

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa B. Vossmer; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Authorizing a Five Year Lease Agreement with Dick's Last Resort of Texas, Inc., d/b/a/ Dick's Last Resort, for Lease of Patio Space on the San Antonio River Walk

DATE: June 5, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a standard five (5) year Lease Agreement with Dick's Last Resort of Texas, Inc., d/b/a/ Dick's Last Resort, a restaurant, for lease of patio space on the San Antonio River Walk in City Council District 1 for outdoor patio dining purposes.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The City owns properties along the San Antonio River Walk, which are leased to businesses through contracts negotiated by the Parks and Recreation Department Contract Services Division. The agreement under consideration is with Dick's Last Resort of Texas, Inc., d/b/a/ Dick's Last Resort, for an area containing a total of approximately 786.93 square feet of public property on the River Walk for outside dining purposes. This is a renewal of the lease for this business.

The lease is for a five (5) year term from August 1, 2002 through July 31, 2007. The agreement specifies a rent of \$1.64 per square foot per month for the first year (\$15,486.84 annually), increasing each year by a rate of three percent. This rate is consistent for this area of the River Walk.

POLICY ANALYSIS

This lease agreement is consistent with other leases presently in effect for space on the San Antonio River Walk. It continues the City's policy to enter into agreements that provide good

quality entertainment and restaurant services for visitors to this important City Parks and Recreation Department facility.

FISCAL IMPACT

The monthly rental is \$1.64 per square foot per month for the first lease year and will increase by a rate of three percent (3%) per square foot per year, commencing on the anniversary date of each remaining lease year. The City will receive the following rental income from this proposed Lease Agreement:

First 12 months (\$1.64 per square foot per month): \$15,486.84/annually
Second 12 months (\$1.69 per square foot per month): \$15,958.92/annually
Third 12 months (\$1.74 per square foot per month): \$16,431.12/annually
Fourth 12 months (\$1.79 per square foot per month): \$16,903.20/annually
Fifth 12 months (\$1.84 per square foot per month): \$17,375.40/annually

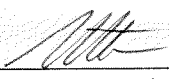
These rental fees will be deposited into the River Walk Capital Improvement Fund.

COORDINATION

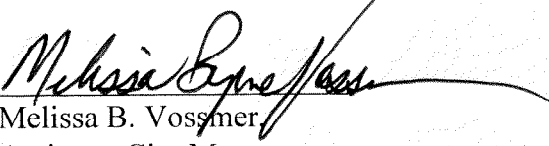
The City Attorney's Office, Risk Management and Asset Management have reviewed and approved this standard lease agreement.

SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure Form completed by Dick's Last Resort of Texas, Inc. is attached.

