

ORDINANCE

2022-11-03-0840

**AUTHORIZING THE EXECUTION OF A RIVER WALK LEASE AGREEMENT WITH SPIRITS OF SAN ANTONIO FOR RETAIL SPACE FOR A BASE TERM OF FIVE YEARS.**

\* \* \* \* \*

**WHEREAS**, the previous term with tenant for a River Walk retail space under East Commerce Street Bridge expired on December 31, 2011; and

**WHEREAS**, the City approved to renew the lease term through December 31, 2016; and

**WHEREAS**, the lease term was again extended through December 31, 2021; and

**WHEREAS**, tenant has operated in holdover status since the expiration of the previous term;  
**NOW THEREFORE:**

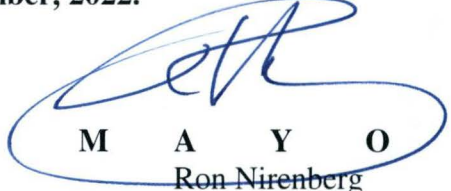
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or designee or the Director of the Center City Operations and Development Department or designee is authorized to execute a River Walk Lease Agreement with Spirits of San Antonio for retail space for a base term of five (5) years as **Attachment I**.

**SECTION 2.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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 3.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

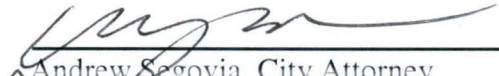
**PASSED AND APPROVED this 3rd day of November, 2022.**

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council Meeting November 3, 2022

13.

**2022-11-03-0840**

Ordinance approving a River Walk Lease Agreement between the City of San Antonio and Spirits of San Antonio for a five year base term, commencing on the approval date of this ordinance. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations Department]

Councilmember Castillo moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

## **Attachment I**



## SAN ANTONIO RIVERWALK

### LEASE AGREEMENT

This Lease Agreement ("Lease") 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 Spirits of San Antonio, a corporation (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

#### 1. DEMISE OF PREMISE

- 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 Corridor area 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:
- 1.2 An area containing approximately 326.40 square feet and 281.20 square feet for a total of 607.60 square feet at San Antonio River Walk level under the northeast corner of the East Commerce Street Bridge, Lot 1, NCB 13812, San Antonio, Bexar County, Texas.
- 1.3 City's Representative. CITY hereby designates the Director of Parks and Recreation of the CITY (or another CITY Department as appropriate), or his designee, to be the representative of Landlord (the "Landlord Representative").

#### 2. USE OF PREMISES

- 2.1 CITY hereby agrees to permit **LESSEE** use of above-described CITY-owned property located at San Antonio River Walk Corridor area, Bexar County, Texas. **LESSEE** agrees that the Leased Premises shall be utilized for the sole purpose of Retail Sales as per Exhibit B attached hereto, 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 **LESSEE** 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 A. **LESSEE** 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 **LESSEE'S** business establishment, in said public right of way. **LESSEE** 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. CONDITIONS OF LEASE

- 3.1 In a continued effort to comply with Ordinance No. 2018-01-11-001 Sec. 36-5(b), **LESSEE**, formerly known as McGusta Fine Cigar Co., d/b/a Spirits of San Antonio, agrees to cease the distribution, display, and sale of tobacco products within 24 months of City Council's execution of this Lease through ordinance. **LESSEE** acknowledges CITY's right to require full compliance with Ordinance No. 2018-01-11-001 Sec. 36-5(b) and that failure to fully comply within the specified time will result in the immediate termination of this Lease.

### 4. TERM

- 4.1 Subject to the earlier termination as hereinafter set forth, the term of this Lease is for a period of *five* (5) years, beginning on January 1, 2022, and ending on December 31, 2027.
- 4.2 **RENEWAL OPTION**: As long as **LESSEE** is not then in default hereunder, CITY and **LESSEE** may mutually agree to extend this Lease for up to and including one (1) additional term of *five* (5) years under all the terms and conditions of this Lease, 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, **LESSEE** shall notify CITY in writing at least one hundred-eighty (180) days before the date of expiration of the original term, hereof, of its intent to extend the Lease term herein provided. After agreement to the exercise of the option to extend, all references in this Lease to the term, hereof shall mean the term as extended. Provided **LESSEE** is not in default and **LESSEE** is agreeable to changes in rent and insurance, if any, for the extended terms, City through the Director may authorize lease extensions. Rent for the renewal term shall be based upon a Fair Market Value Study to be conducted by CITY.

