

First Amendment to River Walk Lease Agreement

(MD Riverwalk LLC dba On the Bend Oyster Bar & Lounge)

This First Amendment to the River Walk Lease Agreement (Agreement) is between MD Riverwalk LLC dba On the Bend Oyster Bar & Lounge (“Lessee”) and the City of San Antonio (“City”), pursuant to the Ordinance Authorizing the First Amendment.

1. Identifying Information

Lessee:	MD Riverwalk LLC dba On the Bend Oyster Bar & Lounge
Lessee’s Address:	4714 Shavano Oak, Suite 2, San Antonio, Texas 78249
Lease:	River Walk Lease between City and Lessee pertaining to a total of 1,298.07 square feet comprised of 698.24 square feet of river level commercial (Patio Area), and 599.83 square feet of street level commercial (Ramada) located at 123 Losoya on the San Antonio River.
Ordinance Authorizing Original Lease:	2018-04-19-0286
Ordinance Authorizing First Amendment:	_____
Beginning of First Renewal Term:	May 1, 2023
Expiration of First Renewal Term:	April 30, 2028

2. Defined Terms

All terms used in this instrument and not otherwise defined herein but defined in the Agreement to it have the meanings previously ascribed to them.

3. Demise Premises

The Leased Premises located at 123 Losoya on the San Antonio River, as described in Section 1.1.1 are adjusted to include an additional 183.75 square feet of River Level Commercial (Patio Area) as follows:

1.1.1 An area containing a total of 1,481.82 square feet as shown in the attached revised **Exhibit A.3** are further described as follows:

- 881.99 square feet of river level commercial (Patio Area)
- 599.83 square feet of street level commercial (Ramada)

4. Term

Sections 3.1 and 3.2 are revised as follows:

3.1 The term of this Lease is renewed from May 1, 2023, through April 30, 2028.

3.2 Lessee may terminate this Agreement with sixty (60) day written notice to City. Notwithstanding the preceding, if at any time during renewal period, Lessee's property lease for adjacent property out of which restaurant is operated is terminated by the property owner(s), this Agreement shall automatically terminate.

5. Rental

Section 4.1 of the Agreement is deleted in its entirety and replaced with the following:

4.1 The rental rate for the five-year renewal term shall be as follows:

Term	Monthly Patio Area	Monthly Ramada	Total Month	Total Year
5/1/2023 - 4/30/2024	\$2,742.99	\$1,475.58	\$4,218.57	\$50,622.85
5/1/2024 - 4/30/2025	\$2,813.55	\$1,511.57	\$4,325.12	\$51,901.44
5/1/2025 - 4/30/2026	\$2,884.11	\$1,547.56	\$4,431.67	\$53,180.02
5/1/2026 - 4/30/2027	\$2,954.67	\$1,583.55	\$4,538.22	\$54,458.61
5/1/2027 - 4/30/2028	\$3,025.23	\$1,623.14	\$4,648.37	\$55,780.39

Rent may be paid in lump sum in advance, or in monthly installments in advance on the first day of each month.

6. Insurance Requirements

Section 13 of the Agreement is deleted in its entirety and replaced with the following:

13.1 No later than 30 days before the scheduled lease agreement, **LESSEE** must provide a completed Certificate(s) of Insurance to **CITY'S Center City Development & Operations Department**. The certificate must be:

13.1.1 clearly labeled with the legal name of the event in the Description of Operations block;

13.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);

13.1.3 properly endorsed and have the agent's signature, and phone number,

13.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by **CITY'S Center City Development & Operations Department**. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

- 13.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, **LESSEE** certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.
- 13.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 13.5 **LESSEE** shall obtain and maintain in full force and effect for the duration of this Agreement, at **LESSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the **LESSEE** claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractor LESSEEs c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by LESSEE	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service
6. Property Insurance	One Hundred Percent (100%) replacement value for Structure, and replacement cost coverage of eighty percent (80%) of actual cash value for improvements and betterments

- 13.6 **LESSEE** must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of **LESSEE** and provide a certificate of insurance and endorsement that names **LESSEE**

and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

- 13.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. **LESSEE** must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

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

- 13.8 **LESSEE'S** insurance policies must contain or be endorsed to contain the following provisions:

13.8.1 Name CITY and 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 CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.

