

AN ORDINANCE 2008-08-21-0722

**AUTHORIZING A TWENTY-YEAR LEASE AGREEMENT FOR THE USE OF 1,151 SQUARE FEET OF RIVER WALK PATIO SPACE TO NEW RIVERCENTER MALL II LP; AND AUTHORIZING AN AMENDMENT EXTENDING A LICENSING AGREEMENT FOR USE OF THE RIVERCENTER LAGOON ISLAND.**

\* \* \* \* \*

**WHEREAS**, new Rivercenter Mall II LP is proposing significant improvements to the mall over the next five years; and

**WHEREAS**, the initial phase of improvements within the lagoon area will include an outdoor patio dining area at river level and a balcony with an indoor dining area, which will both be on City property; and

**WHEREAS**, the Historic Design & Review Commission (HDRC) approved the improvements on April 16, 2008; and

**WHEREAS**, Rivercenter Mall II LP has agreed to satisfactory lease terms for use of this public property and this proposed use will benefit the public; and

**WHEREAS**, in 1993, City Council approved a 25 year license agreement for use of the lagoon island with the owner of Rivercenter Mall (Keystone Texas Property Holding Corporation, subsequently assigned to New Rivercenter Mall II LP); and

**WHEREAS**, new Rivercenter Mall II LP and the City have proposed to extend the term of the license agreement for use of the island from 2018 to 2029 in order to run concurrently with the lease agreement; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee, or the Director of the Downtown Operations Department or her designee, is authorized to execute a twenty-year lease agreement for the use of 1,151 square feet of River Walk patio space to New Rivercenter Mall II LP. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** The City Manager or her designee, or the Director of the Downtown Operations Department or her designee, is authorized to execute an amendment extending the term of the existing license agreement with New Rivercenter Mall II LP for use of the Rivercenter lagoon island from 2018 to 2029. A copy of the license agreement is attached hereto and incorporated herein for all purposes as **Attachment II**.

SW/mgc  
08/21/08  
Item # 17

**SECTION 3.** Funds generated by this ordinance will be deposited into Fund 28033000 CDBG 33RD YEAR, Internal Order 131000001507 FY 08 RHEJAY, INC CATARINA, General Ledger 4401150 Lease - Rental of City Land.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance shall be effective on and after August 31, 2008.

PASSED AND APPROVED this 21<sup>th</sup> day of August, 2008.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

<b>Agenda Item:</b>	<b>17 ( in consent vote: 5, 9, 12, 13, 14, 15, 16, 17, 20, 21, 23, 25, 26, 27B )</b>						
<b>Date:</b>	08/21/2008						
<b>Time:</b>	09:45:18 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a twenty-year lease agreement for the use of 1,151 square feet of River Walk patio space to New Rivercenter Mall II LP; and authorizing an amendment extending a licensing agreement for use of the Rivercenter lagoon island. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				x
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x			x	
John G. Clamp	District 10		x				

## RIVER WALK LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. 2008-08-21-0722, passed and approved by the City Council on the 21<sup>st</sup> day of August, 2008, and **New Rivercenter Mall II, L.P.** – A Delaware Limited Partnership, (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

### 1. DEMISE OF PREMISES

- 1.1. **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** in the San Antonio River Walk Area as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Leased Premises) are further described as follows:
- 1.1.1. AREA 1. An area containing 1,035 square feet of City owned River Walk patio space in the public waterway right of way located directly west of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A; and
  - 1.1.2. AREA 2. An area containing 116 square feet of City owned street level space in the public waterway right of way to be used as street level patio space,, located directly west of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A; and
  - 1.1.3. AREA 3. An area containing 430 square feet of City owned street level space in the public right of way, to be used as a staircase extending from Commerce Street to the existing bridge at river level, located directly west of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A; and
  - 1.1.4. AREA 4. An area containing 140 square feet of City owned River Walk space in the public waterway right of way, located directly east of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, to be used to install a staircase from the river level up to the existing street level crossover bridge, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A; and
  - 1.1.5. AREA 5. An area containing 645 square feet of City owned River Walk space in the public waterway right of way, located directly east of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, to be used as a public

walkway and staircase on the river level, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A; and

- 1.1.6. AREA 6. An area containing 899 square feet of City owned street level space in the public right of way, located directly west of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, to be used as a public walkway at street level, described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit A.

## 2. USE OF PREMISES

- 2.1. **LESSEE** agrees that Area 1 of the Leased Premises and Area 2 of the Leased Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas. **LESSEE** agrees that the staircase area of Area 3 and all of Area 4 shall be utilized for the sole purpose of pedestrian access and that public access to these staircases shall not be restricted at any time without the prior written consent of City by the Director of the Downtown Operations Department, or her designee. **LESSEE** agrees that Area 5 and Area 6 shall be utilized for the sole purpose of pedestrian access and that public access to these walkways shall not be restricted at any time without the prior written consent of City by the Director of the Downtown Operations Department, or her designee.
- 2.2. **CITY'S** Reservation of Rights – In addition to the **CITY'S** Reservations set out in Article 15 and other sections of the Lease Agreement, **CITY** reserves the right to a 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 without first obtaining the consent of **CITY**. Failure to comply with this section may, at **CITY'S** option, constitute default under this Lease Agreement.

## 3. TERM, AND TERMINATION

- 3.1. The term of this Lease will consist of a Construction Phase commencing September 1, 2008 and terminating no later than May 31, 2009, and an Operations Phase commencing on the date normal operations begin on the Leased Premises, but no later than June 1, 2009, and ending 20 years from date normal operations on the Leased Premises begin. The right is expressly reserved to the **CITY**, acting through the City Council, to terminate this Lease Agreement for the following:
  - 3.1.1. In the event this Lease Agreement is deemed to be inconsistent with the public use of the property; or
  - 3.1.2. In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction; or
  - 3.1.3. In the event **LESSEE** shall default in the performance of any covenants or

agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of Default in the payment of rent.

- 3.2. In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, the **CITY** shall give **LESSEE** notice in writing at least thirty (30) days prior to the termination date.
- 3.3. **LESSEE** or **CITY** may cancel this Lease Agreement by giving ninety (90) days written notice to the other party.
- 3.4. Notwithstanding the above, if construction work on the leased premises, including application for building permits, has not commenced by December 1, 2008, this agreement shall be null and void and not binding on either party.

#### 4. RENTAL

- 4.1. **LESSEE** shall commence paying rent as of the day on which **LESSEE** commences normal operations on the Leased Premises, which shall be the commencement of the Operations Phase of the Lease, as identified in Section 3.1 above. All Lease Years referenced in this Lease shall refer to the Lease Year of the Operations Phase. The monthly rental shall be **\$2.03** per square foot per month or **\$24.36** per square foot for Lease years 1 – 5 for the Leased Premises located in AREA 1 as identified above, and **\$1.52** per square foot per month or **\$18.24** per square foot for Lease years 1 – 5 for the Leased Premises located in AREA 2, as identified above. These rental rates shall remain unchanged for Lease years 1 – 5, provided there is development underway at Rivercenter Mall during Lease years 1 – 5. Thereafter, beginning in Lease year 6, the rental rate shall increase by a rate of two and one-half percent (2.5%) per square foot per year for the remainder of the Lease term, subject to the provisions contained in Section 4.2 below. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:

	AREA 1	AREA 2
Year 1	\$2.03/sq. ft./month: \$25,212.60 payable in one lump sum in advance per year or \$2,101.05 per month.	\$1.52/sq. ft./month: \$2,115.84 payable in one lump sum in advance per year or \$176.32 per month.
Year 2	\$2.03/sq. ft./month: \$25,212.60 payable in one lump sum in advance per year or \$2,101.05 per month.	\$1.52/sq. ft./month: \$2,115.84 payable in one lump sum in advance per year or \$176.32 per month.
Year 3	\$2.03/sq. ft./month: \$25,212.60 payable in one lump sum in advance per year or \$2,101.05 per month.	\$1.52/sq. ft./month: \$2,115.84 payable in one lump sum in advance per year or \$176.32 per month.
Year 4	\$2.03/sq. ft./month: \$25,212.60 payable in one lump sum in advance per year or \$2,101.05 per month.	\$1.52/sq. ft./month: \$2,115.84 payable in one lump sum in advance per year or \$176.32 per month.
Year 5	\$2.03/sq. ft./month: \$25,212.60 payable in one lump sum in advance per year or \$2,101.05 per month.	\$1.52/sq. ft./month: \$2,115.84 payable in one lump sum in advance per year or \$176.32 per month.
Year 6	\$2.08/sq. ft./month: \$25,842.92 payable in one lump sum in advance per year or \$2,153.58 per month.	\$1.56/sq. ft./month: \$2,168.74 payable in one lump sum in advance per year or \$180.73 per month.
Year 7	\$2.13/sq. ft./month: \$26,488.99 payable in	\$1.60/sq. ft./month: \$2,222.95 payable in one