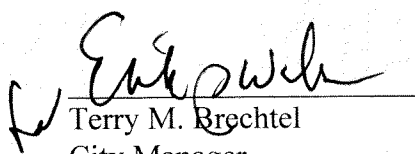


Malcolm Matthews,
Director of Parks and Recreation

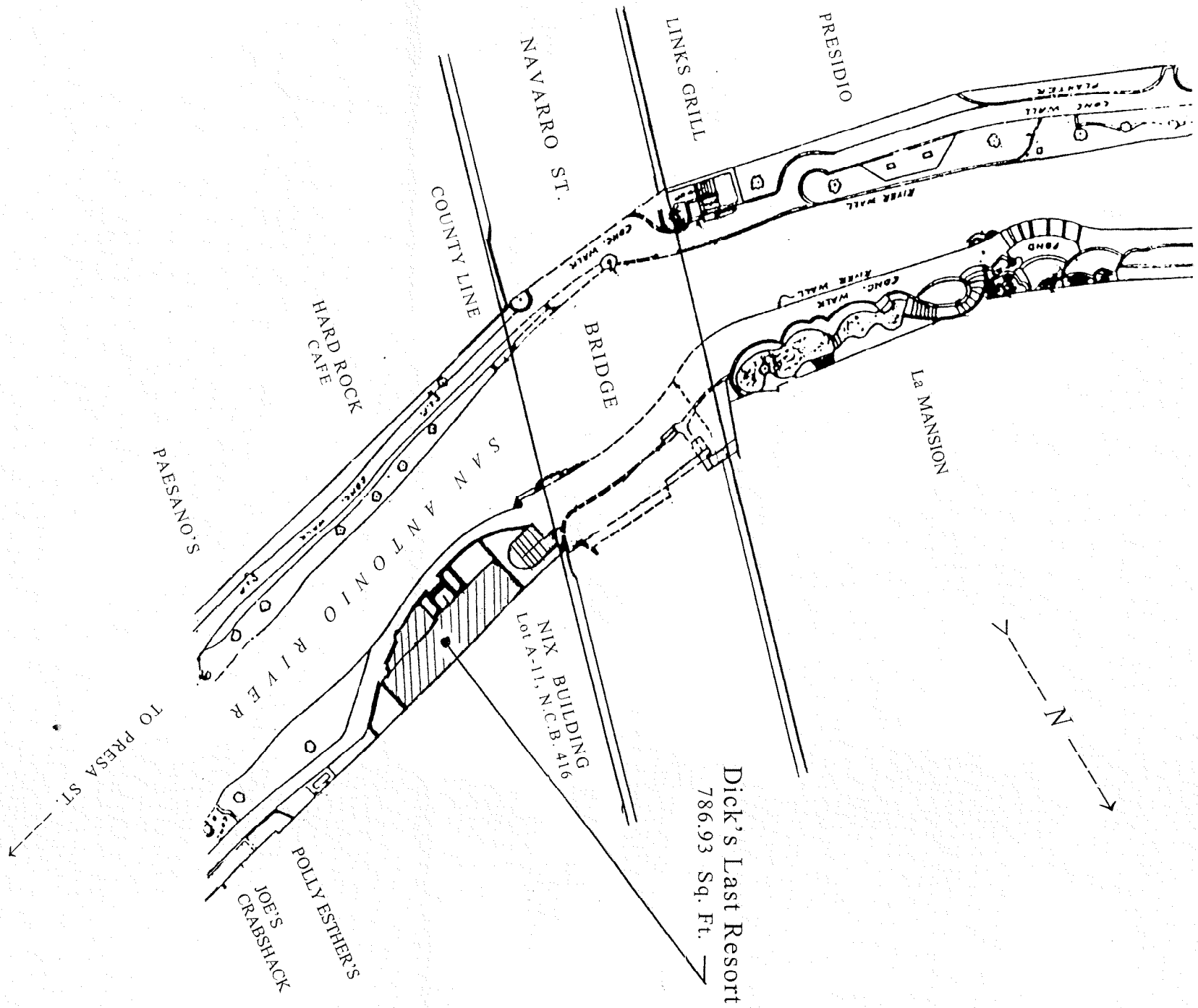


Melissa B. Vossmer
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager



City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State Not Applicable for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract;

(2) the identity of any **business entity** that would be a party to the discretionary contract:

Dick's Last Resort of Texas, Inc., a Texas corporation

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

None

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

**Steven S. Schiff
4514 Travis St., Suite 220
Dallas, Texas 75205**

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

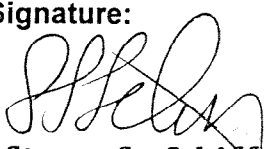
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made: None	Amount:	Date of Contribution:
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Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature:  Steven S. Schiff	Title: President Company: Dick's Last Resort of Texas, Inc.	Date: 5/5/03

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

RIVERWALK LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____, dated _____, 2003 AD, passed and approved by City Council (hereinafter referred to as "CITY"), and **Dick's Last Resort of Texas, Inc.** a Texas Corporation, **d/b/a Dick's Last Resort** (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 Exhibits A and B and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Leased Premises) are further described as follows:

An area containing a total of 786.93 square feet of patio space adjacent to the river level entrance of Dick's Last Resort, a Restaurant, located at 406 Navarro St. and adjacent to the Nix Building, Lot A-11, New City Block 416, and within the River Walk Linear park Landmark District, San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING from the southwest corner of the Nix building on line with the south line of the Nix Building 18.8' on a northeasterly direction to point of beginning for the northwest corner of lease;

THENCE in same northeasterly direction 54.7' on the south line of the Nix Building for the northeast corner of lease;

THENCE in a southeasterly direction 12.4' for the southeast corner of lease;

THENCE in a southwesterly direction 16.0', southeasterly direction 2.1', southwesterly direction 26.5' for the southwest corner of lease;

THENCE in a northwesterly direction 14.4' to point of beginning, containing \pm 786.93 square feet.

2. USE OF PREMISES

- 2.1 CITY hereby agrees to permit LESSEE use of above described CITY-owned property located at 406 Navarro St. River Walk, River Walk Level, San Antonio, Bexar County, Texas. **LESSEE agrees that 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.**
- 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 minimum six (6) foot public right-of-way along the River Walk area to follow the path designated by the CITY for safe passage by pedestrians, which is described by the diagram attached hereto and incorporated herein as Exhibit B. 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, after notice and opportunity to cure, at City's option, constitute default under this Lease Agreement.

