

AN ORDINANCE **2009 - 11 - 19 - 0938**

AUTHORIZING A 52-MONTH LEASE AGREEMENT WITH RIO RIO CANTINA CORPORATION D/B/A RIO RIO CANTINA TO UTILIZE CITY-OWNED RIVER WALK PROPERTY ADJACENT TO THEIR RESTAURANT FOR OUTDOOR FOOD AND BEVERAGE SERVICE AT 421 RIVER WALK WITH PAYMENTS OF \$4,331.92 IN FY 2010.

* * * * *

WHEREAS, Rio Rio Cantina operates at 421 River Walk, located north of the Commerce Street bridge on the west side of the San Antonio River; and

WHEREAS, the restaurant utilizes approximately 171 square feet (sf) of City-owned River Walk property for outdoor dining; and

WHEREAS, Rio Rio presently pays \$292.35 per month in rent; and

WHEREAS, under the new lease agreement, the monthly rent will be \$353.21, based on the rate for river level commercial space of \$2.06 per sf; and

WHEREAS, the rate increases 5% per year in January; and

WHEREAS, the proposed term of the agreement shall begin retroactively on November 1, 2009 and shall be valid through February 28, 2014; and

WHEREAS, although the standard River Walk lease term is five years (60 months), Rio Rio Cantina requested a slightly shorter period (52 months) in order for the term of this patio lease to correspond with their lease term of the adjacent building which they lease for all food preparation and to support the majority of their food and beverage service; **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 or her designee is hereby authorized to execute a 52-month lease agreement with Rio Rio Cantina Corporation d/b/a Rio Rio Cantina to utilize City-owned River Walk property adjacent to their restaurant for outdoor food and beverage service at 421 River Walk with payments of \$4,331.92 in FY 2010. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

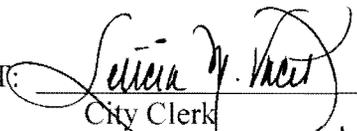
SECTION 2. Funds generated by this ordinance will be deposited into Fund 29093000, Internal Order 219000000001, General Ledger 4407711.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED this 19th day of November 2009.


M A Y O R
JULIÁN CASTRO

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Item:	29 (in consent vote: 6, 7, 8, 9, 10, 12, 13, 15, 16A, 16B, 16D, 17A, 17B, 17D, 18B, 19A, 20A, 20B, 20C, 20D, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33A, 33B, 33C, 33D, 33E, 33F, 34A, 34B)						
Date:	11/19/2009						
Time:	01:19:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a 52-month lease agreement with Rio Rio Cantina Corporation d/b/a Rio Rio Cantina to utilize City-owned River Walk property adjacent to their restaurant for outdoor food and beverage service at 421 River Walk with payments of \$4,331.92 in FY 2010. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x

LEASE AGREEMENT

This Lease Agreement (the "Lease") 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. _____ passed and approved by the City Council on the _____ day of _____, 2009, and **Rio Rio Cantina Corporation, d/b/a Rio Rio Cantina**, a Texas Corporation, (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 River Level Commercial Space: An area containing **171.46** square feet patio space adjacent the San Antonio River, directly across from the river level entrance of **Rio Rio Cantina Corporation, d/b/a Rio Rio Cantina**, located at 421 River Walk, New City Block 148, and within the River Walk, San Antonio, Bexar County, Texas.

2. USE OF PREMISES

2.1 LESSEE agrees that the Leased Premises shall be utilized for the sole purpose of outdoor dining and ancillary purposes thereto, including (without limitation) (i) the service of food and alcoholic and non-alcoholic beverages and (ii) the location of space heaters, lights, designated music areas, and such other personal property approved by the Director of Downtown Operations Department and any and all other necessary departments, boards or commissions of the City, including but not limited to, the Historic Design and Review Commission. For purposes of this Section, approval of improvements or alterations to the Leased Premises by the Historic Design and Review Commission or its successor shall constitute approval of the CITY. All use of the Leased Premises shall be 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.

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 concrete sidewalk designated by the CITY for safe passage by pedestrians and identified on 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 to an extent which violates the CITY'S laws pertaining to queuing along the River Walk area. 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 in a

material way may, at CITY'S option, constitute default under this Lease Agreement subject to the notice and cure period set forth in Article 11 hereof.