	one lump sum in advance per year or \$2,207.42 per month.	lump sum in advance per year or \$185.25 per month.
Year 8	\$2.19/sq. ft./month: \$27,151.21 payable in one lump sum in advance per year or \$2,262.60 per month.	\$1.64/sq. ft./month: \$2,278.53 payable in one lump sum in advance per year or \$189.88 per month.
Year 9	\$2.24/sq. ft./month: \$27,829.99 payable in one lump sum in advance per year or \$2,319.17 per month.	\$1.68/sq. ft./month: \$2,335.49 payable in one lump sum in advance per year or \$194.62 per month.
Year 10	\$2.30/sq. ft./month: \$28,525.74 payable in one lump sum in advance per year or \$2,377.15 per month.	\$1.72/sq. ft./month: \$2,393.88 payable in one lump sum in advance per year or \$199.49 per month.
Year 11	\$2.35/sq. ft./month: \$29,238.89 payable in one lump sum in advance per year or \$2,436.57 per month.	\$1.76/sq. ft./month: \$2,453.73 payable in one lump sum in advance per year or \$204.48 per month.
Year 12	\$2.41/sq. ft./month: \$29,969.86 payable in one lump sum in advance per year or \$2,497.49 per month.	\$1.81/sq. ft./month: \$2,515.07 payable in one lump sum in advance per year or \$209.59 per month.
Year 13	\$2.47/sq. ft./month: \$30,719.10 payable in one lump sum in advance per year or \$2,559.93 per month.	\$1.85/sq. ft./month: \$2,577.95 payable in one lump sum in advance per year or \$214.83 per month.
Year 14	\$2.54/sq. ft./month: \$31,487.08 payable in one lump sum in advance per year or \$2,623.92 per month.	\$1.90/sq. ft./month: \$2,642.39 payable in one lump sum in advance per year or \$220.20 per month.
Year 15	\$2.60/sq. ft./month: \$32,274.26 payable in one lump sum in advance per year or \$2,689.52 per month.	\$1.95/sq. ft./month: \$2,708.45 payable in one lump sum in advance per year or \$225.70 per month.
Year 16	\$2.66/sq. ft./month: \$33,081.12 payable in one lump sum in advance per year or \$2,756.76 per month.	\$1.99/sq. ft./month: \$2,776.17 payable in one lump sum in advance per year or \$231.35 per month.
Year 17	\$2.73/sq. ft./month: \$33,908.14 payable in one lump sum in advance per year or \$2,825.68 per month.	\$2.04/sq. ft./month: \$2,845.57 payable in one lump sum in advance per year or \$237.13 per month.
Year 18	\$2.80/sq. ft./month: \$34,755.85 payable in one lump sum in advance per year or \$2,896.32 per month.	\$2.10/sq. ft./month: \$2,916.71 payable in one lump sum in advance per year or \$243.06 per month.
Year 19	\$2.87/sq. ft./month: \$35,624.74 payable in one lump sum in advance per year or \$2,968.73 per month.	\$2.15/sq. ft./month: \$2,989.63 payable in one lump sum in advance per year or \$249.14 per month.
Year 20	\$2.94/sq. ft./month: \$36,515.36 payable in one lump sum in advance per year or \$3,042.95 per month.	\$2.20/sq. ft./month: \$3,064.37 payable in one lump sum in advance per year or \$255.36 per month.

- 4.2. The initial rates per square foot for the respective leased areas shall be effective upon commencement of the Operations Phase of this Lease Agreement and shall remain the same for Lease years 1 – 5. However, at no shorter than five (5) year intervals, CITY may adjust the rental rate to the market rental rate for comparable properties at that time. Before making such adjustment, CITY shall have a market rental study completed by an appraiser selected by CITY. A copy of said market study result will be provided by CITY to LESSEE. Following any such adjustment of the rental rate by the City, the rental rate will increase by two and one-half percent (2.5%) per square foot per year.
- 4.3. There shall be no rental fee charged for AREAS 3, 4, 5, and 6, identified above.

4.4. Payment shall be submitted to:

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

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

- 4.5. A twenty (\$20.00) dollar late charge will be assessed on any payment received on the eleventh (11<sup>th</sup>) day of the applicable month or any day thereafter. All past due rentals under the terms of this Lease Agreement shall bear interest at the rate of 12% per annum from the date due until paid in full by **LESSEE**, or at the highest rate allowed by law, should 12% be deemed usurious.
- 4.5.1. The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "**GRACE PERIOD**;" nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the **CITY'S** Treasury office by the close of business on the first day of each calendar month.
- 4.5.2. 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.
- 4.5.3. At any such time, should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in subsections 4.3.1 – 4.3.2 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LESSEE** of any such change(s) in advance.
- 4.5.4. 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**.
- 4.5.5. In the event of a **Repeated Event of Default**, **CITY**, without giving **LESSEE** any notice and without affording **LESSEE** an opportunity to cure the default, may terminate this Lease forthwith without notice to **LESSEE**.
- 4.6. Payment shall be made in a manner consistent with the City's Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks.

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

- 5.1. **LESSEE** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE'S** taking possession of the Leased Premises shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.
- 5.2. **LESSEE** agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LESSEE** unless the same are contained herein or made a part hereof by specific reference herein.

## **6. UTILITIES**

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

## **7. IMPROVEMENTS**

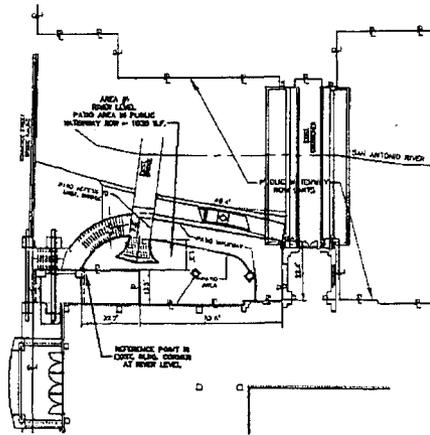
- 7.1. **LESSEE** shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall **LESSEE** make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the **Historic and Design Review Commission**.
- 7.2. **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on, or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.
- 7.3. The staircase and walkway improvements made to **AREAS 3, 4, 5, and 6** shall be completed by **LESSEE** for use by the general public and upon completion shall be owned by **CITY**. All staircase and walkway improvements shall be completed no later than **September 1, 2009**.

## **8. MAINTENANCE OF PROPERTY**

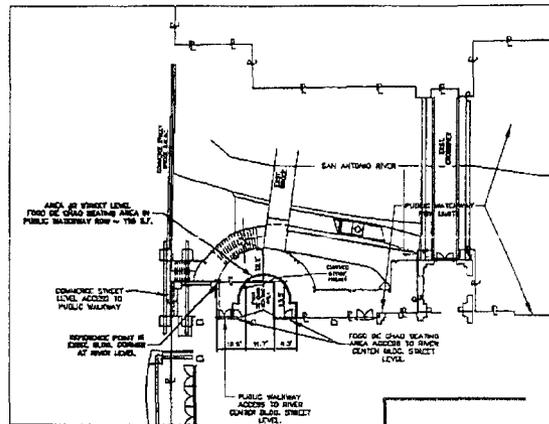
- 8.1. **LESSEE** shall, at all times, maintain the sidewalks adjacent to the Leased Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the **River Walk** free and clear of any tables or other property placed by **LESSEE** on such Leased Premises, and **LESSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Leased Premises; however, **LESSEE'S** use may at no time obstruct public access to the six (6) feet **River Walk** public right-of-way. **LESSEE** shall be responsible for cleaning all public sidewalks within the lagoon area, beginning

at a line from the southernmost edge of the Commerce Street Bridge.

