

## **SAN ANTONIO RIVER WALK LICENSE AGREEMENT**

This License Agreement ("License") is made and entered into by and between the City of San Antonio, acting herein through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_ 2022, passed and approved by the City Council (hereinafter referred to as "**CITY**"), and 212 College Street, LTD, dba Acapulco Sam's (hereinafter referred to as "**LICENSEE**"), 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 **LICENSEE**, does hereby License to **LICENSEE** the real property owned by the CITY in the San Antonio River Walk Corridor area as outlined on the drawing which is attached hereto as **Exhibit A** and incorporated by reference herein for the purposes of this License Agreement the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows:

- 1.1.1 An area containing approximately 40 square feet at the San Antonio River Walk level, located at 212 College Street NCB 416 BLK 23 LOT S PT OF 3 ARB A12, San Antonio, Bexar County, Texas.

### **2. USE OF PREMISES**

- 2.1 **CITY** hereby agrees to permit **LICENSEE** use of above-described CITY-owned property located at San Antonio River Walk Corridor area, Bexar County, Texas. **LICENSEE** agrees that the Licensed Premises shall be utilized for the sole purpose of installation and operation of a drink vending/storage cart in the Licensed premises at the River Walk level, referred herein as "Satellite Bar" in the attached **Exhibit B**, and in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio.
- 2.2 The Satellite Bar will be located in an approved area that will not impede the flow pedestrian traffic at the River Walk, immediately in front of the existing service elevator location. In addition, the orientation of the queuing shall be towards the West, to prevent interference with the access and operations of the adjacent restaurant to the East, and the pedestrian traffic at the River Walk.
- 2.3 The approved hours of operations for Acapulco Sam's Satellite Bar will be as follows:
- 2.3.1 Monday – Sunday from 12:00p.m. to 12:00 a.m.
  - 2.3.2 Weather related days may limit operation hours
  - 2.3.3 The Satellite Bar will be removed and stored away from the River Walk during non-operating hours.
- 2.4 **LICENSEE** further covenants and agrees it shall not block or in any way interfere with the public right-of-way along the River Walk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as **Exhibit B**. **LICENSEE** shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LICENSEE'S** business establishment, in said public right of way. **LICENSEE** shall comply with the CITY'S laws pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons.

### 3. TERM, AND TERMINATION

- 3.1 Subject to the earlier termination as hereinafter set forth, the term of this License is for a period of *one* (1) year, beginning upon City Council approval and ending a year after.
- 3.2 RENEWAL OPTION: As long as **LICENSEE** is not then in default hereunder, CITY and **LICENSEE** may mutually agree to extend this License for up to and including two (2) additional terms of *one* (1) year each under all the terms and conditions of this License, except for rent and insurance which may be adjusted with fair market rental rate and insurance coverages and amounts deemed appropriate by City for subject property. To extend agreement, **LICENSEE** shall notify CITY in writing at least ninety (90) days before the date of expiration of the original term, hereof, of its intent to extend the License term herein provided. After agreement to the exercise of the option to extend, all references in this License to the term, hereof shall mean the term as extended. Provided **LICENSEE** is not in default and **LICENSEE** is agreeable to changes in rent and insurance, if any, for the extended terms, City through the Director may authorize License extensions.
- 3.3 TERMINATION: **LICENSEE** acknowledges this License is conditional on compliance with Section 28.1001 of the Texas Alcoholic Beverages Code entitled "Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption," and Municipal Code of Ordinances Chapter 22, Article I (b). **LICENSEE** agrees to cease the distribution, display, and sale of alcoholic beverages to-go immediately shall any of these laws be amended at any time to make this permitted use to become unlawful in the Licensed Premises. **LICENSEE** further acknowledges the CITY's right to terminate this License for the following reasons:
- 3.3.1 In the event of an amendment to the Section 28.1001 of the Texas Alcoholic Beverages Code "Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption" causes these activities to become unlawful.
- 3.3.2 In the event of an amendment to the Municipal Code of Ordinances Chapter 22, Article I (b), in which these activities become unlawful on the premises.
- 3.3.3 In the event this License is deemed to be inconsistent with the public use of the property; or
- 3.3.4 In the event the use of the Licensed Premises shall have been deemed a nuisance by a court of competent jurisdiction; or
- 3.3.5 In the event **LESEE** shall default in the performance of any covenants or agreements contained herein and shall fail to remedy same following thirty (30) calendar days' written notice of such default, save and except a ten (10) calendar days' notice period will apply in the case of default in the payment of rent.
- 3.4 **CITY** shall give **LICENSEE** notice in writing at least thirty (30) calendar days prior to the termination date.
- 3.5 **LICENSEE** or **CITY** may cancel this License by giving thirty (30) day's written notice to the other party.

