonio River public right-of-way, said point of beginning bears South 16° 24' 32" West 13.67 feet and South 10° 10' 49" West 27.39 feet from the Northwest and most northerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site" as shown by Plat thereof dated October 22, 1967, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the East line of the San Antonio River as follows:

South 10° 10' 49" West 21.08 feet
South 16° 55' 44" West 17.18 feet
South 16° 10' 40" West 54.30 feet and
South 21° 55' 40" West 1.68 feet;

Thence entering the San Antonio River public right-of-way North 68° 02' 02" West 11.29 feet and North 21° 57' 38" East 93.45 feet to the point of beginning and containing 613.67 square feet, more or less.

2. BEGINNING at a point in the East line of the San Antonio River public right-of-way said point of beginning bears North 38° 26' 03" East 11.46 feet from the Southwest and most westerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by plat thereof dated October 22, 1967, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the East line of the San Antonio River as follows:

North 38° 25' 05" East 40.14 feet and
North 21° 55' 40" East 65.09 feet;

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Page 633

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Thence entering the San Antonio River Right-of-way North 68° 02' 02" West 11.33 feet and South 21° 57' 58" West 103.37 feet to the point of beginning and containing 956.85 square feet, more or less.

- 3. BEGINNING at a point in the West line of proposed South Alamo Street, said point of beginning bears North 21° 57' 58" East 20.97 feet from the Southeast and more southerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by Plat thereof dated Sept. 22, 1967, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the West line of proposed South Alamo Street as follows:

North 21° 57' 58" East 259.25 feet
North 16° 20' 42" East 11.88 feet and
North 00° 59' 52" East 5.28 feet;

Thence entering the South Alamo Street public right-of-way as follows:

South 68° 02' 02" East 14.97 feet
South 21° 57' 58" West 276.00 feet and
North 68° 02' 02" West 11.92 feet to the point of beginning and containing 3304.79 square feet, more or less; and,

All of the following air, property and space, situated in the City of San Antonio, County of Bexar, State of Texas, at and above elevation 578 feet and extending to elevation 593 feet, a vertical distance of 15 feet, within and bounded by the surface formed by projecting vertical upward from the surface of the earth the boundaries of those certain pieces or parcels of land bounded and described by metes and bounds as follows:

BEGINNING at a point in the South line of East Market Street, said point of beginning bears South 76° 17' 02" East 14.85 feet from the Northwest and most northerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by Plat thereof dated Sept. 22, 1967, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the South line of East Market Street South 76° 17' 02" East 33.51 feet to a point in the beginning of a curve to the right;

Thence with said curve to the right, whose radius is 8.27 feet an arc distance of 11.15 feet to a point at the end of said curve in the West line of proposed South Alamo Street;

Thence South 00° 59' 52" West 15.77 feet with and along the West line of proposed South Alamo Street;

Thence entering the East Market Street public right-of-way as follows:

North 21° 57' 58" East 19.82 feet
North 68° 02' 02" West 47.50 feet and
South 21° 57' 58" West 5.19 feet to the point of beginning and containing 238.89 square feet, more or less.

All elevations herein stated are based on United States Coast and Geodetic Survey Datum presently in existence for the City of San Antonio.

/s/ 11/1/67

Grantee by acceptance of this deed expressly agrees and covenants that the air, property and space conveyed herein is to be used solely for purposes of constructing, occupying and maintaining a portion of a building (such building presently known as HILTON'S PALACIO DEL RIO), the main building structure and support for such portion being located on lands adjacent thereto; and that if and when the main building structure is removed from such adjacent lands by the voluntary act or acts of grantee, its successors or assigns, then, and in that event, the air, property and space conveyed herein and all rights thereto and therein shall immediately revert to and automatically vest in the City of San Antonio, its successors or assigns.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever, as long as the same are used for the building structure as provided above; and Grantor does hereby bind itself, its successors and assigns to WARRANT and FOREVER DEFEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under it, but not otherwise.

EXECUTED this 27th day of November, 1967.



CITY OF SAN ANTONIO,
a Municipal Corporation

Edward C. Hensel
City Manager

STATE OF TEXAS
COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared Edward C. Hensel, City Manager, of the CITY OF SAN ANTONIO, a Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Municipal Corporation.



GIVEN UNDER MY HAND and seal of office, this the 27th day of November, 1967.
[Signature]
Notary Public in and for Bexar County, Texas.

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STATE OF TEXAS
COUNTY OF BEXAR
I hereby certify that this instrument was filed on the
1st day of the 11th month (month) of the year 1967
at the Volume and Page of the deed records
of Bexar County, Texas as indexed herein by me.

NOV 20 1967



James W. Knight
COUNTY CLERK
BEXAR COUNTY, TEXAS

*Received the Deed for
1000 S. Broadway Apt
by 11/21/67*

FILED IN MY OFFICE
JAMES W. KNIGHT
COUNTY CLERK BEXAR CO.
James
NOV 20 1967

X

JPN:av
11-7-67

AN ORDINANCE 25917

AUTHORIZING THE SALE OF A 261 SQUARE FOOT TRACT OF LAND, OUT OF S. ALAMO STREET AND MARKET STREET RIGHT-OF-WAY TO PALACIO DEL RIO, INC. FOR A CONSIDERATION OF \$1,344.00 AND ALSO AUTHORIZING THE SALE OF AIR AND SPACE RIGHTS ABOVE THE RIVER WALK AREA ON THE WEST SIDE OF PALACIO DEL RIO HOTEL TOGETHER WITH CERTAIN AIR RIGHTS ON THE EAST SIDE OF SAID HOTEL ABOVE S. ALAMO STREET RIGHT-OF-WAY FOR A CONSIDERATION OF \$8,929.60.

* * * * *

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

SECTION 1. That the City Manager is hereby authorized to execute a special warranty deed conveying a 261 square foot tract of land out of S. Alamo Street and Market Street right-of-way to the Palacio Del Rio, Inc. for a consideration of \$1,344.00.

SECTION 2. The City Manager is further authorized to execute a special warranty deed conveying the air and space rights above the San Antonio River Walk area on the west side of Palacio Del Rio Hotel together with certain air rights on the east side of the Hotel above the S. Alamo Street right-of-way to the Palacio Del Rio, Inc. for a consideration of \$8,929.60.

SECTION 3. Detailed description of the property and rights being conveyed are contained in the above two described special warranty deeds, copies of which are attached hereto and incorporated herein.

SECTION 4. That said deeds are not to be delivered to Grantee until proper replatting of the areas involved have been accepted and approved by the City Planning Commission.