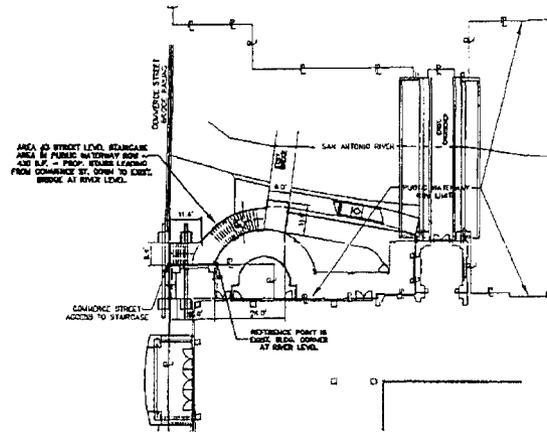
- 8.2. **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**. **LESSEE** shall be responsible for all trash removal within the lagoon area, beginning at a line from the southernmost edge of the Commerce Street Bridge. **LESSEE** shall be responsible for the maintenance of all trash cans within the lagoon area, including repair/replacement and regular installation/removal of trash can liners and disposal of all trash.
- 8.3. **LESSEE** shall, at its sole expense, keep the Leased Premises in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair all damages to the Leased Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the **DIRECTOR** 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. If **LESSEE** 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. **LESSEE** shall be responsible for all landscape maintenance on public property within the lagoon area, beginning at a line from the southernmost edge of the Commerce Street Bridge to include all watering, pruning, removal of dead plant material, mulching, and installation of replacement plants with like plants. Changes to landscape design and/or theme, including removal of existing plant material, is subject to written approval of Director or her designee.
- 8.5. **CITY** shall be responsible for the maintenance and cleaning of the waterway in the lagoon area.
- 8.6. **LESSEE** shall provide **CITY** access to public property within the lagoon area at all times, including from September – November and January – March for installation and removal, respectively, of holiday lights in trees. **CITY** shall provide **LESSEE** with notice advising of the date when the installation and removal of the holiday lights will begin.
- 8.7. Subject to the extension of the lagoon area license agreement for a term corresponding with the term of this Lease, **LESSEE** shall be responsible for maintenance of the lagoon island and bridge to the island, including painting, cleaning, mechanical, and electrical. **CITY** shall share access to the electrical closet, located on the west bank of the San Antonio River below the Commerce Street Bridge to accommodate **LESSEE'S** responsibility.
- 8.8. **LESSEE** will, at the termination of this Lease Agreement, return the Leased Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.
- 8.9. **LESSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LESSEE** both during the term of this Lease and as so left on the Leased Premises after **LESSEE** vacates the Leased Premises, unless caused by the sole negligence or willful misconduct of City or its elected officials, employees, officers, directors, volunteers, and/or representatives). If said signs, goods and any other property placed by **LESSEE** upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.



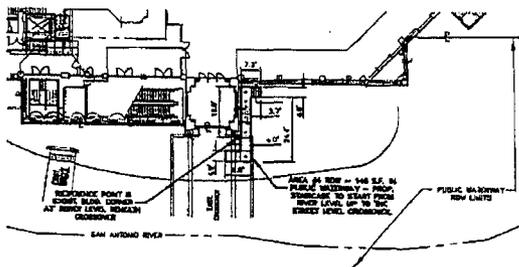
**AREA #1**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL



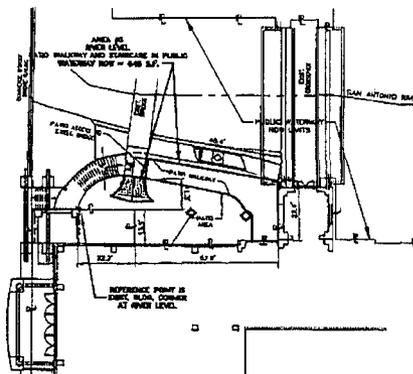
**AREA #2**  
RIVER CENTER EAST SIDE  
 STREET LEVEL



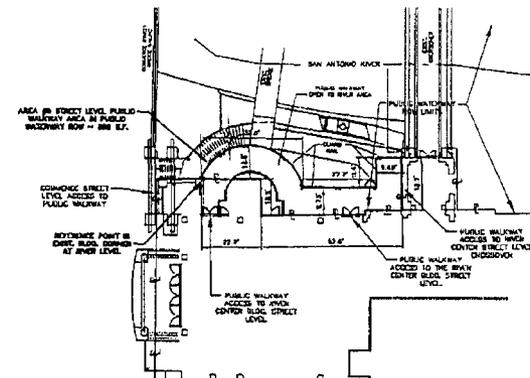
**AREA #3**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL TO STREET LEVEL



**AREA #4**  
RIVER CENTER WEST SIDE  
 RIVER LEVEL TO STREET LEVEL



**AREA #5**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL



**AREA #6**  
RIVER CENTER EAST SIDE  
 STREET LEVEL



**AP # 1457829**

REVISIONS	
DATE	DESCRIPTION

**BRIONES**  
 CONSULTING & ENGINEERING LTD.  
 10101 NORTH LOOP EAST, SUITE 1000  
 HOUSTON, TEXAS 77040  
 (713) 865-1100

LEASE AGREEMENT EXHIBIT DETAIL PLAN  
 RIVER CENTER MALL  
 BEXAR COUNTY, TEXAS

DATE: 08-01-08  
 JOB No. 2007-78  
 SHEET  
 2 of 2

## 9. TAXES AND LICENSES

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

## 10. ASSIGNMENT AND SUBLETTING

- 10.1. Except as to the parent, subsidiary or similarly affiliated company, **LESSEE** shall not assign this Lease Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** by the **DIRECTOR**. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.
- 10.2. Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease Agreement and in the 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 obligation.
- 10.3. The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and or an acceptance of the assignee, or occupant as a **LESSEE**, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

## 11. DEFAULT AND REMEDIES

- 11.1. The following events shall be deemed to be events of default by **LESSEE** under this Lease Agreement:
  - 11.1.1. **LESSEE** shall fail to pay any installment of rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days.
  - 11.1.2. The subletting of any part of the Leased Premises without prior written approval from the Director of the Downtown Operations Department, or her designee.
  - 11.1.3. The encroachment on the public right-of-way beyond the authorized Leased Premises.
  - 11.1.4. **LESSEE** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **LESSEE**, unless **LESSEE** has undertaken to effect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.

- 11.2. Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon CITY electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the Leased 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 LESSEE without relieving LESSEE of any liability hereunder as to rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. LESSEE shall make good any deficiency.
- 11.3. Any termination of this Lease Agreement as herein provided, shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LESSEE hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from LESSEE for any default hereunder. All rights, options and remedies of CITY contained in this Lease Agreement shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.
- 11.4. Upon any such expiration or termination of this Lease Agreement, LESSEE shall quit and peacefully surrender the Leased Premises to CITY, and CITY, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess LESSEE and remove LESSEE and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Leased Premises, and such action by CITY shall not constitute CITY'S acceptance of abandonment and surrender of the Leased Premises by LESSEE nor prevent CITY from pursuing all legal remedies available to it.

## 12. INDEMNIFICATION

- 12.1. LESSEE covenants and agrees to FULLY INDEMNIFY 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS,

**DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall advise the CITY in writing within 24 hours 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.

- 12.2. It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by LESSEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. LESSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

### **13. INSURANCE REQUIREMENTS**

- 13.1. 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.
- 13.2. Prior to the commencement of any work under this Lease Agreement, LESSEE shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Downtown Operations Department, 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), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the CITY'S Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.
- 13.3. Upon any renewal of the term of this Lease Agreement, the CITY shall have 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.

- 13.4. **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 this Lease Agreement, and any extension hereof, at **LESSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and for an amount not less than the amount listed:

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

**\*\* If Applicable.**

- 13.5. 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 coverage, and shall pay the cost thereof.
- 13.6. **LESSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 13.6.1. Name the **CITY** and its officers, employees, 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 and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 13.7. **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  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 13.8. 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. 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 Leased Premises hereunder until **LESSEE** demonstrates compliance with the requirements hereof.
- 13.9. 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. 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: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of **CITY** or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises (unless caused by the sole negligence or willful misconduct of City or its elected officials, employees, officers, directors, volunteers, and/or representatives). **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, except when said claims are the result of the City's sole negligence.

#### **14. RULES AND REGULATIONS AND PROHIBITED USES**

- 14.1. **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.
- 14.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Leased Premises without the prior written approval of the **CITY** through the Director, Downtown Operations Department, or her designee, 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.

- 14.3. **LESSEE** shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings as approved by **CITY** and all applicable boards and/or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC).
- 14.4. Encroachment on the public sidewalk beyond the authorized Leased Premises or into the Public Right-of-Way is not permitted.
- 14.5. There shall be twenty-four (24) hour access to all public walkways and staircases located in AREAS 3, 4, 5, and 6 of the Leased Premises. Public access to these walkways and staircases shall not be restricted at any time without the prior written consent of **CITY** by the Director of the Downtown Operations Department, or her designee.
- 14.6. No activity or method of operation shall be allowed in, on or about the Leased Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
  - 14.6.1. Nudity means total absence of clothing or covering for the human body.
  - 14.6.2. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
  - 14.6.3. Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.
- 14.7. The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.
- 14.8. Discrimination because of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment or in the use of or admission to the Leased Premises is prohibited.
- 14.9. **LESSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.
- 14.10. **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 that 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, 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. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the City Code of the City of San Antonio immediately prior to making such request. Failure to comply with this section may, at **CITY'S** option, constitute default under this Lease Agreement.
- 14.11. **LESSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person

to engage in vending on the Leased Premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to **LESSEE'S** customers seated at tables within the Leased Premises.

14.12. **LESSEE** shall abide by Vending Requirements and Regulations as set forth in Section 16-236 of the City Code of the City of San Antonio and Section 35-679 of the Unified Development Code.

14.12.1. Notwithstanding the preceding, **LESSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis are employees of **LESSEE** and the Mariachis are not allowed to engage in solicitation of business to **LESSEE'S** customers or any other persons on the Premises.