### 5. RENT

- 5.1 In consideration of this Lease Agreement, **LESSEE** 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 Leased Premises shall be paid to CITY by **LESSEE**, based on \$8.38 per square foot per month for Lease Year One, to be increased at a rate of three percent (2.5%) per year as follows:

Term	Rate	Monthly	Annual
1st 12 months	\$8.38	\$5,091.69	\$61,100.26
2nd 12 months	\$8.59	\$5,219.28	\$62,631.41
3rd 12 months	\$8.80	\$5,346.88	\$64,162.56
4th 12 months	\$9.02	\$5,480.55	\$65,766.62
5th 12 months	\$9.25	\$5,620.30	\$67,443.60

\*commencement date to be identified through separate instrument after approval from City is received

- 5.2 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:

Treasury Supervisor  
City Hall Annex  
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.**

- 5.3 At any time during the Lease 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, **LESSEE** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made
- 5.3.1 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 **LESSEE** of any such change(s) in advance.
- 5.3.2 Notwithstanding anything to the contrary set forth in this Lease Agreement, if **LESSEE** shall fail to make the timely payment of any rent or any additional charges due the CITY from **LESSEE** or the payment of any other money due the CITY from **LESSEE** under the terms of this Lease, 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.
- 5.3.3 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**.
- 5.4 All additional charges provided for under this Lease 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 **LESSEE** of any such additional charges when due according to the terms of this Lease, CITY shall have the same rights and remedies in respect thereof as CITY shall or may have in respect of the rent.
- 5.5 **FIRE AND OTHER CASUALTY:** In the event that the Leased Premises, or any portion thereof, shall be partially damaged by fire, the elements, civil disorder, or other casualty, **LESSEE** shall give immediate notice thereof to the CITY and the same shall be repaired at the expense of CITY, without unreasonable delay, unless CITY determines that the damage is so extensive that repair or rebuilding ("restoration") is not feasible since the damage has rendered the Leased Premises untenable. If the CITY elects to repair the premises, **LESSEE'S** rent shall be abated for the construction period. In the event that the damage should be so extensive as to render the Leased Premises untenable, in the judgment of CITY, then, at the option of CITY, and upon written notice to **LESSEE** ("date



of determination"), this Lease shall cease and come to an end, as of such date of determination.

## 6. USE OF PREMISES

- 6.1 **LESSEE** agrees that the Leased Premises shall be utilized for the sole purpose of the retail sale of merchandise prelisted on EXHIBIT B, attached hereto, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and City of San Antonio, Texas. Any deviations from this use must have prior written approval of the Director of the Parks and Recreation Department (or other CITY Department as appropriate) of the City of San Antonio ("Director"), such approval shall not be unreasonably withheld, delayed or denied. In no event shall **LESSEE** ever be authorized to sell food or beverages.
- 6.2 Prohibited Uses. **LESSEE** shall not use, or permit the use of, the Premises for any other, different or additional purpose without first obtaining the Approval of the City Representative. Tenant agrees that the Permitted Uses are subject to **LESSEE'S** compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Premises and that nothing in this Lease shall constitute or be deemed to constitute a waiver by CITY of the performance of its Governmental Functions or of any such Applicable Laws or of the duty of **LESSEE** to comply with such Applicable Laws. Notwithstanding the permitted use hereunder, Tenant agrees that it shall not violate any of the Rules and Regulations listed below.
- 6.3 **LESSEE** covenants and agrees that, continuously and uninterruptedly from and after the date on which **LESSEE** opens the Leased Premises for business, it will operate and conduct within the Leased Premises, the business it is permitted to operate and conduct under the provisions of this Lease Agreement, except while the Leased Premises are untenable by reason of fire or other casualty. **LESSEE** agrees to conduct its business in the Leased Premises at all times in a first-class manner consistent with reputable business standards and practices for such businesses.
- 6.4 **LESSEE** further agrees to maintain following minimum days and hours of operation 10am - 6pm Monday - Saturday, 12pm - 6pm Sunday, provided however, **LESSEE** shall be allowed to be closed on the following holidays: Thanksgiving Day, Christmas Day, New Year's Day and Easter.
- 6.5 **LESSEE** may not close **LESSEE'S** business under any circumstances, except where an emergency exists. **LESSEE** must notify the Director, Department of Parks and Recreation (or other CITY Department as appropriate), or his designee within 24 hours after closure to inform of the nature of the emergency.
- 6.5.1 Emergencies are defined as: Death in the **LESSEE'S** or **LESSEE'S** employee(s) family; Medical Emergency; Automobile Accident; and/or any circumstance or situation approved by the Director, Department of Parks and Recreation (or other CITY Department as appropriate), or his designee.
- 6.6 Should **LESSEE** have to close its business for more than one day or for any period of time, but not to exceed thirty (30) calendar days, due to illness or for a planned vacation, buying trips or any other reasons, **LESSEE** must notify the Director of the Department of Parks and Recreation of the City of San Antonio (or other CITY Department as



appropriate) of said closing in advance, except of illness. If such notice is given, such closings shall be deemed authorized by **CITY** and not in violation of such provisions of Section 5.4 above.