### 4. RENT

- 4.1 In consideration of this License Agreement, **LICENSEE** hereby covenants and agrees to pay to **CITY** as and in the manner herein provided and subject to the terms, provisions, and

conditions herein set forth, without notice or demand and without any setoff or deduction whatsoever, the rent provided for in this Article. The rental for the Licensed Premises shall be paid to CITY by **LICENSEE**, based on \$2.56 per square foot per month for License Year One, to be increased at a rate of 2.5 percent (2.5%) per year as follows:

Term	Rate	Monthly Amount	Annual Amount
Year 1	\$2.56	\$102.40	\$1,228.80
Year 2	\$2.62	\$104.96	\$1,259.52
Year 3	\$2.69	\$107.58	\$1,291.01

- 4.2 Specifically, payment shall be in funds which are legal tender The United States of America at the place and time of payment and shall be submitted to:

City of San Antonio  
Finance Department  
Revenue Divisions  
PO BOX 60  
San Antonio, TX 78291

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

- 4.3 At any time during the License term if more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a twenty-four (24) month period, **LICENSEE** will be placed on a cash or money order basis for the following two (2) License years. No exceptions will be made.

- 4.3.1 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 subsection 4.3 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LICENSEE** of any such change(s) in advance.

- 4.3.2 Notwithstanding anything to the contrary set forth in this License Agreement, if **LICENSEE** shall fail to make the timely payment of any rent or any additional charges due the CITY from **LICENSEE** or the payment of any other money due the **CITY** from **LICENSEE** under the terms of this License, 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 License, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.

- 4.3.3 In the event of a Repeated Event of Default, **CITY**, without giving **LICENSEE** any notice and without affording **LICENSEE** an opportunity to cure the default, may terminate this License forthwith without notice to **LICENSEE**.

- 4.4 All additional charges provided for under this License shall constitute rent payable hereunder with the same effect as if the same were the rent reserved and provided for herein, and in the event of the nonpayment by **LICENSEE** of any such additional charges when due according to the terms of this License, **CITY** shall have the same rights and remedies in respect thereof as **CITY** shall or may have in respect of the rent.

## **5. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 5.1 **LICENSEE** has had full opportunity to examine the Licensed 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. **LICENSEE'S** taking possession of the Licensed Premises upon completion of **LICENSEE'S** work, being improvements to be made to the property referenced hereafter, shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition and **LICENSEE** hereby accepts and expressly agrees to License the Licensed Premises in its present "AS IS", "WHERE IS" condition and "WITH ALL FAULTS", as suitable for the purpose for which Licensed.
- 5.2 **LICENSEE** agrees that no representations, respecting the condition of the Licensed Premises and no promises to decorate, alter, repair, or improve the License Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made a part of hereof by specific reference herein. **CITY** expressly disclaims any warranty of suitability that may otherwise have arisen by operation of law. **CITY** does not warrant that there are no latent defects in the facilities that are vital to the **LICENSEE'S** use of the premises for their intended commercial purpose and that these essential facilities will remain in a suitable condition. In the event that a latent defect is discovered in the facilities after commencement of the License which would materially prevent **LICENSEE'S** intended use of the premises, **LICENSEE** shall have the right to terminate this License as of the date of written notice to **CITY** of the material latent defect. Such early termination will be **LICENSEE'S** sole remedy.

## **6. UTILITIES**

- 6.1 **LICENSEE** shall furnish and pay for all gas, water, electricity, sewer, or other utilities that may be necessary for its operation. **LICENSEE** further agrees to pay all monthly utility and related charges associated with effective maintenance of said operation.
- 6.2 **LICENSEE** acknowledges that **CITY** has made no utility connections to the Licensed Premises for electricity, sewer, gas, water, or other utility usage. Therefore, **LICENSEE** agrees to make arrangement with utility providers, and as applicable, to electricity and water for utility lines and connections, which must be separately metered and installed in accordance with the City of San Antonio building code and other regulations applicable thereto. In the event that **LICENSEE**, despite reasonable commercial efforts and expenditures, is unable to establish such utility connections, **LICENSEE** shall have the right to terminate this License agreement as of the date of written notice to **CITY**. Such early termination will be **LICENSEE'S** sole remedy.