### **15. RESERVATIONS: CITY**

- 15.1. **CITY** reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LESSEE** shall not be entitled to an abatement or reduction of rent because of such entry, nor shall said entry be deemed an actual or constructive eviction of **LESSEE** from the Leased Premises. Should construction or other activity by **CITY** prevent **LESSEE'S** use of the Leased Premises for the purposes outlined herein for longer than ten (10) days, then **LESSEE** shall be entitled to an abatement of rent under this Lease Agreement for such period of time and, at **LESSEE'S** option, this Lease Agreement may be terminated or extended for the same number of days **LESSEE'S** use of Leased Premises was denied.
- 15.2. No provision of this Lease Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments or amusements, or river walk parades for the benefit of the public.
- 15.3. **CITY** park police 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.

### **16. HOLDING OVER**

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

### **17. QUIET ENJOYMENT**

- 17.1. **CITY** covenants and agrees, subject to the provisions of this Lease Agreement, that **LESSEE**, on paying the rent and all other charges in this Lease Agreement provided for and observing and performing the covenants, agreements and conditions of this Lease Agreement on its part to be

observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term without hindrance or molestation of any kind whatsoever.

#### 18. CONFLICT OF INTEREST

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

#### 19. SEPARABILITY

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

#### 20. NOTICES

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

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

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

or to such other address as 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:

New Rivercenter Mall II, L.P.  
849 E. Commerce

**San Antonio, Texas 78205**

Or at such other address on file with the City Clerk as **LESSEE** may provide from time to time in writing to **CITY**.

**21. PARTIES BOUND**

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

**22. TEXAS LAW TO APPLY**

- 22.1. **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

**23. LIEN FOR RENT**

- 23.1. In consideration of the mutual benefits arising under this Lease Agreement, **LESSEE** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto **CITY**, upon all property of **LESSEE** now or hereafter placed in or upon the Leased Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest in favor of **CITY** for payment of all rents and other sums agreed to be paid by **LESSEE** herein. At **CITY'S** request, **LESSEE** shall execute and deliver to **CITY** a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

**24. RELATIONSHIPS OF PARTIES**

- 24.1. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and **LESSEE**.

**25. GENDER**

- 25.1. Words of gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**26. CAPTIONS**

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

**27. ENTIRE AGREEMENT/AMENDMENT**

- 27.1. This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LESSEE.
- 27.2. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 27.3. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

**28. AUTHORITY**

28.1. 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.

**LESSOR:**

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

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

*[Handwritten Signature]*  
City Manager

ATTEST:

City Clerk

*[Handwritten Signature]*

APPROVED AS TO FORM:

City Attorney

*[Handwritten Signature]*

**LESSEE:**

**NEW RIVERCENTER MALL II, L.P.,  
A Delaware Limited Partnership**

Printed Name

*Ben Ashkenazy*

Signature

*[Handwritten Signature]*

Title

*President*

Address

~~849 E. Commerce~~  
*433 Fifth Avenue, Suite 200*

Address

~~San Antonio, Texas 78205~~

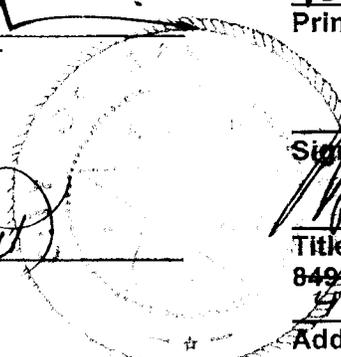
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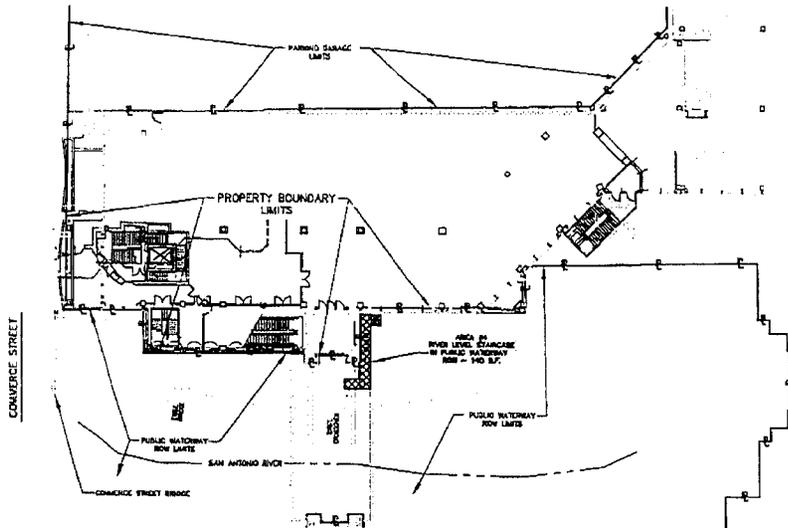
City, State, and Zip Code

(210) 225-0000

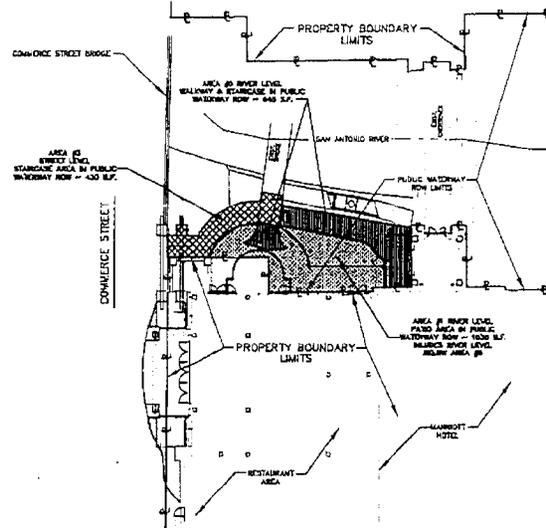
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Area Code/Telephone Number



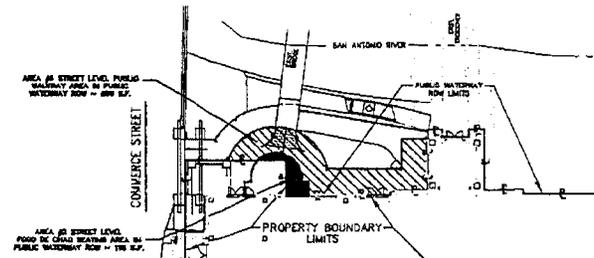


**RIVER CENTER WEST SIDE**

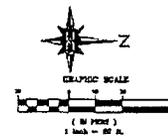


**RIVER CENTER EAST SIDE**

RIVER AREA				
AREA	LOCATION	SQ. FOOTAGE	TYPE	LEVEL
#1	RIVER AREA (EAST SIDE)	1035 S.F.	PATIO AREA	RIVER
#2	RIVER AREA (EAST SIDE)	118 S.F.	FOOD DE CHAO SEATING AREA	STREET
#3	RIVER AREA (EAST SIDE)	430 S.F.	STAIRCASE	STREET TO RIVER
#4	RIVER AREA (WEST SIDE)	140 S.F.	STAIRCASE	STREET TO RIVER
#5	RIVER AREA (EAST SIDE)	645 S.F.	WALKWAY/STAIRCASE	RIVER
#6	RIVER AREA (EAST SIDE)	899 S.F.	PUBLIC WALKWAY	STREET
TOTAL SQ. FOOTAGE AREA = 3265 S.F.				