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

- 7.1 **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 upon completion of **LESSEE'S** work, being improvements to be made to the property referenced hereafter, shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition and **LESSEE** hereby accepts and expressly agrees to lease the Leased Premises in its present "AS IS", "WHERE IS" condition and "WITH ALL FAULTS", as suitable for the purpose for which leased.
- 7.2 **LESSEE** agrees that no representations, respecting the condition of the leased Premises and no promises to decorate, alter, repair, or improve the Lease 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 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 **LESSEE'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 lease which would materially prevent **LESSEE'S** intended use of the premises, **LESSEE** shall have the right to terminate this lease as of the date of written notice to **CITY** of the material latent defect. Such early termination will be **LESSEE'S** sole remedy.

## **8. UTILITIES**

- 8.1 **LESSEE** shall furnish and pay for all gas, water, electricity, sewer or other utilities that may be necessary for its operation. **LESSEE** further agrees to pay all monthly utility and related charges associated with effective maintenance of said operation.
- 8.2 **LESSEE** acknowledges that **CITY** has made no utility connections to the Leased Premises for electricity, sewer, gas, water or other utility usage. Therefore, **LESSEE** 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 **LESSEE**, despite reasonable commercial efforts and expenditures, is unable to establish such utility connections, **LESSEE** shall have the right to terminate this lease agreement as of the date of written notice to **CITY**. Such early termination will be **LESSEE'S** sole remedy.

## **9. IMPROVEMENTS**

- 9.1 **LESSEE** shall not construct any improvements or structures on the Leased Premises nor shall **LESSEE** make any alterations to said premises without the prior written approval of the **CITY** through the Director of the Department of Parks and Recreation 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).

- 9.2 **LESSEE** 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 Leased Premises. Within thirty (30) days after the execution hereof, **LESSEE** agrees to submit to CITY plans and specifications (hereafter "plans") covering any work **LESSEE** desires to perform, in such detail as CITY may require; and **LESSEE** agrees not to commence any of such works until CITY has approved **LESSEE'S** plans in writing. Said plans, when approved, shall be signed by CITY and **LESSEE** and made a part of this Lease Agreement, as Exhibit C, (being a Summary and Explanation of said Plans and Specifications).
- 9.3 CITY agrees to examine and approve or disapprove the above mentioned plans within a reasonable period of time after receipt and to notify **LESSEE** in writing when the same have been approved or disapproved and in the event of approval, **LESSEE** agrees to commence **LESSEE'S** Work promptly thereafter, proceed with it diligently, and to open the Leased Premises for business with the public as soon as possible after **LESSEE'S** Work has been completed which completion date in no event shall be later than fifty (50) days after CITY approval of the plans .
- 9.4 Any improvements so installed by the **LESSEE** that can be removed without damage to the Leased Premises may be removed at the sole expense of the **LESSEE** at the termination of the term of this Lease 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 **LESSEE** not timely remedied herein, shall be deemed abandoned and shall become the property of CITY to dispose of, at **LESSEE'S** expense by public or private sale or otherwise, without liability to **LESSEE** whatsoever **LESSEE** agrees to pay any storage, moving, demolition or other expenses incurred by CITY in connection with such disposal.
- 9.5 **LESSEE** 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 Department of Parks and Recreation of the City of San Antonio (or other CITY Department as appropriate) prior to the start of any construction.
- 9.6 **LESSEE** 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 **LESSEE** during the performance of any said construction and against any claim for injury to persons or property resulting from or in anywise connected with **LESSEE'S** alterations, additions, or improvements.
- 9.7 At any time during the term of this Lease or any extensions thereof, if applicable, that **LESSEE** contracts for construction of improvements on the Leased Premises, then **LESSEE** 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, **LESSEE** shall either provide, or cause to be provided to the CITY payment and performance bonds, naming CITY as an additional insured.