PASSED AND APPROVED this 9th day of November, 1967.

John M. Clatter
M A Y O R

ATTEST:

J. H. Duclman
City Clerk

APPROVED AS TO FORM:

Sam S. Coep
City Attorney

SPECIAL WARRANTY DEED

STATE OF TEXAS |
 |
COUNTY OF BEXAR |

KNOW ALL MEN BY THESE PRESENTS:

THAT the CITY OF SAN ANTONIO, a municipal corporation, incorporated under the laws of the State of Texas, acting by and through _____,

City Manager, pursuant to Ordinance No. _____ dated the _____ day of _____, 1967, duly adopted by the City Council of said City, for and in consideration of the sum of ONE THOUSAND THREE HUNDRED FORTY-FOUR AND NO/100 (\$1,344.00) DOLLARS, to it in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto PALACIO DEL RIO, INC., Grantee herein named, all of the following described property located within the City of San Antonio, Bexar County, Texas, to-wit:

0.006 acres (261.14 square feet) of land out of a portion of South Alamo Street, in the City of San Antonio, Bexar County, Texas, being more particularly described by metes and bounds as follows:

BEGINNING at a point on the West line of South Alamo Street, said point of beginning lies in the Southeast corner of a 0.082 acre tract of land designated as Block 9, New City Block 14016 of an unrecorded subdivision plat of Civic Center Project No. 5, Tax R-83, Urban Renewal Agency, City of San Antonio, Bexar County, Texas;

THENCE North 16° 20' 42" East 11.88 feet with and along the proposed West line of South Alamo Street, to a point;

THENCE North 00° 39' 32" East 47.78 feet with and along the proposed West line of South Alamo Street, to a point in the beginning of a curve to the left;

THENCE with said curve to the left, whose radius is 8.27 feet, whose chord bears North 37° 38' 17" West 10.32 feet, an arc distance of 11.15 feet to the end of said curve, a point on the South line of East Market Street;

THENCE North 76° 17' 02" West 16.92 feet with and along the South line of East Market Street to a point in the beginning of a curve to the right;

THENCE with said curve to the right, whose radius is 25.00 feet, whose chord bears South 38° 44' 46" East 30.46 feet, and arc distance of 32.76 feet, to the end of said curve and the beginning of another curve to the right;

THENCE with second curve to the right, whose radius is 753.00 feet, whose chord bears South 00° 35' 49" West 47.61 feet, an arc distance of 47.61 feet to the point of beginning;

TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee for itself, its successors and assigns and every successor in interest. As part of the consideration hereof, Grantee agrees to the following as covenants running with the land:

1. All restrictions, regulations and land uses as set forth in the Urban Renewal Plan for Civic Center Project, Tax. R-83, which was filed on the 27th day of August, 1964, in the office of the City Clerk of the City of San Antonio, Texas, and all amendments thereto. This covenant shall run in favor of the Agency, for a 25 year period from the

date of this Deed, without regard to whether the Agency has at any time been, remains, or is owner of any land or interest therein to or in favor of which such covenant relates.

2. Not discriminate upon the basis of race, color, creed or national origin in the sale, lease, or rental or in the use of occupancy of the property or any improvements erected thereon or to be erected thereon, or on any part thereof. This covenant shall remain in effect without limitation as to time and the United States shall be a beneficiary and be entitled to enforce it.

3. To construct or cause to be constructed on the above-described land the following improvements according to these requirements:

A. A public facility according to plans and specifications approved by the City Council of the City of San Antonio for the expansion of that public municipal area known as "La Villita" being a part of the City of San Antonio's Convention Center Complex.

B. Promptly begin and diligently prosecute to completion the redevelopment of the property by the construction of the improvements mentioned in Paragraph "A" next above; said construction to begin within two (2) years from the date of this deed and be completed within five (5) years from the date of this deed.

C. Grantor will furnish Grantee an Instrument of Certification of Completion for the improvements set forth in Paragraph 3A above, which certification when filed by Grantee in the Deed Records of Bexar County, Texas shall constitute a conclusive determination of satisfaction and termination of the agreement and covenants set forth herein with respect to the obligation of Grantee, its successors and assigns to construct the improvements enumerated in Paragraph 3A hereof within the period prescribed for the beginning and completion of same set forth in Paragraph 3B hereof.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind itself, its successors and assigns to WARRANT and FOREVER DEFEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under it, but not otherwise.

EXECUTED this day of , 1967.

CITY OF SAN ANTONIO

BY: _____
City Manager

/s/ 11/2/67

STATE OF TEXAS |
 |
COUNTY OF BEXAR |

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____, City Manager, of the
CITY OF SAN ANTONIO, a municipal corporation, known to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged to me that he executed the same
for the purposes and consideration therein expressed, in the capacity therein stated,
and as the act and deed of said Municipal Corporation.

GIVEN UNDER MY HAND and seal of office, this the _____ day of _____,
1967.

Notary Public in and for Bexar County, Texas

D E E D

STATE OF TEXAS |
COUNTY OF BEXAR |

KNOW ALL MEN BY THESE PRESENTS:

That the CITY OF SAN ANTONIO, hereinafter called "Grantor" acting by and through _____, City Manager, pursuant to Ordinance No. _____, passed and approved by the City Council on _____, 1967, for and in consideration of the sum of EIGHT THOUSAND NINE HUNDRED TWENTY-NINE AND 60/100 DOLLARS (\$8,929.60) to it in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, and in further consideration of the reversion agreement by Grantee hereinafter contained, has granted, sold and conveyed unto PALACIO DEL RIO, INC., a Texas Corporation, all of the following air, property and space, situated in the City of San Antonio, County of Bexar, State of Texas, at and above elevation 686 feet and extending to elevation 831 feet, a vertical distance of 165 feet, within and bounded by the surface formed by projecting vertically upward from the surface of the earth the boundaries of those certain pieces or parcels of land bounded and described by metes and bounds as follows:

- 1. BEGINNING at a point in the East line of the San Antonio River public right-of-way, said point of beginning bears South 16° 24' 51" West 13.67 feet and South 10° 10' 49" West 27.59 feet from the Northwest and most northerly corner of the 0.436 acre tract designated for reference as the "Palacio Del Rio Hotel Site" as shown by Plat thereof dated _____, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the East line of the San Antonio River as follows:

South 10° 10' 49" West 21.08 feet
South 16° 55' 44" West 17.18 feet
South 16° 10' 40" West 34.30 feet and
South 21° 55' 40" West 1.68 feet;

Thence entering the San Antonio River public right-of-way North 68° 02' 02" West 11.29 feet and North 21° 57' 58" East 93.43 feet to the point of beginning and containing 613.67 square feet, more or less.