**RIVER CENTER EAST SIDE**



**AP # 1457829**

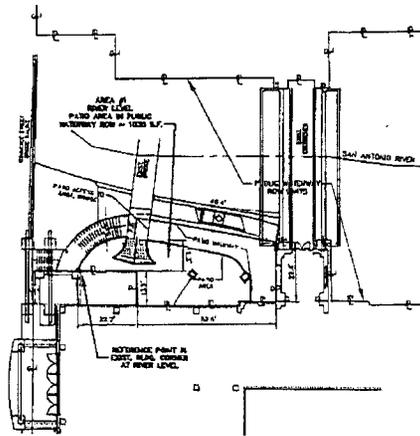
REVISIONS	
DATE	DESCRIPTION

**BRIDGES**  
 CONSULTING & ENGINEERING LTD.  
 2110 BROADWAY, SUITE 1000  
 SAN ANTONIO, TEXAS 78205-1114

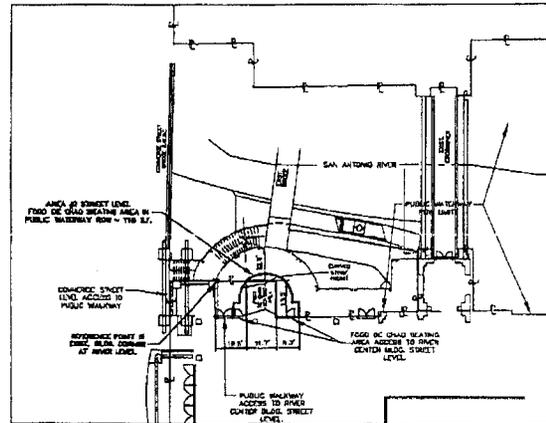
LEASE AGREEMENT EXHIBIT  
 RIVER CENTER MALL  
 BEXAR COUNTY, TEXAS

DATE: 08-01-08  
 JOB No. 2007-78  
 SHEET  
 1 OF 2

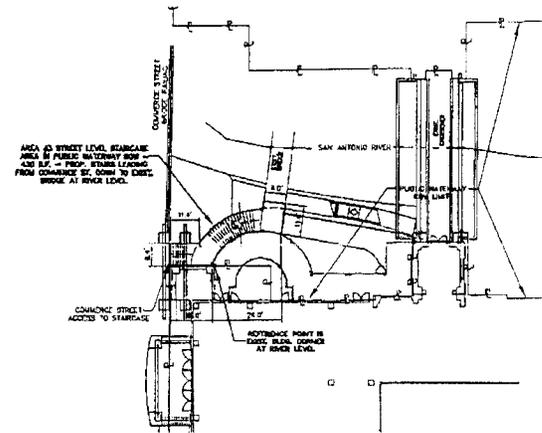
EXHIBIT A P. 1 OF 2



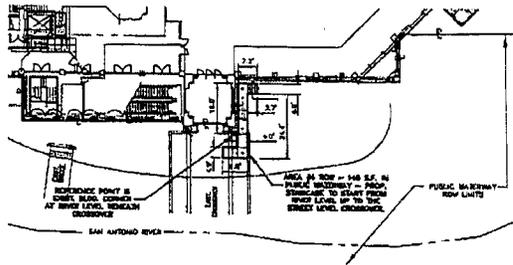
**AREA #1**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL



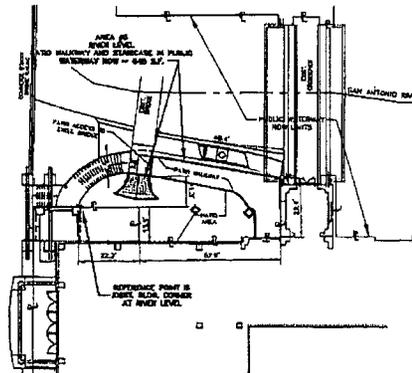
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RIVER CENTER EAST SIDE  
 STREET LEVEL



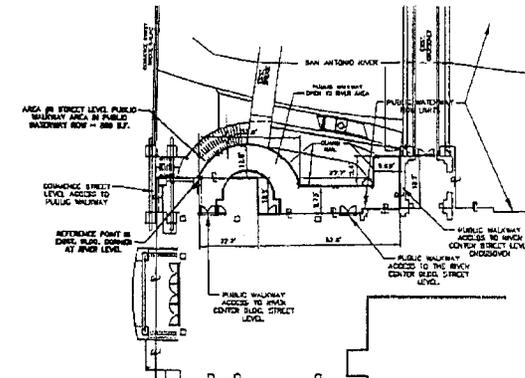
**AREA #3**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL TO STREET LEVEL



**AREA #4**  
RIVER CENTER WEST SIDE  
 RIVER LEVEL TO STREET LEVEL



**AREA #5**  
RIVER CENTER EAST SIDE  
 RIVER LEVEL



**AREA #6**  
RIVER CENTER EAST SIDE  
 STREET LEVEL



**AP # 1457829**

REVISIONS	
date	description

**BRIONES**  
 CONSULTING & ENGINEERING LTD.  
 5100 S. BRIDGES  
 SAN ANTONIO, TEXAS 78244  
 PROJECT NO. 1457829

LEASE AGREEMENT EXHIBIT DETAIL PLAN  
 RIVER CENTER MALL  
 BEXAR COUNTY, TEXAS

DATE: 08-01-08  
 JOB No. 2007-78  
 SHEET  
 2 OF 2



CMS or Ordinance Number: CN0040002744

TSLGRS File Code:1000-25

Document Title:

CONT - Twenty-year lease agreement with New Rivercenter Mall II LP for use of 1  
,151 square feet of Riverwalk Patio space located within the Rivercenter Mall lagoon area.

**Commencement Date:**

**9/1/2008**

**Expiration Date:**

**6/1/2029**



CMS or Ordinance Number: OR00000200808210722

TSLGRS File Code: 1000-05

Document Title:

ORD - Twenty-year lease agreement with New Rivercenter Mall II LP for use of 1,151 square feet of Riverwalk Patio space located within the Rivercenter Mall lagoon area.

**Ordinance Date:**  
**8/21/2008**

WFF/lgg [5/5/93;5/10/93;5/25/93;5/27/93]

File No. 88-0215E  
Riverwalk Extension & Lagoon  
Island and Stage Area  
(RIVERCENTER MALL)

## LICENSE AGREEMENT

This License Agreement is between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, as LICENSOR (hereinafter called "CITY") acting by and through its City Manager or Assistant City Manager, or Assistant to the City Manager, pursuant to Ordinance No. 77944 dated May 13, 1993, and KEYSTONE-TEXAS PROPERTY HOLDING CORP., a Texas Corporation, as "LICENSEE", being the owners of RIVERCENTER MALL.

WHEREAS, CITY has constructed certain public improvements known as the Riverwalk Extension and the Lagoon Island and Stage Area surrounded by the RIVERCENTER MALL; and

WHEREAS, CITY is agreeable to LICENSEE's use, maintenance and operation of such area for the performance of public or private events conducted by LICENSEE, NOW THEREFORE; the parties agree as follows:

### I. GRANT OF LICENSE

1.1. Licensed Premises. For and in consideration of the observance of the terms and conditions set forth below, the CITY grants to LICENSEE a License, being non-exclusive permission to use, maintain and operate, solely for the purpose described below that certain public right-of-way located in the Riverwalk Extension and Lagoon Area, legally described as the former Lots 71 and 72, N.C.B. 152 and Lots 9 and 10, N.C.B. 1010, San Antonio, Bexar County, Texas being an island on which is located an open-air stage area and adjacent concrete stairs and steel bridge, known as the "Licensed Premises" as shown on Exhibit "A" attached hereto. Said Licensed Premises is surrounded by the RIVERCENTER MALL, located on real property legally described as (1) Block 2, N.C.B. 1010, Rivercenter Subdivision, San Antonio, Bexar County, Texas, as shown by plat filed of Record in Volume 9513, Pages 46-47 of the Deed and Plat Records of Bexar County, Texas, (2) Rivercenter Subdivision Unit 1A, NCB 1010, Volume 9517, Page 164 of said Records, as well as (3) a 2.533 acre parcel of land on which Dillard's Department Store is located, legally described as part of NCB 151, San Antonio, Bexar County, Texas, and shown on Exhibit "B" attached hereto.

1.2. Purpose and Use. ~~The purpose of this License is to permit the use, maintenance and operation of the Licensed Premises for the performance of public or private events conducted by LICENSEE.~~ LICENSEE's entry into and use of CITY'S property above shall be limited and restricted to such purpose, together with the non-exclusive right of ingress and egress, together with the public in general over (1) the Riverwalk Extension and (2) the

stair area/ <sup>and steel bridge</sup> leading to said island and stage. CITY, however, reserves the right to use the Licensed Premises at any time, by notifying LICENSEE in advance and working with LICENSEE's schedule, so as to assure non-interruption of prior scheduled events. CITY specifically reserves the right herein to utilize, to the exclusion of LICENSEE, the Licensed Premises in connection with the San Antonio Texas Cavaliers' River Parade during The Fiesta San Antonio celebration and for the annual San Antonio Holiday River Lighting Parade celebration each year. LICENSEE agrees to provide CITY with a list of any scheduled events on a monthly basis and CITY reserves the right to use said premises for other performances in coordination with LICENSEE's scheduled events.

1.3. CITY's Superior Interest. LICENSEE acknowledges that this License is personal in nature and vests no right, title or interest in any of the property over, under, or upon the Licensed Premises nor the Riverwalk Extension and Lagoon Area. In connection therewith, CITY reserves the right at any time to enter upon the Licensed Premises for asserting its superior fee title and for any emergency which may occur. LICENSEE agrees to let CITY enter said area for the exercise of CITY's superior rights and for said emergency purposes.