#### **10. MAINTENANCE OF PROPERTY**

- 10.1 **LESSEE** shall at its sole cost and expense (a) keep the storefront entry doors and the interior of the Premises in first-class condition and repair and decorated in a first-class manner; (b) keep in first-class condition and repair all improvements, equipment, facilities, and fixtures (including hardware and heating, cooling and ventilation equipment, electrical, plumbing, sprinklers and sprinkler heads, and other mechanical facilities to the point of connection with CITY'S facilities) located in the Premises; and (c) replace all broken window glass and door glass in the Premises with glass of the same size and quality, unless the same shall result from any structural defect in the building ..
- 10.2 During the Term of this Lease, **LESSEE** agrees to employ a suitable contractor to perform **LESSEE'S** obligations for maintenance of the heating, cooling, and ventilation units on the Premises and for **LESSEE'S** obligations for maintenance of all fire protection systems within the Premises including the sprinkler system. Such maintenance shall include at least semi-annual inspections and cleaning of said units and systems, together with such adjustments and servicing as each such inspection discloses to be required and, in addition, all repair, testing and services shall be necessary or reasonable required by CITY or CITY'S insurance underwriter.
- 10.3 **LESSEE** shall diligently comply with and execute at its own expense during the term of this Lease, all present and future laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, ordinary and extraordinary, foreseen or unforeseen, concerning the condition or use of the Lease Premises, or any part thereof, of any federal, state, municipal, or other public department, bureau, office or authority or of the National Board of Fire Underwriters, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Leased Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, require the making of structural alterations or the use or application of portions of the Leased Premises for compliance therewith or interfere with the use and enjoyment of the Lease Premises, and shall protect, hold harmless and indemnify CITY of and from all fines, penalties, claim or claims for damages of every kind and nature arising out of any failure to comply with any such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations.
- 10.4 **LESSEE** will indemnify, protect and save harmless **CITY** from and against each and every claim, demand, fine, penalty, cause of action, liability, damage, judgment or loss, of whatsoever kind or nature, to which **CITY** may be subject or which **CITY** may sustain, including without limitation reasonable attorney's fees, reasonable costs and other reasonable expenses incurred by CITY in defending against the **LESSEE** in the performance of any of the covenants or agreements contained in the Lease.
- 10.5 **CITY** shall not be liable for any labor or materials furnished or to be furnished to **LESSEE** upon credit, and no mechanics or other lien, for any such labor or materials shall attach to or affect the reversionary or other estate or interest of **CITY** in and to the Leased Premises. Whenever and as often as any such lien shall have been filed against the Leased Premises, if based upon any action or interest of **LESSEE**, or of anyone claiming through the **LESSEE**, **LESSEE** shall promptly take such action by bonding,



deposit or payment as will remove or satisfy the lien and, if **LESSEE** is in default thereof for thirty (30) days after notice to **LESSEE**, **CITY** may, at its option, pay the amount of such mechanics lien, or discharge the same by bond or deposit, and the amounts so paid or deposited (including the premium on any such bond) with interest thereon at the less of (I) eighteen percent (18%) per annum or (II) the maximum rate permitted by applicable law from the date of such payment or deposit until repaid to **CITY** shall be deemed additional rent reserved under this Lease and, at the option of **CITY**, shall be payable with the next installment of rent or with any subsequent installment of rent thereafter becoming due.

- 10.6 **LESSEE** will, at the termination of this Lease, peaceably and quietly leave, surrender, and 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 accident only excepted, and shall repair all damage to the Leased Premises caused by or resulting from the removal of any removable property of **LESSEE**. Any removable property of **LESSEE** which shall remain on the Leased Premises after the expiration of the term of this Lease or sooner termination of thereof and the removal of **LESSEE** from the Leased Premises may, at the option of **CITY**, be deemed to have been abandoned, and either may be retained by **CITY**, as **CITY'S** property, or may be removed and disposed of in such manner as **CITY** may see fit, without further notice or liability therefor. If such personal property or any part thereof shall be sold, **CITY** may receive and retain the proceeds of such sale and apply the same, at **CITY'S** option, against the expenses of the sale, the cost of moving and storage, any arrears of rent or additional rent payable hereunder and any damages to which **CITY** may be entitled under this Lease or pursuant to law, with any excess proceeds remaining to be paid by **CITY** upon demand to **LESSEE**.
- 10.7 **CITY** shall not be responsible or liable for any damages to any property, including the destruction of signs, goods, and/or other property of **LESSEE**, or any injury or death to any person or persons at any time on or about the Lease Premise or the streets, bridge, river area, or sidewalks adjacent thereto; and **LESSEE** agrees that it will not hold **CITY** in any way responsible or liable therefore and will further indemnify and hold **CITY** harmless from and against any and all claims, liability, penalties, damages, expenses, and judgments arising from injury to persons or property of any nature and also for any matter or thing growing out of the use or occupancy of the Leased Premises, or of the streets, bridge, river area or sidewalks adjacent thereto.

## 11. TAXES AND LICENSES

- 11.1 **LESSEE** shall pay, on or before their respective due dates, and as additional "charges" during the term of this Lease Agreement, 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**. **LESSEE** 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 **LESSEE** within thirty (30) days following payment of same. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease by the **CITY**.