- 2. BEGINNING at a point in the East line of the San Antonio River public right-of-way said point of beginning bears North 38° 26' 05" East 11.46 feet from the Southwest and most westerly corner of the 0.436 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by plat thereof dated _____, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the East line of the San Antonio River as follows:

North 38° 26' 05" East 40.14 feet and
North 21° 55' 40" East 63.09 feet;

Thence entering the San Antonio River Right-of-way North $68^{\circ} 02' 02''$ West 11.33 feet and South $21^{\circ} 57' 58''$ West 103.57 feet to the point of beginning and containing 956.85 square feet, more or less.

3. BEGINNING at a point in the West line of proposed South Alamo Street, said point of beginning bears North $21^{\circ} 57' 58''$ East 20.97 feet from the Southeast and more southerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by Plat thereof dated _____, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the West line of proposed South Alamo Street as follows:

North $21^{\circ} 57' 58''$ East 259.25 feet
North $16^{\circ} 20' 42''$ East 11.88 feet and
North $00^{\circ} 59' 52''$ East 5.28 feet;

Thence entering the South Alamo Street public right-of-way as follows:

South $68^{\circ} 02' 02''$ East 14.97 feet
South $21^{\circ} 57' 58''$ West 276.00 feet and
North $68^{\circ} 02' 02''$ West 11.92 feet to the point of beginning and containing 3304.79 square feet, more or less; and,

All of the following air, property and space, situated in the City of San Antonio, County of Bexar, State of Texas, at and above elevation 678 feet and extending to elevation 693 feet, a vertical distance of 15 feet, within and bounded by the surface formed by projecting vertical upward from the surface of the earth the boundaries of those certain pieces or parcels of land bounded and described by metas and bounds as follows:

BEGINNING at a point in the South line of East Market Street, said point of beginning bears South $76^{\circ} 17' 02''$ East 14.85 feet from the Northwest and most northerly corner of the 0.456 acre tract designated for reference as the "Palacio Del Rio Hotel Site," as shown by Plat thereof dated _____, prepared by Haggard, Groves & Associates, Inc., Consulting Engineers, filed for record with the City of San Antonio;

Thence continuing with and along the South line of East Market Street South $76^{\circ} 17' 02''$ East 33.31 feet to a point in the beginning of a curve to the right;

Thence with said curve to the right, whose radius is 8.27 feet an arc distance of 11.15 feet to a point at the end of said curve in the West line of proposed South Alamo Street;

Thence South $00^{\circ} 59' 52''$ West 15.77 feet with and along the West line of proposed South Alamo Street;

Thence entering the East Market Street public right-of-way as follows:

North $21^{\circ} 57' 58''$ East 19.82 feet
North $68^{\circ} 02' 02''$ West 47.50 feet and
South $21^{\circ} 57' 58''$ West 5.19 feet to the point of beginning and containing 238.89 square feet, more or less.

All elevations herein stated are based on United States Coast and Geodetic Survey Datum presently in existence for the City of San Antonio.

Grantee by acceptance of this deed expressly agrees and covenants that the air, property and space conveyed herein is to be used solely for purposes of constructing, occupying and maintaining a portion of a building (such building presently known as HILTON'S PALACIO DEL RIO), the main building structure and support for such portion being located on lands adjacent thereto; and that if and when the main building structure is removed from such adjacent lands by the voluntary act or acts of grantee, its successors or assigns, then, and in that event, the air, property and space conveyed herein and all rights thereto and therein shall immediately revert to and automatically vest in the City of San Antonio, its successors or assigns.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever, as long as the same are used for the building structure as provided above; and Grantor does hereby bind itself, its successors and assigns to WARRANT and FOREVER DEFEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under it, but not otherwise.

EXECUTED this _____ day of _____, 1967.

CITY OF SAN ANTONIO,
a Municipal Corporation

ATTEST:

City Manager

City Clerk

STATE OF TEXAS |
|
COUNTY OF BEXAR |

BEFORE ME, the undersigned authority, on this day personally appeared _____ City Manager, of the CITY OF SAN ANTONIO, a Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Municipal Corporation.

GIVEN UNDER MY HAND and seal of office, this the _____ day of _____, 1967.

Notary Public in and for Bexar County, Texas.

EXHIBIT B

AGREED BOUNDARY LINE DESCRIPTION

[See attached metes and bounds description and visual depiction of
Agreed Boundary Line]

VICKREY & ASSOCIATES, Inc.

CONSULTING ENGINEERS

**METES & BOUNDS DESCRIPTION
FOR
AGREED BOUNDARY LINE**

Between the northwest line of Lot 15, Block 9, New City Block 14016, City of San Antonio, Bexar County, Texas, as recorded in Volume 5700, Page 284, Deed and Plat Records of Bexar County, Texas and a southeast line of the San Antonio River Property, said line being more particularly described by metes and bounds as follows:

BEGINNING: at a found lead plug and tack at the southwestern corner of said Lot 15, said point also being on an easterly line of said San Antonio River property and at the northwest corner of Lot 10, New City Block 142, as recorded in Volume 2835, Page 500, Deed and Plat Records of Bexar County, Texas;

THENCE; along said northwest line of Lot 15 and said easterly line of San Antonio River property, and along the agreed boundary line, the following six (6) courses;

North 38° 23' 09" East, a distance of 51.14 feet to a found lead plug and tack;

North 21° 44' 19" East, a distance of 136.26 feet to a found screw in tile,

North 15° 42' 06" East, a distance of 54.44 feet to a found screw in tile;

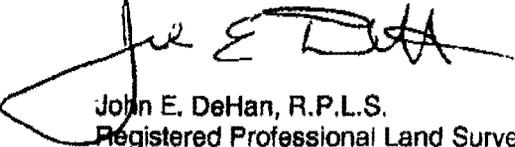
North 16° 38' 19" East, a distance of 17.13 feet to a found nail in tile;

North 09° 06' 06" East, a distance of 48.65 feet to a set concrete nail;

North 15° 45' 31" East, a distance of 13.67 feet to the northwest corner of said Lot 15, on the south right of way line of Market Street, for the POINT OF ENDING of this boundary line agreement.

Job No. 1535-017-105

Certified this 30th day of January, 2009
Revised this 25th day of March, 2009


John E. DeHan, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6042
Vickrey & Associates, Inc.