## II. LICENSE FEE

2.1. Payment. ~~The License Fee for this grant is delivery to CITY by LICENSEE of the sum of 50% of each fee charged to a user of the Licensed Premises, if a fee is charged, payable annually upon the anniversary date of this License Agreement, at the office of the City Treasurer, 506 Dolorosa Street, San Antonio, Bexar County Texas, to be deposited into Index Code No. 012435. However, CITY reserves the right to use said Licensed Premises free of charge in accordance with Section 1.2 above. As additional consideration LICENSEE agrees to maintain the Licensed Premises for the entire term hereof and as detailed hereafter.~~

## III. TERM

3.1. Term. The License Agreement hereby granted shall be for a term of twenty-five (25) years, beginning on the date hereof (the "Effective Date"), unless otherwise terminated pursuant to the terms herein. Further, in addition to other termination provisions set forth herein, CITY reserves the right, every ten (10) years, that is, on or before the tenth year anniversary and twentieth year anniversary dates of this License Agreement, to review LICENSEE's use under the terms herein and to terminate said License Agreement if LICENSEE is not complying, to CITY's satisfaction, with the provisions herein.

#### IV.

#### CONSTRUCTION, MAINTENANCE AND OPERATIONS

4.1. Costs. LICENSEE agrees to maintain and operate the Licensed Premises at its sole cost and expense and agrees that CITY shall have no financial obligations whatsoever regarding this License. In conducting such maintenance and operation, LICENSEE, agrees to adhere to all applicable safety and environmental standards, and other rules and regulations, including those imposed by State law, federal law, City of San Antonio ordinances, and Bexar County ordinances and to obtain all necessary permits to perform any work in connection therewith.

4.2. Damages. CITY shall not be liable for any damages caused to the Licensed Premises by reason of LICENSEE's use thereof or by reason of any prior or future construction, use, maintenance or operation of said Licensed Premises or by virtue of any other performance, use, maintenance, ~~or~~ operation<sup>of</sup> activities authorized or permitted by CITY, not inconsistent with LICENSEE's use of said Licensed Premises.

4.3. Prohibition against Construction. LICENSEE shall not construct any improvements upon the Licensed Premises without first having said plans and specifications for the construction approved in writing in advance by CITY. Any temporary paraphernalia, such as lighting or decorations, will be allowed if tasteful in nature and not distracting from the overall image or appearance of the Riverwalk Extension, Lagoon, stairs, steel bridge, or island stage area.

4.4. Barricades. Should any barricades be necessary for performances, use, maintenance, operation, or construction by LICENSEE, the CITY Parks and Recreation Department shall be contacted in advance and consulted as to the placement of such barricades so as not to impede pedestrian access to the Riverwalk Extension and Lagoon areas. However, LICENSEE fully understands and agrees that the Riverwalk Extension and Lagoon Areas shall remain open at all times for the use of the public.

4.5. Not Binding. LICENSEE covenants that it shall not bind, nor shall its contractor or subcontractors, bind, or attempt to bind, CITY for payment of any money in connection with any performance, use, whether temporary or permanent in nature, maintenance, construction of improvements, operation or other work in, on or about the Licensed Premises, whether authorized or unauthorized hereunder.

4.6. Contractors and Subcontractors. LICENSEE hereby agrees to promptly pay all persons supplying labor, services, and materials in the performance of any and all maintenance and repair, as well as, construction work, including any current or future maintenance, repair, or construction that may hereafter be made and LICENSEE will require LICENSEE's contractor and

subcontractors to fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted by any person, persons, firm or corporation on account of labor, materials or services, to include, but not be limited to, performances, both amateur and professional, on the Licensed Premises, furnished to LICENSEE or to said contractors or subcontractors during any said performance, use, operation, maintenance or construction and against any claim for injury or death to persons or damage to property arising out of LICENSEE's use of the Licensed Premises or any such performance, use maintenance, operation or construction. The term "supply labor, services, and materials here under shall also include any public or private performances <sup>performed at the request, or with consent of, LICENSEE</sup> on the Licensed Premises by actors, dancers, singer, or other performing artists, whether amateurs or professionals.

4.7. **Signs.** LICENSEE will have LICENSEE's contractor and subcontractors agree to install all signs, including location, direction and warning signs, as required by applicable CITY and Bexar County ordinances, as well as, State and federal laws, in case performances, use, operations, maintenance, or construction warrant same. This Article IV shall apply to any claims made by performers, amateur or professional, who may be employees or who may be agents, independent contractors, representatives, sublicensees, or invitees of LICENSEE.

## V. LIABILITY/INSURANCE

5.1. **Liability.** CITY shall not assume any liability by reason of its grant of this License or LICENSEE's exercise of its rights hereunder. LICENSEE assumes, accepts, and recognizes full and complete responsibility and liability for any and all actions or claims which result from, grow out of, or are incident to the maintenance and use of the Licensed Premises or any part thereof by LICENSEE or its agents, employees, contractors, including, but not limited to, performers, both amateur and professional, representatives, sublicensees, or invitees, or subcontractors. LICENSEE agrees to fully indemnify, save and hold harmless CITY from and against all claims, liens, damages, injuries or deaths to third parties, expenses, including, but not limited to, all expenses incidental to the investigation and defense thereof, fees, fines, penalties, proceedings, actions, demands and suits made upon CITY based upon or arising out of, resulting from, or related to LICENSEE's activities under this License Agreement, including any acts or omissions of LICENSEE, any of LICENSEE's contractors or subcontractors or LICENSEE's agents, employees, representatives, sublicensees, or invitees, while in the exercise or performance by LICENSEE, LICENSEE's contractors, subcontractors, agents, employees, representatives, sublicensees or invitees of the rights or duties under this License Agreement

or any person, firm, or corporation, including, but not limited to, contractors and subcontractors, acting pursuant to a performance, maintenance, operation, or construction contract or any other contract with LICENSEE/<sup>relating to the Licensed Premises</sup> LICENSEE shall promptly advise CITY in writing of any claim or demand against LICENSEE or CITY known to LICENSEE related to or arising out of LICENSEE's activities under this License Agreement and shall see to the investigation of and defense of such claim or demand at LICENSEE's sole cost and expense, including the payment of attorney's fees and court costs. Further, CITY shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of a governmental body or authority or other matter beyond the reasonable control of CITY, or for any damage or inconvenience which may arise through repair or alteration of any part of the Riverwalk Extension or Lagoon or stairs leading to the stage or other public rights-of-way or on any other improvements within the Licensed Premises, or failure to make repairs, or from any cause whatever, except as results from CITY's sole active negligence or willful misconduct. The term "contractor" and "contractors" and "subcontractor(s)" used herein and elsewhere in this License Agreement shall also include independent contractors, such as performers, whether amateur or professional.

5.2. Proof of Insurance. LICENSEE shall provide and maintain through self-insurance or insurance, at LICENSEE's sole cost and expense, coverage in the following types and amounts for the term of the License, with companies licensed to do business in the State of Texas, to wit:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$100,000 Each Occurrence
2. Comprehensive General Liability to include (but not limited to) the following:	Combined Single Limit-for Bodily Injury and Property Damage: \$1,000,000 (or its equivalent)
(a) Premises/Operations	
(b) Independent Contractor	
(c) Products/Completed Operations	
(d) Contractual.	
(e) Personal Injury	

3. Property Insurance--for physical damage to the property of LICENSEE, including any improvements and betterments made to the Licensed Premises
- Eighty Percent (80%) of Replacement Cost Insurance coverage

With respect to the above-required insurance, the CITY shall:

1. Be named as a named insured as its interest may appear.
2. Be provided with a waiver of subrogation, as to Worker's Compensation and Employee's Liability only.
3. Be provided with 30 days' advance written notice of cancellation or material change.
4. Be provided with Documentation and/or Certificates of Insurance, evidencing the above insurance, prior to issuance of the License. Said Documentation shall be provided to:

**CITY CLERK**  
City of San Antonio  
City Hall/Military Plaza  
P.O. Box 839966/2nd Floor  
San Antonio, Texas 78283-3966

5.4. CITY shall not be liable for any damage either to the person or property of LICENSEE covered by this License or to other persons due to the premises or any part or appurtenances thereof arising from bursting or leaking of water, gas, waste pipes, sprinkler systems, or defective wiring or excessive or deficient electrical current or conduit malfunctioning, or from any act or omission of LICENSEE, or any other persons on or about said premises, unless such damage shall have been caused by the sole active negligence or willful misconduct of CITY, its employees, contractors or representatives, and then only to the extent of CITY's limits of liability under the Texas Tort Claims Act, with any indemnification to be made only upon final adjudication or payment as part of a settlement.

**VI.**  
**TERMINATION/DEFAULT**

6.1. The parties agree that this License Agreement may not be terminated prior to the expiration of the term unless (1) the use made of the premises under this License should be deemed inconsistent with the public use of the right(s) of way or may become a nuisance, pursuant to the provisions of Section 137 of the City of San Antonio, Texas City Charter; or (2) in the event LICENSEE abandons the use of the Licensed Premises for a period of

three (3) consecutive months, depending on scheduling of events or (3) fails to perform in accordance with the terms hereof, whereupon CITY shall notify LICENSEE in writing of such default. If LICENSEE fails to cure such default within ten (10) days after the date CITY mails said notice by Certified or Registered Mail, Return Receipt Requested, as provided hereafter, if a failure to pay the annual License Fee, or within thirty (30) days after the date CITY mails, as aforesaid, said notice if the default is other than a failure to pay the annual License Fee, then CITY may repossess the Licensed Premises, by force, if necessary, and remove LICENSEE and its improvements and fixtures, without any liability whatsoever to LICENSEE for damages caused thereby.

