

AN ORDINANCE 2009-10-08-0813

**AUTHORIZING THE ASSIGNMENT OF A RIVERWALK PATIO LEASE AGREEMENT WITH AMERICAN JAZZ, INC. D/B/A JIM CULLUM'S LANDING TO MR. CHRISTOPHER ERCK D/B/A RIVER BANK, LTD.**

\* \* \* \* \*

**WHEREAS**, ordinance No. 2008-10-16-0931 authorized a new River Walk patio lease agreement with American Jazz, Inc. d/b/a Jim Cullum's Landing for a five (5) year term, commencing on November 1, 2008 and ending October 31, 2013. Currently, the City is in Year 1 of the agreement; and

**WHEREAS**, the agreement provides for an option to extend the Lease for three consecutive three-year periods; and

**WHEREAS**, Mr. Jim Cullum recently announced plans to sell The Landing to Mr. Christopher Erck, d/b/a River Bank, Ltd. which operates the Swig Martini Bar located at 111 Crockett Street; and

**WHEREAS**, as part of the sale, the City has received a request to assign the interests of the lease to Mr. Erck; and

**WHEREAS**, as the new lessee, Mr. Erck has agreed to the same conditions and terms that were agreed upon by Mr. Cullum; **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 Downtown Operations or her designee is hereby authorized to execute the Consent to Assignment of Lease Agreement with American Jazz, Inc. d/b/a Jim Cullum's Landing to Mr. Christopher Erck d/b/a River Bank, Ltd. A copy of the Consent to Assignment of Lease Agreement is attached hereto as **Attachment I**.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000001, General Ledger 4406845.

**SECTION 3.** 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.

SW/mgc  
10/08/09  
Item #12

**SECTION 4.** This ordinance shall become effective immediately upon passage by eight (8) affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof..

PASSED AND APPROVED this 8<sup>th</sup> day of October 2009.



M A Y O R  
JULIAN CASTRO

ATTEST: *Stephanie M. Vaneet*  
City Clerk

APPROVED AS TO FORM: *Hollis Young*  
*for* City Attorney

**Consent to Assignment of Lease Agreement**  
**(American Jazz, Inc./ River Bank, Ltd.)**

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

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**Predicate Facts**

Assignor is the tenant under the below described Lease, and Landlord is the landlord.

Assignor wishes to assign the Lease to Assignee, and Landlord consents to the Assignment on the terms and conditions of this instrument.

**Rights and Obligations**

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

**1. Identifying Information.**

**Ordinance Authorizing  
Consent to Assignment:**

**Lease:** River Walk Patio Lease Agreement for use of 766.22 square feet of patio space located on the River Walk adjacent to the building known as "Hyatt River Walk Hotel" located at 123 Losoya St., San Antonio, TX 78205.

**Ordinance Authorizing  
Original Lease:** 2008-10-16-0931

**Assignor:** American Jazz, Inc. d/b/a Jim Cullum's Landing

**Assignor's Address:** 118 Anastacia Place, San Antonio, TX 78212

**Assignee:** River Bank, Ltd.

**Assignee's Address** 816 Camaron No. 1.00, San Antonio, TX 78212

**Assignment Fee** \$1,500.00  
**(City Code § 37-16):**

## **2. Defined Terms.**

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

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## **3. Consent.**

Landlord consents to the assignment contemplated by this agreement, but this consent is dependent on the other terms of this agreement.

## **4. No Default.**

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

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

## **5. Assumption of Lease.**

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

## **6. Assignment Fee.**

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

## **7. Scope of Agreement.**

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

**8. Same Terms and Conditions.**

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

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**9. Public Information.**

The parties acknowledge that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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

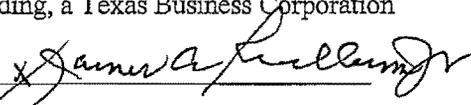
**Landlord:**

**Assignor:**

City of San Antonio, a Texas  
municipal corporation

American Jazz, Inc. d/b/a Jim Cullum's  
Landing, a Texas Business Corporation

By: \_\_\_\_\_

By: 

Printed  
Name: \_\_\_\_\_

Printed  
Name: JAMES A. Cullum Jr

Title: \_\_\_\_\_

Title: PRESIDENT

Date: \_\_\_\_\_

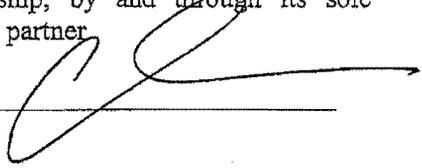
Date: August 20, 2009

**Assignee:**

**Attest:**

River Bank, Ltd., a Texas limited partnership, by and through its sole general partner

\_\_\_\_\_  
City Clerk

By: 

Printed  
Name: Christopher Erck

**Approved as to Form:**

Title: General Partner

Date: August 17, 2009

\_\_\_\_\_  
City Attorney

<b>Agenda Item:</b>	12 ( in consent vote: 5, 9, 10, 12, 13, 15, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J, 17K, 17L, 18 )						
<b>Date:</b>	10/08/2009						
<b>Time:</b>	09:26:58 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the assignment of a Riverwalk patio lease agreement with American Jazz, Inc. d/b/a Jim Cullum's Landing to Mr. Christopher Erck d/b/a River Bank, Ltd. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián 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				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				x
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				