## **7. IMPROVEMENTS**

- 7.1 **LICENSEE** shall not construct any improvements or structures on the Licensed Premises nor shall **LICENSEE** make any alterations to said premises without the prior written approval of the **CITY** through the Director of the Center City Development and Operations Department of the City of San Antonio (or other **CITY** Department as appropriate), and any and all other necessary departments, boards or commissions of the City of San Antonio including, but not limited to, the Historic and Design Review Commission (HDRC).
- 7.2 **LICENSEE** shall provide, at its sole expense, any necessary surveys, designs, plans, and specifications and obtain written approval of all necessary **CITY** agencies prior to commencing any construction or installation of improvements upon the Licensed Premises. Within thirty (30) days after the execution hereof, **LICENSEE** agrees to submit to **CITY** plans

and specifications (hereafter "plans") covering any work **LICENSEE** desires to perform, in such detail as **CITY** may require; and **LICENSEE** agrees not to commence any of such works until **CITY** has approved **LICENSEE'S** plans in writing. Said plans, when approved, shall be signed by **CITY** and **LICENSEE**, and made a part of this License Agreement, as Exhibit C, (being a Summary and Explanation of said Plans and Specifications).

- 7.3 **CITY** agrees to examine and approve or disapprove the above mentioned plans within a reasonable period of time after receipt and to notify **LICENSEE** in writing when the same have been approved or disapproved and in the event of approval, **LICENSEE** agrees to commence **LICENSEE'S** Work promptly thereafter, proceed with it diligently, and to open the Licensed Premises for business with the public as soon as possible after **LICENSEE'S** Work has been completed which completion date in no event shall be later than fifty (50) days after **CITY** approval of the plans .
- 7.4 Any improvements so installed by the **LICENSEE** that can be removed without damage to the Licensed Premises may be removed at the sole expense of the **LICENSEE** at the termination of the term of this License Agreement without payment therefor being made to the **CITY**. Any improvements, including signs, not removed within ten (10) days after [1] termination of the term, or [2] following default by **LICENSEE** not timely remedied herein, shall be deemed abandoned and shall become the property of **CITY** to dispose of, at **LICENSEE'S** expense by public or private sale or otherwise, without liability to **LICENSEE** whatsoever **LICENSEE** agrees to pay any storage, moving, demolition or other expenses incurred by **CITY** in connection with such disposal.
- 7.5 **LICENSEE** agrees that it shall obtain any and all necessary permits and clearances relative to any construction from appropriate local, state, and federal regulatory agencies. A copy of said permits or clearances shall be provided to the Director of the Center City Development and Operations Department of the City of San Antonio (or other **CITY** Department as appropriate) prior to the start of any construction.
- 7.6 **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction authorized hereunder and that I will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits or actions asserted on account of labor, materials, or services furnished to the **LICENSEE** during the performance of any said construction and against any claim for injury to persons or property resulting from or in anywise connected with **LICENSEE'S** alterations, additions, or improvements.
- 7.7 At any time during the term of this License or any extensions thereof, if applicable, that **LICENSEE** contracts for construction of improvements on the Licensed Premises, then **LICENSEE** shall, in accordance with the Insurance provisions hereafter, cause its contractor and subcontractors to provide proof of Builder's Risk Insurance coverage, Worker's Compensation Insurance Coverage, and any other liability or other insurance coverage in the amounts and types of coverage approved by **CITY'S** Risk Manager. In addition, **LICENSEE** shall either provide, or cause to be provided to the **CITY** payment and performance bonds, naming **CITY** as an additional insured.

## **8. MAINTENANCE OF PROPERTY**

- 8.1 **LICENSEE** shall, at all times, maintain the sidewalks adjacent to the Licensed Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the River Walk free and clear of any tables or other property placed by **LICENSEE** on such Licensed Premises, and **LICENSEE** shall not use any of said sidewalk

area in the exercise of privileges granted herein, except to pass to and from the Licensed Premises; however, **LICENSEE'S** use may at no time obstruct public access to the six (6) feet River Walk public right-of-way.