3. TERM, AND TERMINATION

- 3.1 The term of this Lease is for a period beginning on November 1, 2009 and ending on February 28, 2014, unless terminated sooner according to conditions within Article 11 herein.

4. RENTAL

- 4.1 The monthly rental shall be **\$2.06** per square foot per month for November & December 2009, and shall increase by a rate of five percent (5%) per square foot per year each January throughout the lease term. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each calendar month in accordance with the following payment schedule:

4.1.1 11/1/2009 – 12/31/2009 (**\$2.06** per square foot per month): **\$706.42** payable in one lump sum in advance or **\$353.21** per month.

4.1.2 1/1/2010 – 12/31/2010 (**\$2.16** per square foot per month): **\$4,444.20** payable in one lump sum in advance per year or **\$370.35** per month.

4.1.3 1/1/2011 – 12/31/2011 (**\$2.27** per square foot per month): **\$4,670.52** payable in one lump sum in advance per year or **\$389.21** per month.

4.1.4 1/1/2012 – 12/31/2012 (**\$2.38** per square foot per month): **\$4,896.84** payable in one lump sum in advance per year or **\$408.07** per month.

4.1.5 1/1/2013 – 12/31/2013 (**\$2.50** per square foot per month): **\$5,143.80** payable in one lump sum in advance per year or **\$428.65** per month.

4.1.6 1/1/2014 – 2/28/2014 (**\$2.63** per square foot per month): **\$901.88** payable in one lump sum in advance per year or **\$450.94** per month.

- 4.2 Payment shall be submitted to:

Financial Services Division
Revenue Collections
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 CALENDAR MONTH DURING THE TERM OF THIS LEASE AGREEMENT.

- 4.3 A twenty (\$20.00) dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable month or any day thereafter. All past due rentals under the terms of this License Agreement shall bear interest at the rate of 12% per annum from the date due until paid in full by LICENSEE, or at the highest rate allowed by law, should 12% be deemed usurious.

- 4.3.1 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** Financial Services Division by the close of business on the first day of each calendar month.
- 4.3.2 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
- 4.3.3 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.
- 4.3.4 Notwithstanding anything to the contrary set forth in this Lease Agreement, if **LESSEE** shall fail to make the 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 within ten (10) days of when the same is due, 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 after such ten (10) day period of when such amount was due, any further similar failure within said twelve (12) month period shall be deemed to be a **Repeated Event of Default**.
- 4.3.5 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 beyond the ten (10) day period, may terminate this Lease forthwith without further notice to **LESSEE**, provided such termination is approved by the City Council of the **CITY**.

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. Likewise, except for its maintenance obligations set forth herein, **LESSEE** has no obligation to decorate, alter or improve the Leased Premises.

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. For purposes of this Section, approval of any improvements or alterations to the Leased Premises by the Historic Design and Review Commission or its successor shall constitute approval of **CITY**.
- 7.2 **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with **LESSEE'S** 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 arising as a result of **LESSEE'S** construction, repair, alteration, addition or reconstruction and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, reasonable attorney's fees, or court costs incurred by **CITY**.

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 concrete sidewalk adjacent to the Leased Premises free and clear of any tables or other property placed by **LESSEE** on such Leased Premises, and **LESSEE** shall not use any of said concrete sidewalk 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 of the concrete sidewalk adjacent to the Leased Premises.
- 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 (in all material respects) with all applicable garbage, sanitary and health regulations of the **CITY**.
- 8.3 Other than as provided herein, **LESSEE** shall at its sole expense, keep the Leased Premises in good order, and repair, at all times during the Term and shall promptly repair all damages to the Leased Premises or replace any broken fixtures, which damages or breakage is caused by **LESSEE** and/or **LESSEE'S** agents or invitees, 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. For purposes of this Section, approval of any repairs and replacements by the Historic Design and Review Commission or its successor shall constitute approval of the CITY.

- 8.4 CITY shall be responsible for sidewalk repairs to the sidewalk adjacent to the Leased Premises other than those necessitated by the actions of LESSEE, as required to conform with safety and aesthetic standards, subject to annual appropriation by the City Council of the CITY.
- 8.5 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 accepted.
- 8.6 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 (except to the extent, if any CITY may be held liable for causing such damages or destruction) and as so left on the Leased Premises after LESSEE vacates the Leased Premises. 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.