SCALE: 1"=40'

LEGEND

- AGREED BOUNDARY LINE
- FOUND CORNER
- SET CONCRETE NAIL

LINE TABLE			
LINE	LENGTH	BEARING	
L1	51.14'	N38°23'09"E	FIELD
	51.60'	N38°26'05"E	PLAT
L2	136.26'	N21°44'19"E	FIELD
	136.10'	N21°35'40"E	PLAT
L3	54.44'	N15°42'08"E	FIELD
	54.30'	N16°10'40"E	PLAT
L4	17.13'	N16°38'19"E	FIELD
	17.18'	N16°55'44"E	PLAT
L5	48.65'	N09°06'08"E	FIELD
	48.67'	N10°10'49"E	PLAT
L6	13.67'	N15°45'31"E	FIELD
	13.67'	N18°24'51"E	PLAT

NOTES:

- 1) ALL IMPROVEMENTS ARE NOT SHOWN.
- 2) BEARING REFERENCE FOR THIS SURVEY IS BASED ON TEXAS STATE PLANE COORDINATES SYSTEM NAD 83 SOUTH CENTRAL ZONE HOLDING SAN ANTONIO CORS STATION TXAN AND AUSTIN CORS STATION TXAU.

TXAN TXAU
 Lat- N 29°29'28.34308" Lat- N 30°18'42.08806"
 Long- W 98°34'35.88078" Long- W 97°45'22.71309"

- 3) SURVEY WAS REVISED 3/25/09, HOWEVER THE BOUNDARY WAS NOT UPDATED.

SURVEY OF AGREED BOUNDARY LINE BETWEEN LOT 15, BLOCK 9, N.C.B. 14016 AND THE SAN ANTONIO RIVER, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

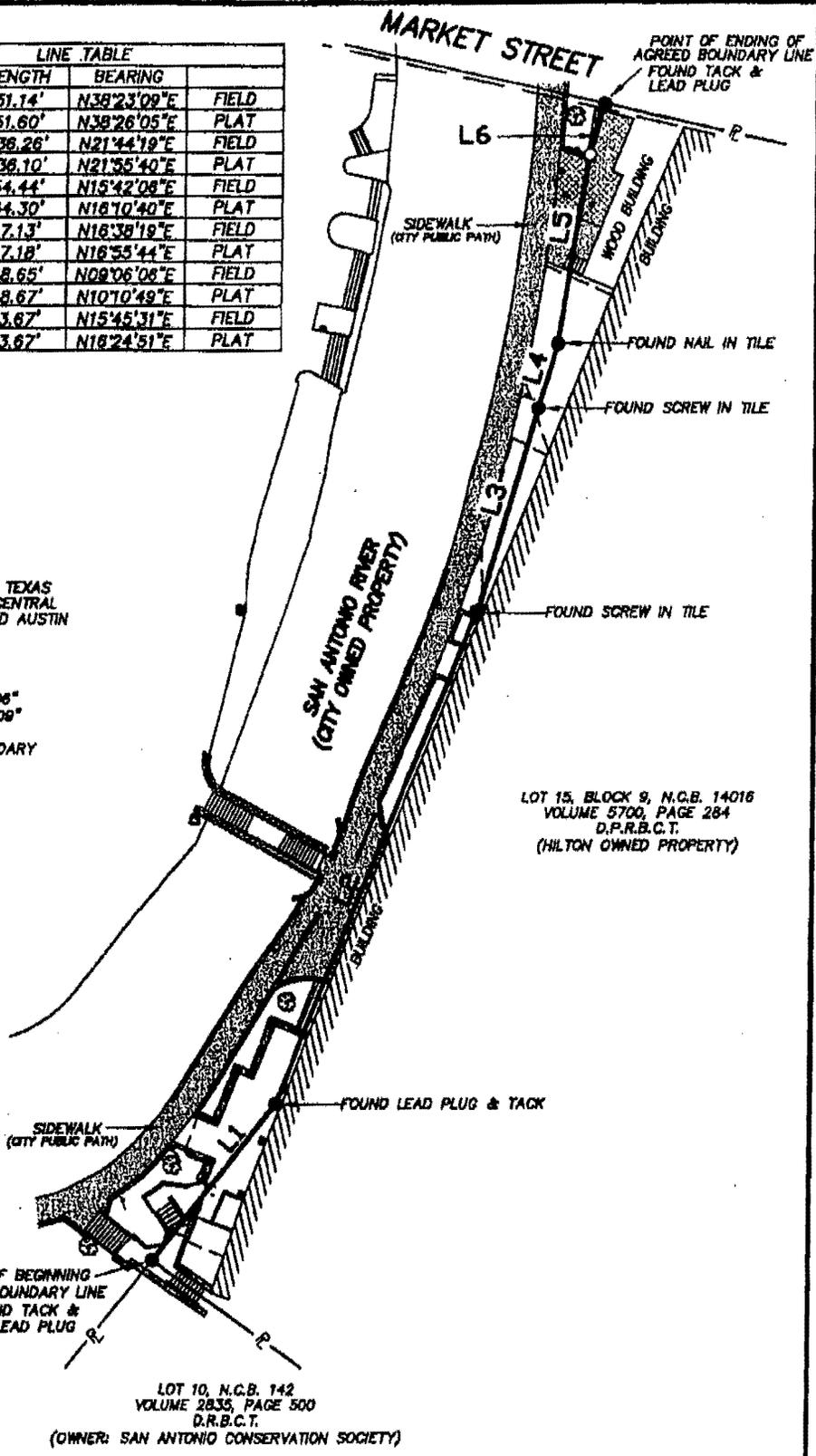


I, JOHN E. DEHAN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS IS A TRUE, COMPLETE AND CORRECT SURVEY OF THE DESCRIBED BOUNDARY LINE SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, WHICH SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY IB, CONDITION I SURVEY.

John E. Dehan

JOHN E. DEHAN, P.L.L.S.
 REGISTERED PROFESSIONAL LAND SURVEYOR
 TEXAS REGISTRATION NO. 6042
 VICKREY & ASSOCIATES, INC.