13.8.2 Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.

13.8.3 Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and

13.8.4 Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 13.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, **LESSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend **LESSEE'S** performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 13.10 In addition to any other remedies CITY may have upon **LESSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order **LESSEE** to stop work and/or withhold any payment(s) which become due to **LESSEE** under this Agreement until **LESSEE** demonstrates compliance with requirements.

13.11 Nothing contained in this Agreement shall be construed as limiting 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 Agreement.

13.12 **LESSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

13.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

13.14 **LESSEE** and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

7. No Default

Neither City nor Lessee is in default under the Agreement, and neither party is aware of a cause of action against the other arising out of or relating to the period before this renewal.

8. Same Terms and Conditions

This renewal instrument is a fully integrated statement of the modifications to the Agreement. Except as expressly modified by this renewal, the Agreement remains a comprehensive statement of the rights and obligations of City and Lessee. City and Lessee reaffirm the Agreement as modified by this renewal instrument and represent to each other that, except as expressly stated in this instrument, no written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

9. Public Information

Lessee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this instrument waives an otherwise applicable exception to disclosure.

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

City

Lessee

City of San Antonio, a Texas municipal corporation

MD Riverwalk LLC dba On the Bend Oyster Bar & Lounge

By: _____

By: _____

Printed
Name: _____

Printed
Name: ARON SELINKOFF

Title: _____

Title: Director

Date: _____

Date: 2-7-2023

Approved as to Form:

City Attorney

Attachments:

Exhibit A.1

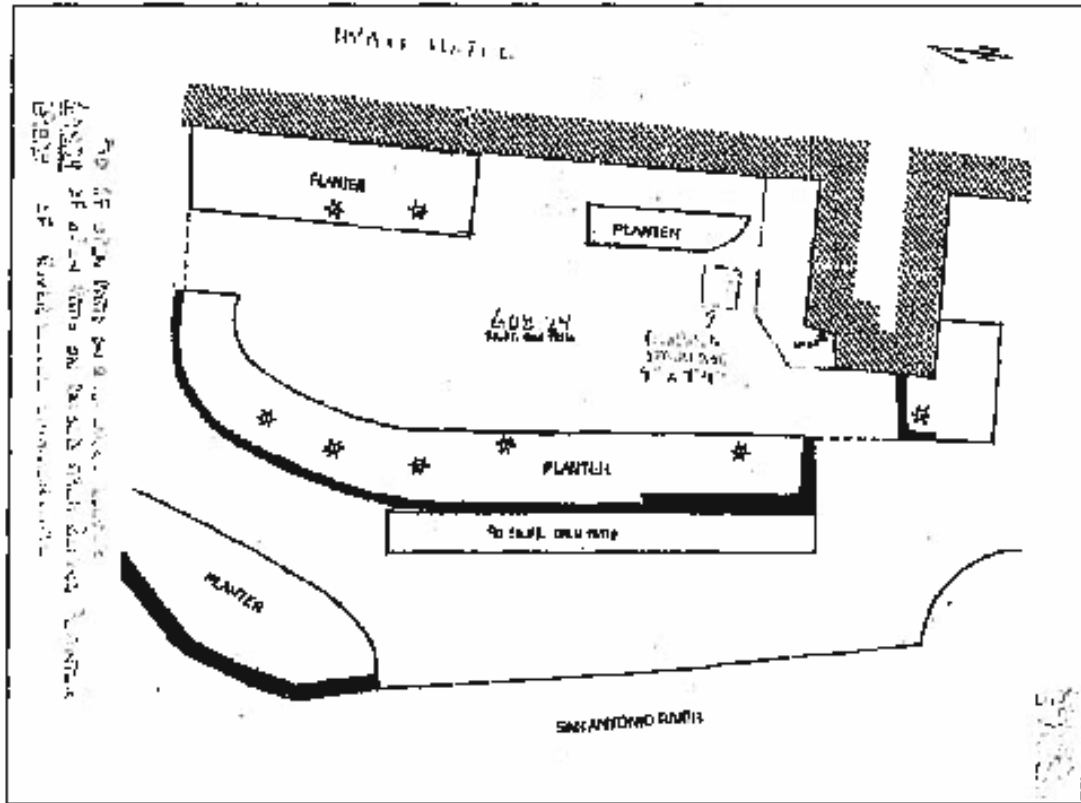
Exhibit A.2

Exhibit A.3

MD Riverwalk LLC. dba On the Bend Oyster Bar & Lounge
Leased Premises

Exhibit A.1 - Original Premises

Patio Area



Ramada

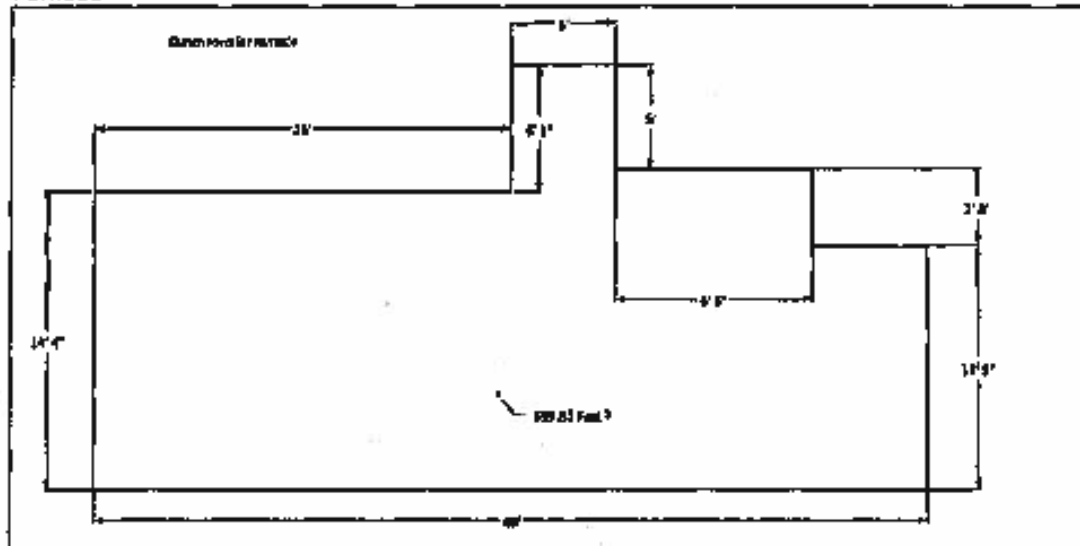
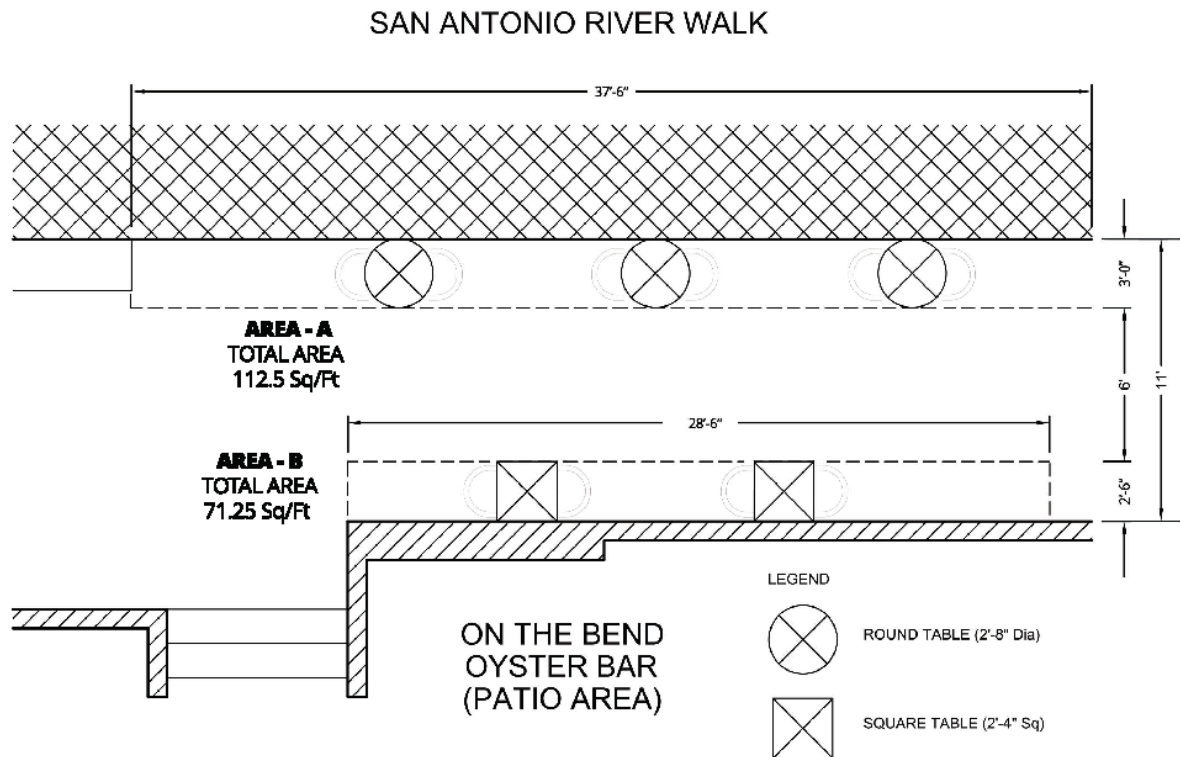