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 a default (after the expiration of the requisite notice and cure period) under the Lease, and grounds for termination of this Lease Agreement by the CITY, as provided in Section 11 below.

10. ASSIGNMENT AND SUBLETTING

- 10.1 Except as to the parent, subsidiary or similarly affiliated company, LESSEE shall not assign this Lease, 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 which may be given only by or pursuant to an ordinance enacted by the CITY Council of San Antonio, Texas. The CITY agrees not to unreasonably withhold, condition, or delay any required consent to a requested subletting or assignment. Within ninety (90) days of approval of such sublease, assignment, or subcontract by City Council, LESSEE shall provide CITY with a copy of the fully executed sublease, assignment, or subcontract. Any assignment or subletting by LESSEE without such permission shall be a default (after requisite notice and cure period) under Lease, and constitute grounds for termination of this Lease by the CITY, as provided in Section 11 below.
- 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 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 a non-permitted 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. No provision of this Lease 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 and such failure shall continue for a period of ten (10) days following receipt of written notice of failure to pay any installment of rent when due and owing.
- 11.1.2 **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, but only as to the thirty (30) day period following termination.
- 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 prior to the date of termination, 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. Provided, however, unless **LESSEE** holds over, **LESSEE** shall not be liable for rent or other charges hereunder attributable to the period 30 days after the **CITY** terminates this Lease or resumes control over the Leased Premises.

- 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, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 Lease, 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 the rights or the performance of the duties under this Lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence or willful misconduct causes personal injury, death, or property damage. IN THE EVENT LESSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 12.2 The provisions of this 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 two (2) business days of any claim or demand against the CITY or LICENSEE known to LESSEE related to or arising out of LESSEE'S activities under this LEASE and shall see to the investigation and defense of such claim or demand covered by this indemnity 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.

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 this Lease 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, **LESSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Downtown Operations Department, which shall be clearly labeled "Rio Rio Cantina Lease Agreement" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY'S** Downtown Operations Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof (but not more frequently than one (1) year intervals) and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk and in no event shall such modification require coverages not reasonably available.

A **LESSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of this 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 with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Contractual liability e. Personal Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 General Aggregate, or its equivalent in umbrella or excess liability coverage.
3.	Property Insurance: For physical damage to the property of LESSEE , including improvements and betterment to the LEASED PREMISES.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LESSEE'S property
4.	Liquor Liability	\$1,000,000 per occurrence

- 13.3 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, LESSEE shall exercise reasonable efforts to comply with any such requests and to submit a copy of the replacement certificate of insurance to CITY if obtained, at the address provided below within 10 days of the requested change. LESSEE shall pay any costs incurred resulting from said changes.

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

- 13.4 LESSEE agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- 13.4.1 Name the CITY and its officers, employees, volunteers and elected representatives as additional insured 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;
- 13.4.2 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;
- 13.4.3 Workers' Compensation and Employers' Liability policy will provide a waiver of subrogation in favor of the CITY.
- 13.4.4 Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

If LESSEE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, after written notice and opportunity to cure as provided herein, the CITY may obtain such insurance, and submit the invoice for the cost of such insurance to LESSEE, who agrees to pay such invoice within thirty (30) days of receipt of same.

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 Agreement.

- 13.5 In addition to any other remedies the CITY may have 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 work hereunder, and/or withhold any payments which become due to LESSEE hereunder until LESSEE demonstrates compliance with the requirements hereof.
- 13.6 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. Except to the degree and extent, if any, CITY may be held liable for causing any such damage, 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.
- 13.7 It is agreed that LESSEE'S insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.
- 13.8 LESSEE and any subcontractors are responsible for all damage to their own equipment and/or property, unless the same is caused by the gross negligence or willful misconduct of the CITY.

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. Provided however, notwithstanding the above, CITY approves those existing advertisements, signs, declarations, and displays currently existing in or about the Leased Premises as of the date of this Agreement for which prior written approval of such necessary department, boards, or commission of CITY has already been obtained (and the same may be replaced or repaired with like-kind signage provided appropriate application is made, and approval is received from, CITY'S Historic Preservation Office).
- 14.3 LESSEE shall be allowed to place chairs and tables on the Leased Premises. CITY will continue to allow use of areas on the edge of the San Antonio River for boarding and off-loading of dinner barges, as designated and approved from time to time by the CITY. CITY will use reasonable efforts to limit the amount of time during LESSEE'S business hours that CITY maintenance barge are anchored or tied up adjacent to or directly across from the Leased Premises.