## 12. ASSIGNMENT AND SUBLETTING

- 12.1 **LESSEE** shall not assign this Lease or allow same to be assigned by operation of law or otherwise, or sublet 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; and which consent will not be unreasonable withheld. Such consent will be conditioned only upon 1) review and approval of any proposed **SUBLESSEE'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 **LESSEE** under this Lease. Any assignment or subletting by **LESSEE** without such consent shall constitute grounds for termination of this Lease by the CITY. Notwithstanding the foregoing, **LESSEE** may assign the Lease 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.
- 12.2 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, 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 released from such obligations.
- 12.3 The receipt by the CITY of rent from assignee, **SUBLESSEE**, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease against assignment and subletting or an acceptance of the assignee, **SUBLESSEE**, or occupant as a **LESSEE** or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in the Lease. No provision of this Lease shall be deemed to have been waived by the CITY unless such waiver is in writing signed by the CITY.
- 12.4 The making of any assignment, sublease, mortgage, pledge, or encumbrance, in whole or in part, shall not operate to relieve **LESSEE** of its obligations under this Lease and, notwithstanding of any such assignment, sublease, mortgage, pledge, or encumbrance, **LESSEE** 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 Lease throughout the term of this Lease, unless released in writing by CITY.
- 12.5 Each and every assignee, whether as assignee or successor in interest of any assignee of **LESSEE**, shall immediately be and become and remain liable for the payment of the rent and additional charges payable under this Lease, and for the due performance of all the covenants, agreements, terms, and provisions of this Lease, on **LESSEE'S** part to be performed, and each and every provision of this Lease applicable to **LESSEE** 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 **LESSEE** named in this Lease. 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 release or discharge such assignee from its obligations and liabilities as set forth above.



- 12.6 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.

### 13. DEFAULT AND REMEDIES

- 13.1 The following events shall be deemed to be events of default by **LESSEE** under this Lease:

13.1.1 **LESSEE** shall fail to pay any installment of rent as provided for in this Lease and such failure shall continue for a period of ten (10) days following the date on which it is due and owing.

13.1.2 **LESSEE** shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **LESSEE**.

- 13.2 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this Lease, and all rights and interest created by it, terminated. Upon CITY electing to terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; and all rights of **LESSEE** under this Lease Agreement shall expire and terminate or CITY, its agents, or attorney may, at its option, resume possession of the premises and relet the same for the remainder of the original term for the best rent CITY, its agent or attorney may obtain from the account of **LESSEE** without relieving **LESSEE** of any liability hereunder, as to rent still due and owing in this Lease, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency.

- 13.3 **LESSEE** understands and agrees that termination of this Lease as herein provided, except under Article 3, Section 3.2.1 and 3.2.3, 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 thereunder. **LESSEE** further agrees that in the event of the expiration or termination of this Lease, under any of the provisions of this Article or pursuant to law, by reason of **LESSEE'S** default hereunder, **LESSEE**, in order to make good any deficiency, shall pay CITY sums, damages, equal to the rent which would have been payable by **LESSEE** had this Lease not been terminated, payable upon the respective rent days specified herein following such termination and until the date herein above set forth for the expiration of the term of the Lease or, as applicable, any extension of said term; provided, however, that CITY shall make reasonable efforts to relet the Leased Premises during said period, and if CITY shall so relet, CITY shall credit **LESSEE** with the net rents if any received by CITY from such reletting, the reasonable expenses of reletting, including to the extent necessary, altering and preparing the Leased Premises for new **LESSEES**, broker's commissions, and all other reasonable expenses properly chargeable against the Leased Premises and the rental therefrom, with any excess of such net rents over the sums payable by **LESSEE** to CITY hereunder to be paid over to **LESSEE**.

- 13.4 Upon any such expiration or termination of this Lease, **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 fixtures, from the Leased Premises, without notice or liability therefor.

- 13.5 All rights, options, and remedies of CITY contained in this Lease shall be cumulative of the other, 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. No waiver by CITY of a breach of any of the covenants, conditions, or restrictions of this Lease 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 here contained.

#### 14. INDEMNIFICATION

- 14.1 **LESSEE** 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 **LESSEE'S** activities under this 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 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.
- 14.2 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. **LESSEE** shall promptly advise the CITY in writing of any claim or demand against the CITY or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE'S** activities under this 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 paragraph.

#### 15. INSURANCE REQUIREMENTS

- 15.1 Any and all employees, representatives, agents or volunteers of **LESSEE** while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of **LESSEE** only and not of the CITY. Any and all claims that may result from any obligation for which **LESSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LESSEE**.
- 15.2 Prior to the commencement of any work under this Lease Agreement, **LESSEE** shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and



Recreation Department (or other CITY Department as appropriate ) and CITY Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original or facsimile signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department (or other CITY Department as appropriate) and the CITY Clerk's Office, and no officer or employee shall have authority to waive this requirement.