1-30-09



LOT 15, BLOCK 9, N.C.B. 14016
 VOLUME 5700, PAGE 284
 D.P.R.B.C.T.
 (HILTON OWNED PROPERTY)

LOT 10, N.C.B. 142
 VOLUME 2835, PAGE 500
 D.R.B.C.T.
 (OWNER: SAN ANTONIO CONSERVATION SOCIETY)

SHEET 2 OF 2

VICKREY & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 12940 Country Parkway San Antonio, Texas 78216
 Telephone: (210)349-3371

EXHIBIT C

BALCONY AND ROOF OVERHANG SURVEY

[See attached Balcony and Roof Overhang Survey]

EXHIBIT D

ENCROACHMENT EASEMENT

The terms and provisions of this Encroachment Easement are fully incorporated into the Boundary Agreement to which this Encroachment Easement is attached and any capitalized terms used herein and not expressly defined herein shall have the meaning as set out in the main body of the Boundary Agreement. City and Hilton affirm and agree that the Existing Air Space Improvements have been previously approved and accepted by City pursuant to the Deed and Ordinance attached as Exhibit "A" to the Boundary Agreement and are being reaffirmed herein.

1. Grant of Encroachment Easement.

1.1 Grant. Subject to the Conditions of Encroachment Easement below, City hereby conditionally grants, sells and conveys to the owner of the Hilton Owned Property, and its successors and assigns, an easement over the City Owned Property for the following purposes: (i) the continued encroachment of the Existing Air Space Improvements in and over the air space of the City Owned Property as well as repairs and like-kind replacements thereto as permitted herein, including (without limitation) presently existing columns or other structures which support an Existing Air Space Improvement; and (ii) maintaining only the Existing Air Space Improvements in the air space above the City Owned Property (collectively the "Encroachment Easement").

1.2 Future Improvements. Subject to the following provisions, this Encroachment Easement for Existing Air Space Improvements does not extend to Additional Air Space Improvements, but does include repairs and like-kind replacements as permitted herein. Any other Additional Air Space Improvements shall require the approval of the City Council of the City of San Antonio through passage of an appropriate ordinance.

1.3 Terms and Conditions of Encroachment Easement.

(a) This Encroachment Easement is granted by City upon the following "Conditions" listed below. A breach of one or more of these Conditions shall trigger the rights and remedies set forth below, as well as any other rights and remedies under any applicable use agreement and/or at law.

The Existing Air Space Improvements are identified on Exhibit "C", Balcony and Roof Overhang Survey, to the Boundary Agreement and made a part hereof for all purposes.

(b) City and Hilton agree said Encroachment Easement is granted and affirmed by City upon the condition that the Existing Air Space Improvements have not been and shall not be used for commercial purposes, and Hilton has no obligation to pay any Use Fee or other fees to City in conjunction with same. In the event any Additional Air Space Improvements are constructed and subsequently used for commercial purposes, Hilton agrees to timely pay to City a monthly fee for use thereof in an amount mutually agreed

upon between City and Hilton (hereafter, "Use Fee"). The Use Fee shall be payable on the terms and rates as set forth per a separate "Use Fee Agreement" entered into between City and Hilton at such time.

(c) For so long as Hilton is owner of the Existing Air Space Improvements, Hilton shall be responsible for the condition and maintenance of the Existing Air Space Improvements. Hilton agrees to (i) repair any damage to the Existing Air Space Improvements, (ii) maintain (or cause to be maintained) the Existing Air Space Improvements in a clean, neat, attractive and sanitary condition, (iii) keep or cause to be kept (in all material respects) the Existing Air Space Improvements free of litter, trash, paper and other waste, and (iv) to the extent deemed advisable by Hilton, repair with like-kind structures. All use, maintenance, and/or repair of the Existing Air Space Improvements shall be in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas. Hilton will not allow any lien to be placed or remain on City Owned Property due to any actions of Hilton, or if any such lien is placed on any City Owned Property, due to any actions of Hilton, shall promptly take such actions necessary to remove such lien in a timely manner. Hilton shall pay all applicable taxes levied on the Existing Air Space Improvements.

(d) Hilton covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, and representatives of the City, 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 City directly or indirectly arising out of, resulting from or related to Hilton activities under this Encroachment Easement, including any acts or omissions of Hilton, any agent, officer, director, representative, employee, consultant or subcontractor of Hilton, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Encroachment Easement, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this indemnification 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. Hilton shall promptly advise the City in writing of any claim or demand against the City known to Hilton related to or arising out of Hilton's activities under this Encroachment Easement and shall see to the investigation and defense of such claim or demand at Hilton's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Hilton of any of its obligations under this Section 1.3(d). Excluded from the obligation provided for in this Section 1.3(d) to indemnify City are those claims, if any, which may arise during the performance by City of a governmental function on the City Owned Property and those claims, if any, which do not occur on the City Owned Property.

(e) It is the EXPRESS INTENT of the parties to the Boundary Agreement, that the INDEMNITY provided for in Section 1.3(d), is an INDEMNITY extended by Hilton to

INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in Section 1.3(d) SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Hilton further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE City AND IN THE NAME OF THE City, any claim or litigation brought against the City and its elected officials, employees, officers, directors, and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

2. Covenants Running with the Land. The easements, restrictions, covenants, and conditions created herein shall run with the real property and shall be binding on all parties having any right, title, or interest in the City Owned Property and the Hilton Owned Property (whether now or in the future) in whole or in part, and their tenants, occupants, licensees, heirs, successors, and assigns. It is specifically understood that all of the benefits, rights, burdens and obligations hereunder are not intended to be personal to any owner who is a signatory hereunder or any successor owner, but that all of such benefits, rights, burdens and obligations are solely derivative of such owner's ownership interest in the City Owned Property or the Hilton Owned Property (as the case may be) and shall run with the land accordingly. References to "Hilton" in this Encroachment Easement shall be deemed to include both Hilton and all subsequent owners of the Hilton Owned Property. References to "City" in this Encroachment Easement shall be deemed to include both City and any subsequent owner of the City Owned Property.

This Lease Agreement is dated effective _____, 2009 (the "Effective Date").