6.2 Upon expiration or termination of this License Agreement, all rights and privileges herein granted shall forthwith immediately cease and terminate and LICENSEE shall have the option of abandoning or recovering any improvements made to, or fixtures placed upon, the Licensed Premises. Should LICENSEE elect to recover said improvements or any portions thereof, then any damage to the surface of the island stage and stairs shall be restored at the sole cost and expense of LICENSEE to their original or better condition existing prior to said removal, and subject to approval of the CITY upon inspection. Any improvements or fixtures not recovered within ninety (90) days after the end of the license term, or other termination set forth herein, shall become the property of the CITY, without further action or liability on CITY's part.

## VII. ASSIGNMENT

7.1. This License Agreement is personal to LICENSEE and shall not be assigned by LICENSEE other than to its parent or an affiliate, without the written consent of CITY, as evidenced by passage of a CITY OF SAN ANTONIO Ordinance.

## VIII. AMENDMENT

8.1. No amendment, modification or alteration of the terms of this License Agreement shall be binding unless it be in writing, dated subsequent to the date hereof, agreed to and duly executed by the parties.

**IX.**  
**NOTICES**

9.1. To CITY. Notices to the CITY required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified Mail, Return Receipt Requested postage prepaid, addressed to:

**CITY CLERK**  
**City of San Antonio**  
**City Hall/Military Plaza**  
**P.O. 839966/2nd Floor**  
**San Antonio, Texas 78283-3966**

or to such other address as may hereafter be designated in writing by the City Manager of the CITY OF SAN ANTONIO.

9.2. To LICENSEE. Notices to LICENSEE shall be addressed to :

**KEYSTONE-TEXAS PROPERTY HOLDING CORP.**  
**c/o THE L & B GROUP**  
**2501 Cedar Springs Road, Suite 300**  
**Dallas, Texas 75201**  
**ATTN: Mr. T. Gregory Kraus**

or to such other address as may hereafter be designated in writing by LICENSEE.

**X.**  
**RELATIONSHIP OF PARTIES**

10.1. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provisions contained herein nor any acts of the parties hereto create a relationship other than that of LICENSOR and LICENSEE.

**XI.**  
**APPLICABLE LAW**

11.1. THIS LICENSE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREIN ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

**XII.**  
**CAPTIONS**

12.1. The captions contained in this instrument are for convenience only and in no way limit or enlarge the terms and conditions of this License.

**XIII.**  
**MISCELLANEOUS**

13.1 **Nondiscrimination.** LICENSEE covenants that LICENSEE, its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of the Licensed Premises, which said discrimination LICENSEE acknowledges is prohibited.

13.2 **Wages.** LICENSEE shall pay wages which are not less than the minimum wages required by Federal and State statutes and CITY and County ordinances, to persons employed in LICENSEE's operations under this License Agreement.

13.3 **No Substantial Interest.** LICENSEE acknowledges that it is informed that Texas law and the CITY OF SAN ANTONIO Charter prohibit contracts between the CITY and any local public official ("official"), such as a CITY officer and employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. LICENSEE certifies (and this License Agreement is made in reliance thereon) that neither LICENSEE, its employees or agents, nor any person having a substantial interest in this License Agreement, is an officer or employee of CITY or any of its agencies.

**XIV.**  
**ENTIRE AGREEMENT**

14.1. This instrument contains and constitutes the entire License Agreement between the parties. No promise, representation, commitment, or purported agreement by anyone acting for or on behalf of the CITY shall be binding upon CITY unless it is included herein or added hereto by amendment as provided in Section 8.1, it being understood that the Charter of CITY requires all contracts with CITY to be in writing and authorized by ordinance.

**XV.**  
**AUTHORITY**

15.1. The Signer of this License Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this License on behalf of LICENSEE and that he or she has had full opportunity to read the contents hereof and to seek its review by legal counsel.

EXECUTED to be effective as of 27, 1993 ("Effective Date"):

**LICENSOR:**

CITY OF SAN ANTONIO,  
a Texas Municipal Corporation

**LICENSEE:**

KEYSTONE-TEXAS PROPERTY  
HOLDING CORP.  
a Texas Corporation

By: *Travis M. Bishop*  
~~Travis M. Bishop~~, ~~Assistant City Manager~~ City Manager

Printed Name: DANIEL W. PHUMLEE  
Title: EXEC. VICE PRESIDENT

ATTEST: *Richard C. Porter*  
RICHARD C. PORTER  
CITY CLERK



*[Handwritten signature]*

E. COMMERCE STREET  
A.D.M. 1988

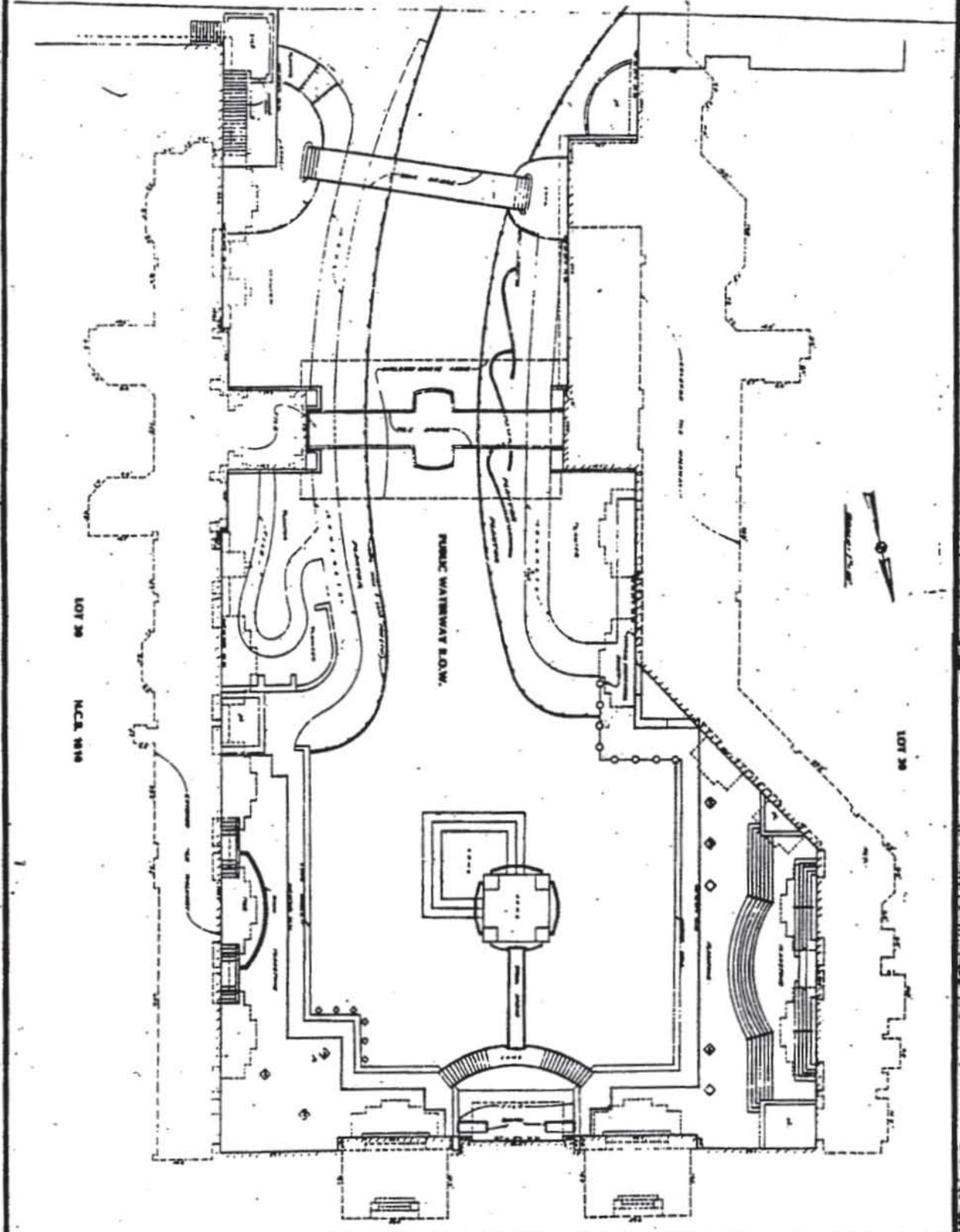


EXHIBIT "A"  
(Lagoon)