15.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

15.4 A **LESSEE'S** financial integrity is of interest to CITY, therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by CITY, **LESSEE** shall obtain and maintain in full force and effect for the duration of the 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 rated A-or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

#### TYPE

1. Workers' Compensation and Employers Liability	5. Property Insurance: For physical damage to the property of <b>LESSEE</b> , including improvements and betterment to the Leased Premises
2. Commercial General (Public) Liability Insurance to include coverage for the following:	6. Liquor Liability*
a. Premises/Operations	*If Applicable
b. Independent Contractors	
c. Broad Form Contractual Liability	AMOUNT
d. Products/completed operations	Statutory
e. Broad form property damage, to include fire legal liability	\$1,000,000/\$1,000,000/\$1,000,000
f. Personal Injury	
g. Explosion, collapse, underground	
3. Comprehensive Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent.
a. Owned/Leased Vehicles	\$2,000,000 aggregate.
b. Non-owned Vehicles	
c. Hired Vehicles	
4. Motor truck cargo insurance including loading and unloading coverage; written on an inland marine form and an all-risk basis.	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
	\$1,000,000
	Coverage for a minimum of eighty percent (80%) of the replacement cost of <b>LESSEE'S</b> property

\$1,000,000 per occurrence, aggregate of  
\$3,000,000

- 15.5 The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the 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 reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- 15.6 **LESSEE** agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 15.6.1 Name the CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies.
- 15.6.2 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.
- 15.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
- 15.7 **LESSEE** shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio  
Department of Parks and Recreation  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 15.8 If **LESSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may initiate Agreement termination proceedings on the first event of default. The CITY may upon **LESSEE'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 **LESSEE** to stop the use of the Premises hereunder until **LESSEE** demonstrates compliance with the requirements hereof.
- 15.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LESSEE** may be held responsible for payments of damages to persons or property



resulting from **LESSEE'S** or its subcontractors' performance of the work covered under this Lease Agreement.

- 15.10 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 for any damage either to the person or property of **LESSEE** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **LESSEE** shall save and hold harmless CITY from any claims arising out of damage to **LESSEE'S** property or damage to **LESSEE'S** business, including subrogation claims by **LESSEE'S** insurers.

## **16. RULES AND REGULATIONS**

- 16.1 **LESSEE** shall observe and comply with all 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 in the River Walk area in the Downtown Central Business District.
- 16.2 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 of Parks and Recreation (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. **LESSEE** agrees to remove all signs from the Leased Premises when **LESSEE** vacates the Leased Premises.
- 16.3 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:
- 16.3.1 Nudity means total absence of clothing or covering for the human body.
- 16.3.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 16.3.3 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default
- 16.4 The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.
- 16.5 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 Leased Premises is prohibited.
- 16.6 **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.



- 16.7 **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 premises which can be seen from the San Antonio River. **LESSEE** shall comply with CITY'S laws pertaining to noise. **LESSEE** 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 **LESSEE'S** business establishment after the hour of 11 :00 p.m., except as necessary for entry to and exit from the establishment.

#### 17. RESERVATIONS: CITY

- 17.1 CITY reserves the right to enter the Leased Premises or any part thereof, for the purpose of ascertaining the condition of the Leased Premises or determining whether **LESSEE** is observing and performing the obligations undertaken by it under this Lease, all without hindrance or molestation from **LESSEE**. CITY shall also have the right to enter upon the Leased 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 **LESSEE'S** failure to make any such repairs or perform any obligations hereunder. **LESSEE** 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 **LESSEE** from the Leased Premises. Except for such work that CITY performs by reason of **LESSEE'S** failure to make repairs or perform work hereunder, 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) days, then this agreement shall be automatically extended for the same number of the days **LESSEE'S** use of Leased Premises was denied.
- 17.2 No provision of this Lease 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.
- 17.3 CITY park police and other safety personnel shall have the right of entry on and into the Leased Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LESSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. **LESSEE** expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of **LESSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

#### 18. HOLDING OVER

- 18.1 Should **LESSEE** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease, 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 Lease. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the **LESSEE** to hold over.

#### 19. QUIET ENJOYMENT

- 19.1 CITY covenants and agrees, subject to the provisions of this Lease, and the restrictions, easements, reservations, and other matters now of record in Bexar County, Texas, affecting the land, that **LESSEE**, on paying the rent and all other charges in this Lease



provided for and observing and performing the covenants, agreements and conditions of this Lease on its part to be observed and performed, shall lawfully and quietly hold, occupy, and enjoy the Leased 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.

## **20. CONFLICT OF INTEREST**

- 20.1 **LESSEE** 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.
- 20.2 **LESSEE** warrants and certifies, and this lease 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.

## **21. ENTIRE AGREEMENT**

- 21.1 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 **LESSEE**. 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.

## **22. SEPARABILITY**

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

## **23. NOTICES**

- 23.1 Notices to CITY required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

City of San Antonio  
Center City Development and Operations  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
City Hall-Second Floor  
P.O. Box 839966  
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 **LESSEE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LESSEE** at:

Spirits of San Antonio  
Roland Polanco  
801 East Riverwalk  
San Antonio, Texas 78205

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

#### **24. PARTIES BOUND**

- 24.1 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 **LESSEE** in this Lease, they shall each be bound jointly and severally hereunder.