- 8.2 **LICENSEE** shall, at all times, keep or cause to be kept the Licensed Premises free of litter, trash, paper, and other waste and shall conform with all applicable garbage, sanitary, and health regulations of the **CITY**.
- 8.3 **LICENSEE** shall, at its sole expense, keep the Licensed Premises in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair all damages to the Licensed Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the 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. If **LICENSEE** does not promptly make such arrangements, **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 **LICENSEE** will, at the termination of this License Agreement, return the Licensed Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.
- 8.5 **LICENSEE** agrees to hold **CITY** harmless for any theft, damages, or destruction of signs, goods and/or other property of **LICENSEE** both during the term of this License and as so left on the Licensed Premises after **LICENSEE** vacates the Licensed Premises. If said signs, goods and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by **LICENSEE** within thirty (30) calendar days after the Licensed Premises are vacated, then the **CITY** may remove same without further notice or liability.

## **9. TAXES AND LICENSES**

- 9.1 **LICENSEE** shall pay, on or before their respective due dates, and as additional "charges" during the term of this License Agreement, to the appropriate collecting authority, all Federal, State, and local taxes and fees, which are now or may hereafter be levied upon the Licensed Premises, or upon **LICENSEE**, or upon the business conducted on the Licensed Premises, or upon any of **LICENSEE'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 **LICENSEE**. **LICENSEE** shall exhibit and deliver to **CITY** copies of the receipted bills or other evidence reasonably satisfactory to **CITY** showing such payment promptly after such receipts shall have been received by **LICENSEE** within thirty (30) days following payment of same. Failure to comply with the foregoing provisions shall constitute grounds for termination of this License by the **CITY**.

## **10. ASSIGNMENT AND SUBLETTING**

- 10.1 **LICENSEE** shall not assign this License or allow same to be assigned by operation of law or otherwise or sublet the Licensed 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; and which consent will not be unreasonable withheld. Such consent will be conditioned only upon 1) review and approval of any proposed **SUBLICENSEE'S** or assignee's identity, financial condition, and management experience and 2) in the event of an assignment, the execution by such assignee of any agreement in form and substance satisfactory to **CITY** assuming and agreeing to perform all obligations of

the **LICENSEE** under this License. Any assignment or subletting by **LICENSEE** without such consent shall constitute grounds for termination of this License by the **CITY**. Notwithstanding the foregoing, **LICENSEE** may assign the License to any parent, subsidiary, or similarly affiliated entity without the prior written consent of the **CITY**, with ten (10) days prior written notice to the **CITY**.

- 10.2 Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License, and in the building and property referred to herein; and to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall by virtue of such assignment be relicensed from such obligations.
- 10.3 The receipt by the **CITY** of rent from assignee, **SUBLICENSEE**, or occupant of the Licensed Premises shall not be deemed a waiver of the covenant in this License against assignment and subletting or an acceptance of the assignee, **SUBLICENSEE**, or occupant as a **LICENSEE** or a re-license of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in the License. No provision of this License shall be deemed to have been waived by the **CITY** unless such waiver is in writing signed by the **CITY**.
- 10.4 The making of any assignment, sublicense, mortgage, pledge, or encumbrance, in whole or in part, shall not operate to relieve **LICENSEE** of its obligations under this License and, notwithstanding of any such assignment, sublicense, mortgage, pledge, or encumbrance, **LICENSEE** shall remain liable for the payment of all rental, taxes, additional rent, and other charges for the due performance of all the covenants, agreement, terms, and provisions of this License throughout the term of this License, unless relicensed in writing by **CITY**.
- 10.5 Each and every assignee, whether as assignee or successor in interest of any assignee of **LICENSEE**, shall immediately be and become and remain liable for the payment of the rent and additional charges payable under this License, and for the due performance of all the covenants, agreements, terms, and provisions of this License, on **LICENSEE'S** part to be performed, and each and every provision of this License applicable to **LICENSEE** prior to such assignment shall also apply to and bind every such assignee with the same force and effect as though such assignee were the original **LICENSEE** named in this License. No transfer to such assignee shall be binding upon **CITY** unless such assignee shall deliver to **CITY** a recordable instrument which contains a covenant of assumption by said assignee to such effect, but the failure or refusal of such assignee to deliver such instrument shall not relicense or discharge such assignee from its obligations and liabilities as set forth above.
- 10.6 Any consent by **CITY** herein contained or hereafter given to any act or acts for which **CITY'S** consent by the terms hereof are required, shall be held to apply only to the specific transaction hereby or thereby approved.