- 14.4 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:
- 14.4.1 Nudity means total absence of clothing or covering for the human body.
- 14.4.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 14.4.3 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default subject to applicable notice and cure periods.
- 14.5 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.
- 14.6 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.
- 14.7 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.
- 14.8 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 Leased 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, subject to applicable notice and cure periods.
- 14.9 LESSEE shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the Premises, other than the ordinary and customary restaurant service with wait staff bringing and food and beverages to LESSEE'S customers seated at tables within the Premises. 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. 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, and provided public right of way is not obstructed.

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. Provided, such entrance does not materially hinder LESSEE'S business operations, 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 fifty percent (150%) 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 Landlord 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 Landlord warrants and certifies, and this lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

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, first class or 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
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

Or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LESSEE** shall be deemed sufficient if in writing and mailed, first class or Registered or Certified mail, Postage Prepaid, addressed to **LESSEE** at:

Rio Rio Cantina Corporation
d/b/a Rio Rio Cantina
875 E. Ashby Place, Bldg 2
San Antonio, Texas 78212

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. Upon written request of LESSEE, CITY agrees to subordinate its statutory and contractual liens to the lien of any third party lender of LESSEE, in such form as may be reasonably requested by such third party lender.

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.

AUTHORITY

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: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LESSEE:

**Rio Rio Cantina Corporation
d/b/a Rio Rio Cantina**

Vivian Hurt *Vivian Hurt*

Printed Name & Signature

Vice President

Title

875 E Ashby Place Building 2

Address

San Antonio, TX 78212

City, State, and Zip Code

(210) 828-4525

Area Code/Telephone Number

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

METES AND BOUNDS DESCRIPTION FOR LEASE AREA 11
0.004 OF AN ACRE (171.46 SQUARE FEET) OUT OF
THE SAN ANTONIO RIVER PROPERTY
CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS

Being a 0.004-acre (171.46 square feet) lease area within the San Antonio River Property, being out of the original town tract of the City of San Antonio, Bexar County, Texas. Said 0.004-acre lease area being more particularly described as follows:

COMMENCING at a set MAG nail on the southwest line of said San Antonio River Property, at the north corner of the Schultze and Rilling Buildings Renovation Joint Venture, 0.139-acre tract, recorded in Volume 3668, Page 593, Official Public Records of Real Property Records of Bexar County, Texas, same point also being a corner of the Riverwalk Properties, Ltd., 0.473-acre tract, recorded in Volume 5647, Page 96, Official Public Records of Real Property of Bexar County, Texas, North 76°12'17" East, into said San Antonio River Property, a distance of 6.28 feet to a set MAG nail in concrete, for the **POINT OF BEGINNING** and most westerly corner of the herein described lease area;

Thence; North 57°17'05" East, a distance of 4.88 feet to a point at the edge of the southwest bank of the San Antonio River, for the most northerly corner of the herein described lease area;

Thence; along said southwest river bank, the following three (3) courses;

South 31°01'08" East, a distance of 13.15 feet to a point at the edge of said river bank, for a corner of the herein described lease area;

North 60°16'48" East, a distance of 0.30 feet to a point at the edge of said river bank, for a corner of the herein described lease area;

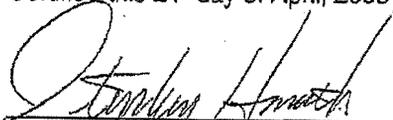
South 33°20'00" East, a distance of 22.37 feet to a point at the edge of said river bank, for the most easterly corner of the herein described lease area;

Thence; South 57°17'05" West, departing said southwest river bank, at 1.21 feet passing a found 60D nail, continuing for a total distance of 5.03 feet to a set MAG nail in concrete, for the most southerly corner of the herein described lease area;

Thence; North 32°42'55" West, a distance of 35.53 feet to the **POINT OF BEGINNING**, containing 0.004 of an acre (171.46 square feet), more or less.

Job No. 1535-017
RA m&b0.004ac
April 21, 2008

Certified this 21st day of April, 2008


Stephen Horvath, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 2811
Vickrey & Associates, Inc.