#### **25. TEXAS LAW TO APPLY**

- 25.1 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.

#### **26. TERMINOLOGY**

- 26.1 Words of any gender used in this Lease 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.

#### **27. CONDEMNATION**

- 27.1 If during the term of this Lease, or any renewal or extension hereof, all or substantially all of the Leased Premises shall be taken or appropriated by condemnation or eminent domain proceedings, this Lease shall thereupon terminate and expires on the date of such taking; and in such event, the obligation to pay rent and additional rent shall be apportioned and paid to the date of such taking. For purposes of this Paragraph 26.1 "substantially all of the Leased Premises" shall be deemed to have been taken if the untaken portion cannot be practically, economically, and profitably used or converted for use by **LESSEE** for the purposes for which the Leased Premises are being used immediately prior to such taking. In the event of a dispute between CITY and **LESSEE** as to whether or not the untaken portion of the Leased Premises can be so used or convert, if the parties cannot agree within thirty (30) days after the date of such taking, such



disputes shall be resolved by arbitration as the case may be in the manner provided in Article 26 hereafter.

- 27.2 Except for the provisions of Section 26.4 as to a partial taking, the parties agree that any condemnation award or damages shall go to CITY, however, **LESSEE**, shall have the right to pursue any claim to which it may be entitled, if any, by virtue of its leasehold interest in the Leased Premises. Further, **LESSEE** and CITY shall each have the right, at its own expense, to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals therein.
- 27.3 In the event of any such taking of less than all or substantially all of the Leased Premises or the Improvements, either party hereto shall have the option to terminate this Lease as of the date of such taking by the giving of written notice to the other party of such election within fifteen (15) days after the date of such taking, and upon the exercise of such option by either party, neither CITY or **LESSEE** shall have any further obligations or liabilities to the other hereunder from and after the date of such taking. If, however, this Lease is not so terminated, CITY shall, within a reasonable period of time after such taking, make such repairs and alterations as may be necessary to restore the portion of the improvements not taken by such condemnation or eminent domain proceedings (subject to a reasonable period of time to collect any condemnation award of damages payable to CITY). In such event, **LESSEE'S** right of possession as to the portion of the Leased Premises so taken shall terminate on the date of such taking, and the rental payable hereunder shall be redetermined and shall equal that portion of the rental prevailing on the date of such taking which the fair market rental value of the untaken portion of the Leased Premises bears to the fair market rental value of the Leased Premises immediately prior to such taking, but in no event shall such redetermined rental exceed that which was payable prior to such taking. If the parties cannot agree on said fair market rental values, the same shall be determined by appraisal in the manner provided as Article 26 hereafter. Until such adjusted rental is determined, **LESSEE** shall continue to pay rental as provided in Article 4 above, and if upon such determination **LESSEE** shall have made any overpayments, such overpayments shall be credited against future installments of rental. If less than all or substantial all of the Leased Premises are taken such that the Leased Premises are completely untenable or unsuitable for the purposes for which they were hereby leased, and neither party exercises its option to terminate this Lease as is herein provided, all rental payments shall be abated until the date of completion by CITY of such repairs and alterations to the Improvements as are necessary to make the Leased Premises tenable or suitable for the purposes for which they are hereby leased.
- 27.4 If all or any part of the Leased Premises or of **LESSEE'S** interest in this Lease shall be taken in condemnation proceedings or by any right eminent domain for a temporary use or occupancy, the term of this Lease shall not be reduced or affected in any way and **LESSEE** shall continue to pay in full the rent and additional charges herein reserved, without reduction or abatement, in the manner and at the times herein specified and, except only to the extent that **LESSEE** is prevented from doing pursuant to the terms of the order of the condemning authority, **LESSEE** shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. In the event of any such temporary taking, **LESSEE** shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise, unless such periods of temporary use or occupancy shall extend beyond the expiration date of the term of this Lease, in which case such award, after payment to CITY therefrom of the estimated costs of

restoration of the Leased Premises to the extent that any such award is intended to compensate for damage to the Leased Premises, shall be apportioned by CITY and **LESSEE** as of such date of expiration in the same ratio that the part of the entire period for which such compensation is made falling before the day of expiration and that falling after, bear to such entire period.

#### **28. CAPTIONS**

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

#### **29. AUTHORITY**

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

#### **30. NON-APPROPRIATION**

- 30.1 Notwithstanding any other provisions of the Lease, and in order to satisfy the requirements of the Constitution of the State of Texas, all covenants and commitments of CITY contained herein which would require the expenditure of funds by CITY are subject to and contingent upon the annual appropriation process. In the event CITY fails to appropriate sufficient funds dedicated to funding any such obligation of CITY, such a failure shall not be considered a default or breach hereunder and **LESSEE'S** sole remedy for such failure shall be to terminate this Lease Agreement.