LESSOR:

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

By: _____
City Manager

ATTEST:

City Clerk

LESSEE:

**PALACIO DEL RIO, INC.,
a Delaware corporation
d/b/a Hilton Palacio del Rio**

By: Charles E. Ebron
Name: Charles E. Ebron
Title: President

APPROVED AS TO FORM:

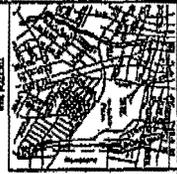
City Attorney

Exhibits:

- Exhibit A – Depiction of River Walk Property
- Exhibits A-1, A-2 and A-3 – Metes and Bounds Property Descriptions
- Exhibit B – City Public Path

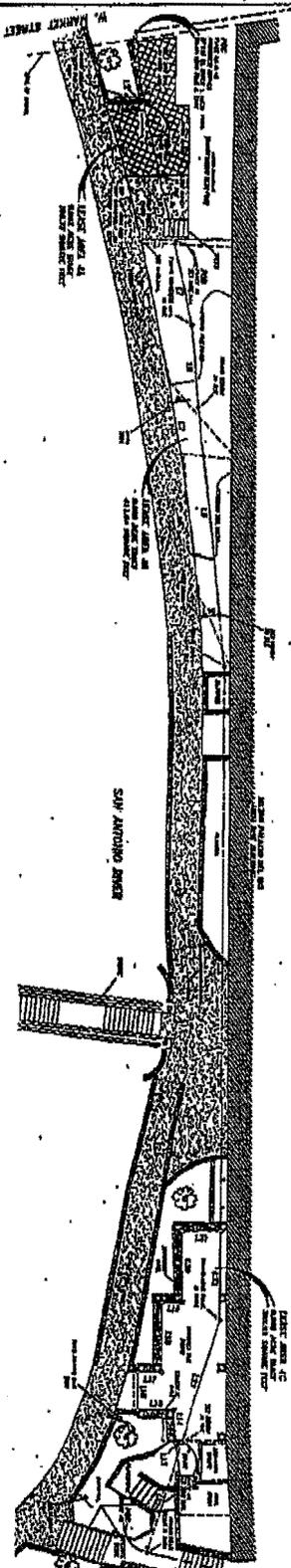
EXHIBIT A
DEPICTION OF RIVER WALK PROPERTY

[See the attached]



NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY PLAN	10/15/54	W.A.V.
2	FINAL PLAN	11/15/54	W.A.V.
3	AS BUILT	12/15/54	W.A.V.

NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY PLAN	10/15/54	W.A.V.
2	FINAL PLAN	11/15/54	W.A.V.
3	AS BUILT	12/15/54	W.A.V.



THIS PLAN IS THE PROPERTY OF VICKREY & ASSOCIATES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF VICKREY & ASSOCIATES, INC. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION IS STRICTLY PROHIBITED AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

THIS PLAN IS THE PROPERTY OF VICKREY & ASSOCIATES, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF VICKREY & ASSOCIATES, INC. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION IS STRICTLY PROHIBITED AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

W.A. VICKREY
 VICE PRESIDENT
 VICKREY & ASSOCIATES, INC.
 1000 BROADWAY, SUITE 1000
 SAN ANTONIO, TEXAS 78205
 (512) 349-1234

LEASE AREA 4A, 4B, AND 4C, SAN ANTONIO RIVERWALK, SAN ANTONIO, BEXAR COUNTY, TEXAS	PREPARED FOR THE CITY OF SAN ANTONIO	VICKREY & ASSOCIATES, INC. CONSULTING ENGINEERS 1000 Broadway, Suite 1000, San Antonio, Texas 78205 Telephone: (512) 349-1234	DATE 11/15/54 DRAWN BY W.A.V.	SHEET NO. 1 OF 1	SCALE AS SHOWN	NO. OF SHEETS 1	TOTAL SHEETS 1	NO. OF SHEETS 1	TOTAL SHEETS 1
	PROJECT NO. 54-100		SHEET NO. 1 OF 1		TOTAL SHEETS 1		TOTAL SHEETS 1		TOTAL SHEETS 1

EXHIBIT A-1
METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4A
0.002 OF AN ACRE (108.77 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.002-acre (108.77 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.002-acre lease area being more particularly described as follows:

COMMENCING at a found lead plug & tack on the southwest right-of-way line of W. Market Street and on southeast line of said San Antonio River Property, same point also being the at the most northerly corner of Lot 15, Block 8, New City Block 14018, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, South $15^{\circ}45'31''$ West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 13.67 feet to a set MAG nail in rock wall, South $09^{\circ}06'06''$ West, continuing along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 1.58 feet to a point on the south edge of a rock wall and the edge of a brick patio, for the **POINT OF BEGINNING** and most easterly corner of the herein described lease area;

Thence; South $09^{\circ}06'06''$ West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said brick patio, a distance of 15.11 feet to a set screw in tile, on the southwest edge of said tile patio and the northeast edge of a pebble rock patio, for the most southerly corner of the herein described lease area;

Thence; North $68^{\circ}54'38''$ West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, along the southwest edge of said brick patio and the northeast edge of said pebble rock patio, a distance of 6.91 feet to a set $\frac{1}{2}$ " iron rod with cap stamped "VICKREY PROP. COR.," at a non-tangent point on curve to the left, on the east edge of a pebble rock sidewalk adjacent to the San Antonio River, same point also being the most westerly corner of said tile patio and most northerly corner of said concrete patio, for the most westerly corner of the herein described lease area;

Thence; along said curve to the left and generally along said pebble rock sidewalk and the west line of said tile patio, a distance of 16.41 feet, with a radius of 220.00 feet, a central angle of $04^{\circ}00'46''$, a chord bearing and distance of North $05^{\circ}10'54''$ East, 15.40 feet to a point at the southwest corner of said rock wall, for the most northerly corner of the herein described lease area;

Thence; South $68^{\circ}39'24''$ East, departing the east line of said pebble rock sidewalk, along the southwest edge of said rock wall and a north edge of said tile patio, a distance of 7.99 feet to the **POINT OF BEGINNING**, containing 0.002 of an acre (108.77 square feet), more or less.



Job No. 1535-017
RA m&b0.002ao
April 21, 2008

Certified this 21st day of April, 2008



Stephen Horvath, R.P.-L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



EXHIBIT A-2

METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4B
0.009 OF AN ACRE (411.64 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.009-acre (411.64 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.009-acre lease area being more particularly described as follows:

COMMENCING at a found lead plug & tack on the southwest right-of-way line of W. Market Street and on southeast line of said San Antonio River Property, same point also being the most northerly corner of Lot 15, Block 9, New City Block 14016, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, South 15°45'31" West, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 13.67 feet to a set MAG nail in rock wall, South 09°06'06" West, continuing along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 30.23 feet to a set MAG nail, at the southwest edge of a pebble rock patio, and northeast edge of a tile patio, for the **POINT OF BEGINNING** and most easterly corner of the herein described lease area;

Thence; along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, the following three (3) courses:

South 09°06'06" West, a distance of 18.42 feet to a found concrete nail in tile, for a corner of the herein described lease area;

South 16°38'19" West, a distance of 17.13 feet to a found screw in tile, for a corner of the herein described lease area;