## **11. DEFAULT AND REMEDIES**

- 11.1 The following events shall be deemed to be events of default by **LICENSEE** under this License Agreement:
  - 11.1.1 **LICENSEE** shall fail to pay any installment of rent as provided for in this License Agreement and such failure shall continue for a period of ten (10) calendar days following receipt of written notice of failure to pay any installment of rent when due and owing.

- 11.1.2 **LICENSEE** shall fail to comply with any term, provision, or covenant of this License Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) calendar days after written notice thereof to **LICENSEE**, unless **LICENSEE** has undertaken to effect such cure within such thirty (30) calendar day period and is diligently pursuing the same to completion.
- 11.2 Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this License 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, resume possession of the Licensed Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LICENSEE** without relieving **LICENSEE** of any liability hereunder as to rent still due and owing in this License Agreement, or any extension thereof, as applicable. **LICENSEE** shall make good any deficiency.
- 11.3 Any termination of this License Agreement as herein provided due to an event of default by **LICENSEE**, shall not relieve **LICENSEE** 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 **LICENSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LICENSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this License 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 License Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this License 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.
- 11.4 Upon any such expiration or termination of this License Agreement, **LICENSEE** shall quit and peacefully surrender the Licensed 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 Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LICENSEE** and remove **LICENSEE** 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 Licensed Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Licensed Premises by **LICENSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

## **12. INDEMNIFICATION**

- 12.1 **LICENSEE** covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers 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 **LICENSEE'S** activities under this AGREEMENT, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this



AGREEMENT, 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.

- 12.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

### 13. INSURANCE REQUIREMENTS

- 13.1 Prior to the commencement of any work under this Agreement, **LICENSEE** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's **Center City Development & Operations Department**, which shall be clearly labeled "**212 College Street, LTD, dba Acapulco Sam's**" in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature 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 pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's **Center City Development & 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 effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed reasonably necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 13.3 A **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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 listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/ \$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent LICENSEEs	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its

c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by <b>LICENSEE</b>	equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate

13.4 **LICENSEE** agrees to require, by written contract, that all sublicensees providing goods or services hereunder obtain the same insurance coverages required of **LICENSEE** herein and provide a certificate of insurance and endorsement that names the **LICENSEE** and the **CITY** as additional insureds. Respondent shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the sublicensee. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.5 As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may make a reasonable request for the 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). **LICENSEE** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall submit a copy of any replacement certificate of insurance to **CITY** at the address provided below within ten (10) calendar days of any change. **LICENSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Center City Development & Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

13.6 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

13.6.1 Name the **CITY**, its officers, officials, 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;

13.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

13.6.3 Workers' compensation, employers' liability, general liability, and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.

13.6.4 Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 13.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 13.8 In addition to any other remedies the **CITY** may have upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its sublicensees' performance of the work covered under this Agreement.
- 13.10 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 13.12 **LICENSEE** and any Sublicensees are responsible for all damage to their own equipment and/or property.

#### **14. RULES AND REGULATIONS**

- 14.1 **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE'S** business, including but not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.
- 14.2 No advertisements, signs, decorations, or displays shall be placed in, on or about the Licensed Premises without the prior written approval of the **CITY** through the Director of Center City Development and Operations Department (or other CITY Department as appropriate) and any and all other necessary departments, boards, or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Licensed Premises when **LICENSEE** vacates the Licensed Premises.
- 14.3 No activity or method of operation shall be allowed in, on or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
- 14.3.1 Nudity means total absence of clothing or covering for the human body.
- 14.3.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

- 14.3.3 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default
- 14.4 The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.
- 14.5 Discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability directly or indirectly, in employment or in the use of or admission to the Licensed Premises is prohibited.
- 14.6 **LICENSEE** 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.
- 14.7 **LICENSEE** shall not place speakers or amplified music on or near the patio of the Licensed Premises or in any other location outside the enclosed building on any side of the premises which can be seen from the San Antonio River. **LICENSEE** shall comply with **CITY'S** laws pertaining to noise. **LICENSEE** agrees to comply with any requests by the **CITY'S** park police, San Antonio police officers or noise abatement officers to close the windows and doors of **LICENSEE'S** business establishment after the hour of 11 :00 p.m., except as necessary for entry to and exit from the establishment.