DETAIL OF IMPROVEMENTS AT RIVER

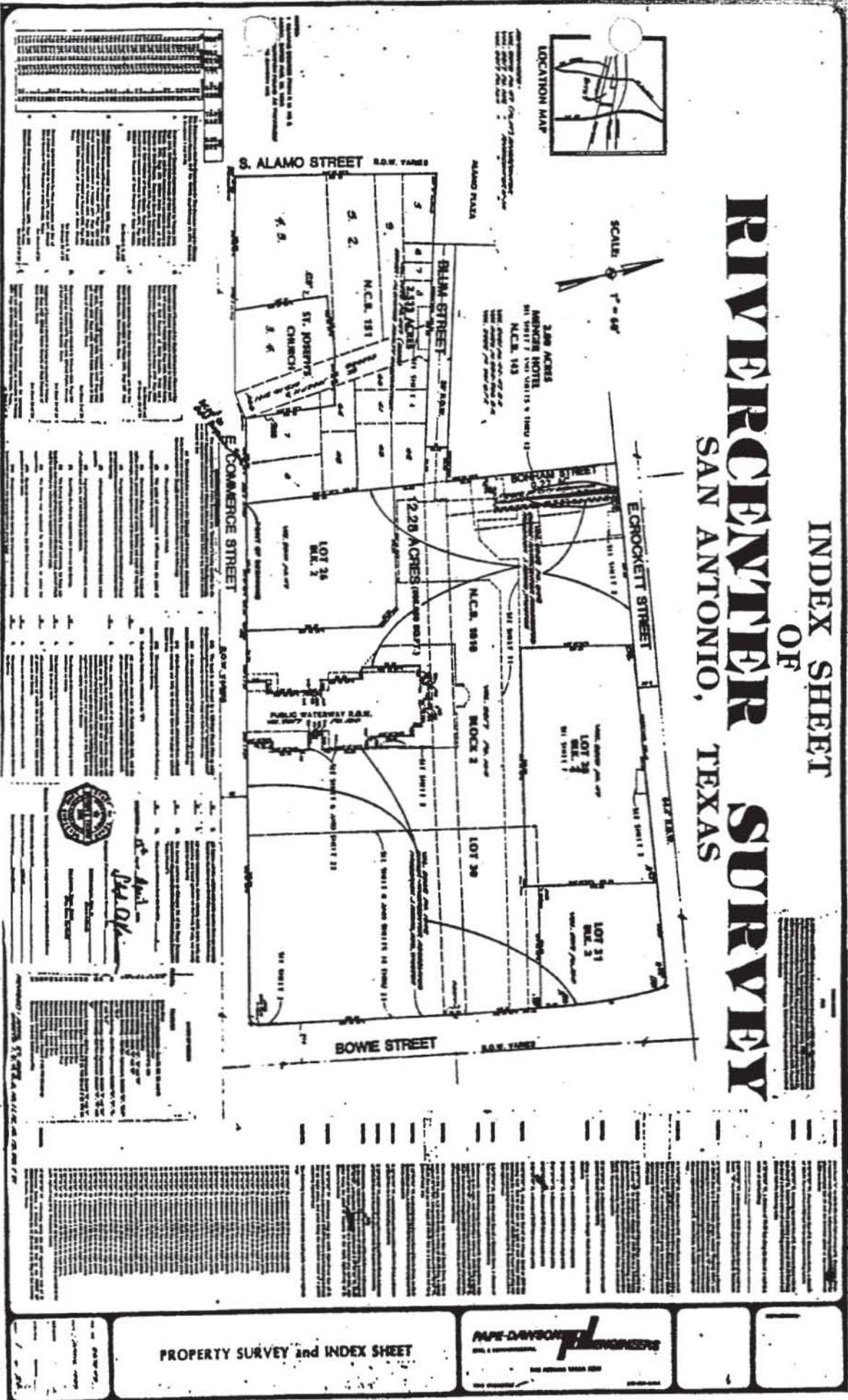
**PAPE-DANSON ENGINEERS**  
INC. & ASSOCIATES  
1000 WEST 10TH AVE.  
WILSON, B.C. V7M 1S6  
TEL: 251-1111

DATE: 11/11/88  
BY: J. DANSON  
CHECKED: J. DANSON  
SCALE: AS SHOWN  
PROJECT: [illegible]

SECTION: [illegible]  
DATE: 11/11/88

# INDEX SHEET OF RIVERCENTER SURVEY SAN ANTONIO, TEXAS

EXHIBIT "B"  
(Lagoon)



PROPERTY SURVEY and INDEX SHEET





**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 17  
Council Meeting Date: 8/21/2008  
RFCAs Tracking No: R-3709

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**DEPARTMENT:** Downtown Operations

**DEPARTMENT HEAD:** Paula Stallcup

**COUNCIL DISTRICT(S) IMPACTED:**  
Council District 1

**SUBJECT:**  
Lease Agreement with Rivercenter Mall

**SUMMARY:**

This ordinance establishes an agreement to lease River Walk patio space within the Rivercenter Mall lagoon area to New Rivercenter Mall II LP in support of new outdoor dining areas and authorizes the City Manager or her designee to execute an amendment to extend the license agreement for use of the lagoon island to run concurrently through the term of the lease.

**BACKGROUND INFORMATION:**

New Rivercenter Mall II LP (tenant) is proposing significant improvements to the mall over the next five years, and this agreement supports the initial phase of improvements within the lagoon area to include an outdoor patio dining area at river level and a balcony with an indoor dining area, which will both be on City property. The lease agreement includes the following provisions:

1. Tenant shall construct and maintain two public staircases, linking street level to east and west banks of the River Walk.
2. Tenant shall construct and maintain a balcony with public walkway on the east side of the river.
3. Tenant shall construct and maintain a public walkway at river level on the east side of the river.
4. Tenant shall be responsible for all landscape maintenance, cleaning of public walkways, and removal of all trash within the lagoon area.
5. Tenant shall be responsible for maintenance of lagoon island and bridge, including cleaning, painting, mechanical, and electrical.
6. City shall be responsible for cleaning river in lagoon area.
7. City shall be responsible for installing holiday lights on trees in lagoon area.
8. Lease shall be composed of a construction phase and an operations phase. Construction phase shall commence upon contract execution and end once operations begin. Operations phase shall commence no later than June 1, 2009 and end June 1, 2029.
9. City shall extend existing license agreement with Rivercenter for use of lagoon island to run concurrently with lease (extend from 2018 to 2029).

The Historic Design & Review Commission (HDRC) approved the improvements on April 16, 2008.

**NOTE:** In 1993, City Council approved a 25 year license agreement for use of the lagoon island with the owner of Rivercenter Mall (Keystone Texas Property Holding Corporation, subsequently assigned to New Rivercenter Mall II LP). In exchange for New Rivercenter Mall II LP assuming responsibility for maintenance within the lagoon area through 2029, New Rivercenter Mall II LP and the City have proposed to extend the term of license agreement for use of the island from 2018 to 2029 in order to run concurrently with lease agreement.

**ISSUE:**

Lease of River Walk property to adjacent businesses is consistent with City policy.

**ALTERNATIVES:**

City Council may choose not to lease River Walk property adjacent to Rivercenter Mall and/or may select alternate methods to achieve public improvements to the River Walk lagoon area.

**FISCAL IMPACT:**

Lease rates are consistent for River Walk property, based on market study, and are \$2.03/sf per month for river level commercial space and \$1.52/sf per month for street level commercial. During the first five years of the lease, the lease rate will remain unchanged, provided development improvements are in process at Rivercenter Mall. Beginning in Year 6 and for each subsequent year, the lease rate shall increase at 2.5% annually. In addition, the City may further adjust the lease rate at five year intervals, based upon market rate studies.

Rental payments shall begin upon operations phase, which shall begin no later than June 1, 2009.

	Rate per sf	# sf	Rate per month
River Level Commercial	\$2.03	1035	\$2,101.05
Street Level Commercial	\$1.52	116	\$176.32
			\$2,277.37

FY 2009 \$9,109.48  
 FY 2010 \$27,328.44  
 FY 2011 \$27,328.44  
 FY 2012 \$27,328.44  
 FY 2013 \$27,328.44

Revenue generated from this lease shall be deposited in the Community Development Block Grant Fund.

**RECOMMENDATION:**

Staff recommends approval of the agreement to lease River Walk property to Rivercenter Mall II LP and to amend the existing license agreement with Rivercenter Mall II LP to run concurrently with the proposed lease agreement.

**ATTACHMENT(S):**

File Description	File Name

<a href="#">Discretionary Contracts Disclosure Form</a>	DiscretionaryContractsDisclosureRivercenter.pdf
<a href="#">Lease Agreement</a>	RivercenterMallLeaseAgreement08122008.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200808210722.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Paula Stallcup Director Downtown Operations

**APPROVED FOR COUNCIL CONSIDERATION:**

Pat DiGiovanni Deputy City Manager