South 15°42'06" West, a distance of 43.55 feet to a set screw in tile, for the most southerly corner of the herein described lease area;

Thence; North 75°45'06" West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, a distance of 3.81 feet to a set screw in tile, at a non-tangent point on curve to the left, on the east edge of a pebble rock sidewalk adjacent to the San Antonio River, for the most westerly corner of the herein described lease area;

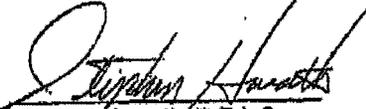
Thence; along said curve to the left and generally along said pebble rock sidewalk and the west line of said tile patio, a distance of 80.00 feet, with a radius of 692.00 feet, a central angle of 06°37'27", a chord bearing and distance of North 12°22'40" East, 79.96 feet to a set MAG nail, at the southwest corner of said pebble rock patio and northwest corner of said tile patio, for the most northerly corner of the herein described lease area;

Thence; South 67°51'02" East, departing the east line of said pebble rock walk, along the southwest edge of said pebble rock patio and the northeast edge of said tile patio, a distance of 8.65 feet to the **POINT OF BEGINNING**, containing 0.009 of an acre (411.64 square feet), more or less.



Job No. 1535-017
RA m&b0.009ac
April 21, 2008

Certified this 21st day of April, 2008



Stephen Horvath, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



EXHIBIT A-3
METES AND BOUNDS PROPERTY DESCRIPTIONS

[See the attached]

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION FOR LEASE AREA 4C
0.009 OF AN ACRE (382.02 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS**

Being a 0.009-acre (382.02 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.009-acre lease area being more particularly described as follows:

COMMENCING at a found lead plug & tack on the southeast line of said San Antonio River Property, same point also being the most westerly corner of Lot 15, Block 9, New City Block 14016, as shown on subdivision plat recorded in Volume 5700, page 284, Deed and Plat Records of Bexar County, Texas, and the most northerly corner of San Antonio Conservation Society Tract, recorded in Volume 2835, Page 500, Official Public Records of Real Property of Bexar County, Texas, North 38°23'09" East, along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 24.36 feet to a set MAG nail, for the **POINT OF BEGINNING** and most southerly corner of the herein described lease area;

Thence; North 68°57'25" West, departing the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, a distance of 1.32 feet to a point at a corner of concrete wall, same point also being on the edge of a tile patio, for a corner of the herein described lease area;

Thence; along edge of said concrete wall and edge of tile patio, the following two (2) courses:

North 21°02'35" East, a distance of 8.97 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 68°50'17" West, a distance of 7.57 feet to a point at a corner of said concrete wall, for the most westerly corner of the herein described lease area;

Thence; North 21°42'06" East, departing said edge of concrete wall, across said tile patio, a distance of 7.94 feet to a point at a corner of a concrete wall, same point being at the edge of said tile patio, for a corner of the herein described lease area;

Thence; along edge of said concrete wall and edge of tile patio, the following five (5) courses:

South 67°58'35" East, a distance of 4.90 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 21°43'08" East, a distance of 14.69 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

South 68°07'01" East, a distance of 4.02 feet to a point at a corner of said concrete wall, for a corner of the herein described lease area;

North 21°37'24" East, a distance of 14.69 feet to a point at a corner of said concrete wall, for the most northerly corner of the herein described lease area;



South 68°16'49" East, a distance of 7.77 feet to a point at edge of concrete wall on the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, for the most easterly corner of the herein described lease area;

Thence; along the northwest line of said Lot 15 and the southeast line of said San Antonio River Property, across said tile patio, the following two (2) courses:

South 21°44'19" West, a distance of 18.51 feet to a found lead plug and tack, for a corner of the herein described lease area;

South 38°23'09" West, a distance of 26.78 feet to the POINT OF BEGINNING, containing 0.009 of an acre (382.02 square feet), more or less.

Job No. 1535-017
RA m&b0.009ac
April 21, 2008

Certified this 21st day of April, 2008

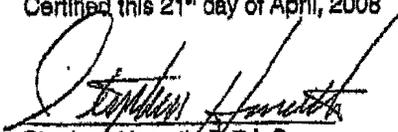

Stephen Horvath, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



EXHIBIT B
CITY PUBLIC PATH

[See the attached]

VICKREY & ASSOCIATES, Inc.

CONSULTING ENGINEERS

**METES & BOUNDS DESCRIPTION
FOR
AGREED BOUNDARY LINE**

Between the northwest line of Lot 15, Block 9, New City Block 14016, City of San Antonio, Bexar County, Texas, as recorded in Volume 5700, Page 284, Deed and Plat Records of Bexar County, Texas and a southeast line of the San Antonio River Property, said line being more particularly described by metes and bounds as follows:

BEGINNING: at a found lead plug and tack at the southwestern corner of said Lot 15, said point also being on an easterly line of said San Antonio River property and at the northwest corner of Lot 10, New City Block 142, as recorded in Volume 2835, Page 500, Deed and Plat Records of Bexar County, Texas;

THENCE; along said northwest line of Lot 15 and said easterly line of San Antonio River property, and along the agreed boundary line, the following six (6) courses;

North 38° 23' 09" East, a distance of 51.14 feet to a found lead plug and tack;

North 21° 44' 19" East, a distance of 136.26 feet to a found screw in tile,

North 15° 42' 06" East, a distance of 54.44 feet to a found screw in tile;

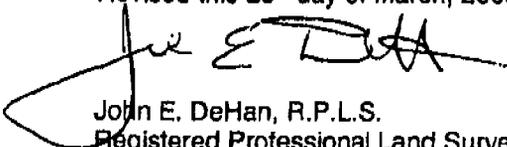
North 16° 38' 19" East, a distance of 17.13 feet to a found nail in tile;

North 09° 08' 06" East, a distance of 48.65 feet to a set concrete nail;

North 15° 45' 31" East, a distance of 13.67 feet to the northwest corner of said Lot 15, on the south right of way line of Market Street, for the POINT OF ENDING of this boundary line agreement.

Job No. 1535-017-105

Certified this 30th day of January, 2009
Revised this 25th day of March, 2009


John E. DeHan, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6042
Vickrey & Associates, Inc.