Exhibit A.2 – Additional River Level Commercial (Patio Area)

OVERALL AREA
(AREA A) + (AREA B)
183.75 Sq/Ft



TITLE:	EXTENDED PATIO AREA	
LOCATION:	ON THE BEND OYSTER BAR 123 Losoya St, San Antonio, TX 78205	
DESIGN BY:	T. Corless	
DATE:	11/16/2022	
REV:	OTB-PATIO-001	

Exhibit A.3 – Revised Premises

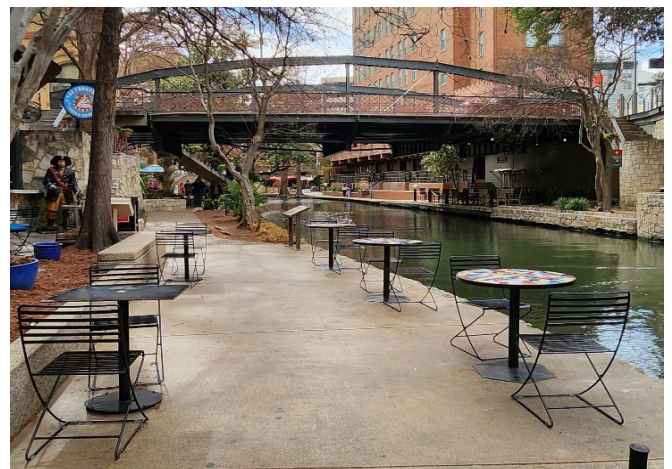
123, Losoya St. San Antonio River

Leased Premises 1,481.82 as follows:

- 881.99 sf. of River Level Commercial (Patio Area)
- 599.83 sf. of Street Level Commercial (Ramada)



River Level Commercial Patio Area – 881.99 sf.



Street Level Commercial Ramada – 599.83 sf.