[Remainder of this page intentionally left blank]

[Signatures page to follow]



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

**LESSOR:**

CITY OF SAN ANTONIO,  
A Texas Municipal Corporation

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**LESSEE:**

Spirits of San Antonio

  
\_\_\_\_\_  
Signature

Robert Polanco  
\_\_\_\_\_  
Printed Name

MBNG PARTNER  
\_\_\_\_\_  
Title

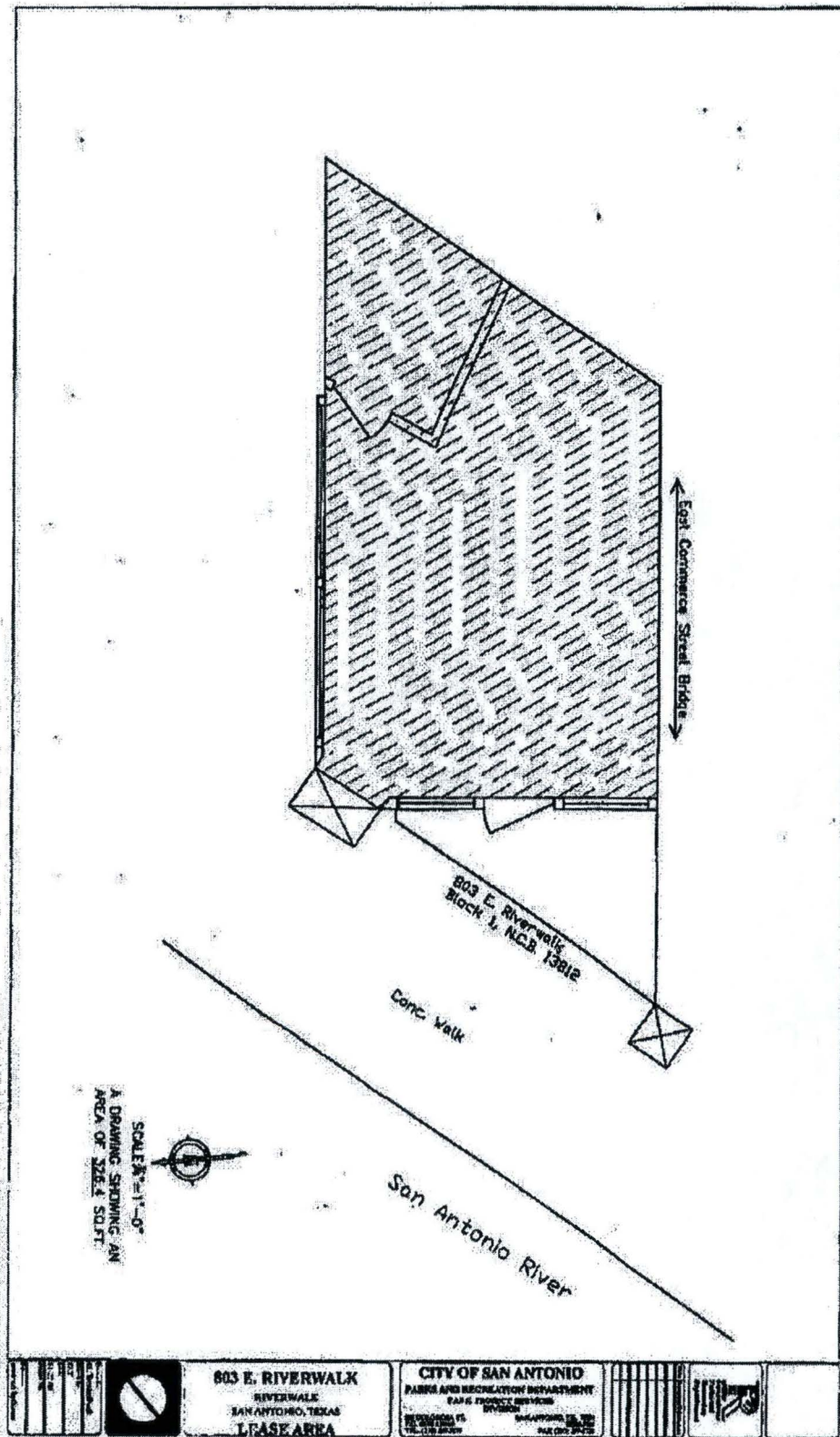
9-13-2022  
\_\_\_\_\_  
Date

**ATTEST:**

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

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

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





A DRAWING SHOWING AN  
AREA OF 281.2 SQ. FT.  
WITHIN THE RIVER WALK