SCALE: 1"=40'

LEGEND

— AGREED BOUNDARY LINE

● FOUND CORNER

○ SET CONCRETE NAIL

LINE TABLE			
LINE	LENGTH	BEARING	
L1	51.14'	N38°23'09"E	FIELD
	51.60'	N38°28'05"E	PLAT
L2	136.26'	N21°44'19"E	FIELD
	138.10'	N21°55'40"E	PLAT
L3	54.44'	N15°42'06"E	FIELD
	54.30'	N16°10'40"E	PLAT
L4	17.13'	N16°38'19"E	FIELD
	17.18'	N16°55'44"E	PLAT
L5	48.65'	N09°08'06"E	FIELD
	48.67'	N10°10'49"E	PLAT
L6	13.67'	N15°45'31"E	FIELD
	13.67'	N16°24'51"E	PLAT

NOTES:

- 1) ALL IMPROVEMENTS ARE NOT SHOWN.
- 2) BEARING REFERENCE FOR THIS SURVEY IS BASED ON TEXAS STATE PLANE COORDINATES SYSTEM NAD 83 SOUTH CENTRAL ZONE HOLDING SAN ANTONIO CORS STATION TXAN AND AUSTIN CORS STATION TXAU.

TXAN

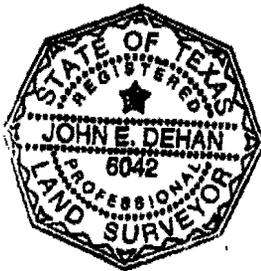
TXAU

Lot- N 29°29'28.34308"
Long- W 88°34'35.88078"

Lot- N 30°18'42.08808"
Long- W 97°45'22.71308"

- 3) SURVEY WAS REVISED 3/28/09, HOWEVER THE BOUNDARY WAS NOT UPDATED.

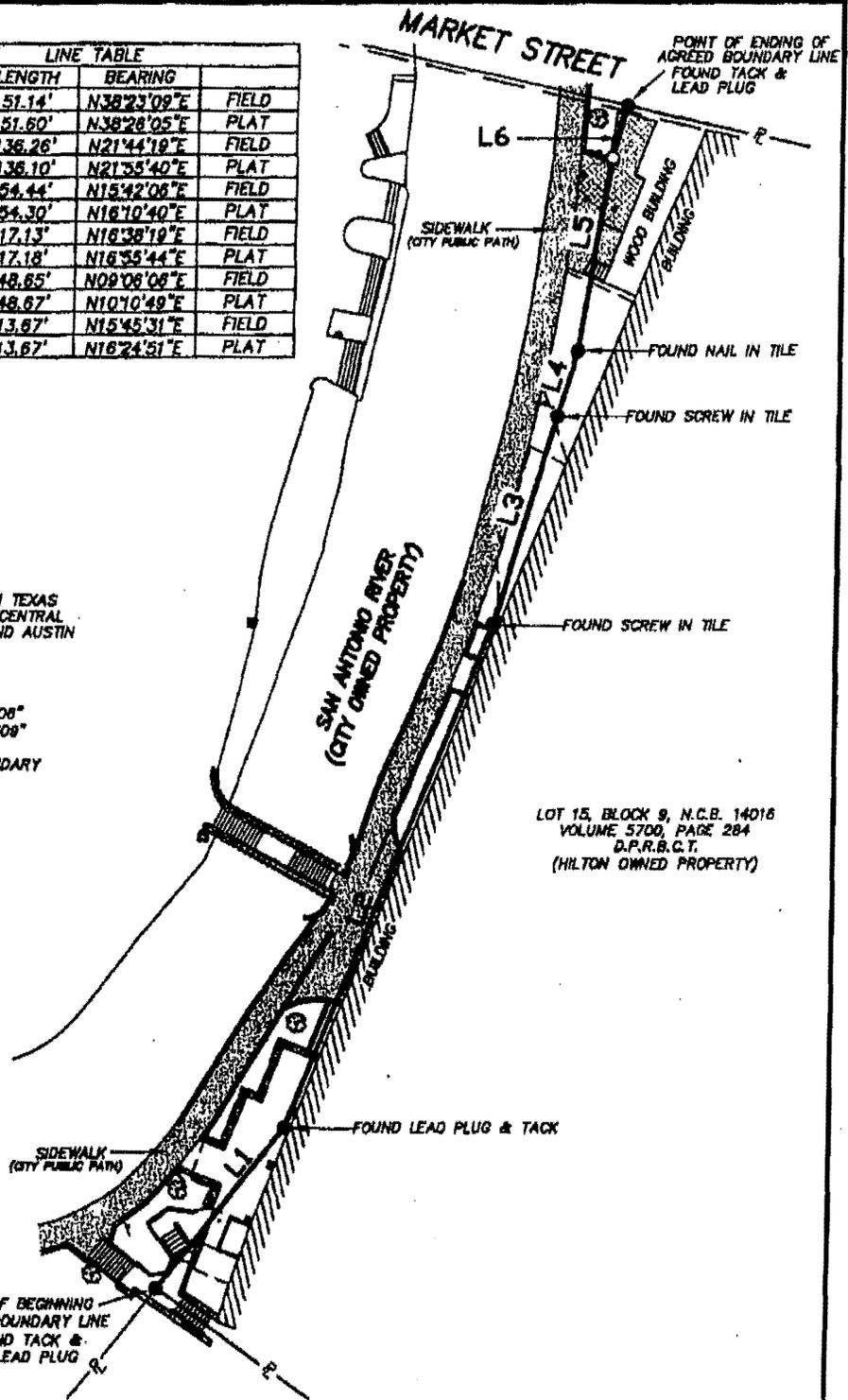
SURVEY OF AGREED BOUNDARY LINE
BETWEEN LOT 15, BLOCK 9, N.C.B.
14018 AND THE SAN ANTONIO RIVER,
CITY OF SAN ANTONIO, BEXAR
COUNTY, TEXAS.



I, JOHN E. DEHAN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS IS A TRUE, COMPLETE AND CORRECT SURVEY OF THE DESCRIBED BOUNDARY LINE SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, WHICH SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY IB, CONDITION 1 SURVEY.

JOHN E. DEHAN, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 8042
VICKREY & ASSOCIATES, INC.

1.30.09



LOT 15, BLOCK 9, N.C.B. 14018
VOLUME 5700, PAGE 284
D.P.R.B.C.T.
(HILTON OWNED PROPERTY)

LOT 10, N.C.B. 142
VOLUME 2835, PAGE 500
D.P.R.B.C.T.
(OWNER: SAN ANTONIO CONSERVATION SOCIETY)

SHEET 2 OF 2



VICKREY & ASSOCIATES, INC.
CONSULTING ENGINEERS
12940 Country Parkway San Antonio, Texas 78218
Telephone: (210)348-3271