#### 15. RESERVATIONS: CITY

- 15.1 **CITY** reserves the right to enter the Licensed Premises or any part thereof, for the purpose of ascertaining the condition of the Licensed Premises or determining whether **LICENSEE** is observing and performing the obligations undertaken by it under this License, all without hindrance or molestation from **LICENSEE**. **CITY** shall also have the right to enter upon the Licensed Premises for the purpose of examining, inspection, or making repairs as herein provided or for performing any work thereof that may be necessary by reason of **LICENSEE'S** failure to make any such repairs or perform any obligations hereunder. **LICENSEE** shall not be entitled to an abatement or reduction of rent by reason of such entry nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Licensed Premises. Except for such work that **CITY** performs by reason of **LICENSEE'S** failure to make repairs or perform work hereunder, should construction or other activity by **CITY** prevent **LICENSEE'S** use of the Licensed Premises for the purposes outlined herein for longer than ten (10) days, then this agreement shall be automatically extended for the same number of the days **LICENSEE'S** use of Licensed Premises was denied.
- 15.2 No provision of this License shall operate in any manner to prevent **CITY** from permitting displays, tournaments, amusements, or river parades for the benefit of the public on or about the San Antonio River.
- 15.3 **CITY** park police and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE'S** 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 **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License, 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 double the amount of the rent paid for the last month of the term of this License. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

## **17. QUIET ENJOYMENT**

- 17.1 **CITY** covenants and agrees, subject to the provisions of this License, and the restrictions, easements, reservations, and other matters now of record in Bexar County, Texas, affecting the land, that **LICENSEE**, on paying the rent and all other charges in this License provided for and observing and performing the covenants, agreements and conditions of this License on its part to be observed and performed, shall lawfully and quietly hold, occupy, and enjoy the Licensed Premises during the term hereof for any and all lawful purposes, subject to the other terms hereof, without hindrance or molestation of any kind whatsoever.

## **18. CONFLICT OF INTEREST**

- 18.1 **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio 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 parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 18.2 **LICENSEE** warrants and certifies, and this License 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 License is illegal, invalid, or unenforceable under present or future laws effective during the term of this License, then and in that event, it is the intention of the parties hereto that the remainder of this License shall not be affected thereby, and it is also the intention of the parties to this License that in lieu of each clause or provision of this License that is illegal, invalid, or unenforceable, there be added as a part of this License 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 under this License Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:
- |  |                               |
|--|-------------------------------|
| City of San Antonio                    | City of San Antonio           |
| Center City Development and Operations | Office of the City Clerk      |
| Contract Services Division             | P.O. Box 839966               |
| P.O. Box 839966                        | San Antonio, Texas 78283-3966 |
| San Antonio, Texas 78283-3966          |                               |

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time. Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, registered, or certified mail, postage prepaid, addressed to **LICENSEE** at:

212 College Street, LTD, dba Acapulco Sam's  
215 N Center #2002  
San Antonio, Texas 78202

or such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to the Director of the Center City Development and Operations Department (or other CITY Department as appropriate), of the City of San Antonio.

#### **21. PARTIES BOUND**

- 21.1 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, and if there shall be more than one party designated as **LICENSEE** in this License, they shall each be bound jointly and severally hereunder.

#### **22. TEXAS LAW TO APPLY**

- 22.1 THIS LICENSE 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. TERMINOLOGY**

- 23.1 Words of any gender used in this License 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.

#### **24. CAPTIONS**

- 24.1 The captions contained in this License are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this License.

#### **25. ENTIRE AGREEMENT**

- 25.1 This Agreement, together with the authorizing ordinance and any attached exhibits, constitutes the entire agreement between the parties hereto respecting the subject matter herein, and any other written or parole agreement with **CITY** regarding the subject matter herein is hereby expressly waived and terminated by **LICENSEE**. It is understood that the Charter of the City of San Antonio requires that all contracts with the CITY be in writing and adopted by ordinance. Further, no amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and approved by such an ordinance.

#### **26. AUTHORITY**

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

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

**LESSOR:**  
CITY OF SAN ANTONIO,  
A Texas Municipal Corporation

**LICENSEE:**  
212 College Street, LTD, dba Acapulco Sam's

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

Samuel Panchevre  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Managing Partner  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

October 27, 2022  
\_\_\_\_\_  
Date

ATTEST:

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

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

\_\_\_\_\_  
APPROVED AS TO FORM

**Attachments:**  
Exhibit A  
Exhibit B