3. TERM AND TERMINATION

- 3.1 The term of this Lease is for a five (5) year period beginning on August 1, 2002 and ending on July 31, 2007. The right is expressly reserved to the CITY, acting through the City Council, to terminate this Agreement for the following:
- 3.1.1 In the event this Lease Agreement shall have been adjudicated to be inconsistent with the public use of the property along with other leases of City owned property along this area of the River Walk and such other leases have been treated similarly; 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 may cancel this Lease by giving thirty (30) days written notice to the CITY.

4. RENTAL

- 4.1 The monthly rental rate shall be \$1.64 cents per square foot per month or \$19.68 per square foot per year for the first lease year, and shall increase by the rate of three percent (3%) per square foot per year, commencing on the anniversary date of each remaining Lease year. 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:
- 4.1.1 First 12 months: \$15,486.84 annually, payable in one lump sum in advance or \$1,290.57 per month. Rate: \$1.64 per square foot, per month.
 - 4.1.2 Second 12 months: \$15,958.92 annually, payable in one lump sum in advance or \$1,329.91 per month. Rate: \$1.69 per square foot, per month.
 - 4.1.3 Third 12 months: \$16,431.12 annually, payable in one lump sum in advance or \$1,369.26 per month. Rate: \$1.74 per square foot, per month.
 - 4.1.4 Fourth 12 months: \$16,903.20 annually, payable in one lump sum in advance or \$1,408.60 per month. Rate: \$1.79 per square foot, per month.
 - 4.1.5 Fifth 12 months: \$17,375.40 annually, payable in one lump sum in advance or \$1,447.95 per month. Rate: \$1.84 per square foot, per month.
- 4.2 Payment shall be submitted to:

Treasury Supervisor
City Hall Annex
P.O. Box 839975
San Antonio, Texas 78283-3975

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

5. ACCEPTANCE AND CONDITION OF PREMISES

- 5.1 LESSEE has had full opportunity to examine the Leased Premises and acknowledges that to the knowledge of the LESSEE, 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, that may be necessary for its operations as authorized herein on the Leased Premises. LESSEE further agrees to pay all charges incurred by LESSEE associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, LESSEE agrees to pay any expenses therefor.

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 LESSEE agrees to preserve a narrow strip of landscaping at the base of the wall along the river behind the paved area on which the tables and chairs are to be situated.

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 River Walk property free and clear on any tables or other property placed by LESSEE. Tenants 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.
- 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.
- 8.3 Other than as provided herein, LESSEE shall be responsible for the condition of the Leased Premises. LESSEE shall repair any damage to the Leased Premises caused by LESSEE, and

shall maintain, or caused to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition.

- 8.4 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.
- 8.5 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. 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 therefor.

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, 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. Any assignment or subletting by LESSEE without such permission shall constitute grounds for termination of this Lease 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 and in the building and property referred to herein; and, to the extent that such assignee assumes City's obligations hereunder, CITY shall, by virtue of such assignment, be released from such 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. No provision of this Lease shall be deemed to have been waived by the CITY unless such waiver is in writing signed by the CITY.

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 instalment 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.
- 11.1.3 The taking by a court of competent jurisdiction of LESSEE and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

- 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, except under Article III, Section 3.1.1 and 3.1.2., 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. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall promptly advise the CITY in writing of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LESSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

- 12.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 12), 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 AGREEMENT, LESSEE shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to the City. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- 13.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the city's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 13.4 A lessee's financial integrity is of interest to CITY, therefore, subject to lessee's right to maintain reasonable deductibles in such amounts as are approved by CITY, LESSEE shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at LESSEE'S sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation 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*	Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate or its equivalent in excess or umbrella liability coverage
3.	Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined single limit of \$1,000,000 per occurrence
4.	Property Insurance: For physical damage to the property of LESSEE, including improvements and betterments to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the actual cash of LESSEE'S property
5.	Liquor Liability	\$1,000,000 per occurrence, general aggregate of \$2,000,000

* 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 coverages, 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, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;

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
Department of Parks and Recreation
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

- 13.8 If LESSEE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of LESSEE to maintain said insurance or secure said endorsements. 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(s) which become due to LESSEE hereunder until LESSEE demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extend 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.
- 13.10 All personal property placed in the Leased Premises shall be at the sole risk of LESSEE. CITY shall not be liable, and LESSEE waives all claims for any damage either to the person or property of LESSEE or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. LESSEE shall save and hold harmless CITY from any claims arising out of damage to lessee's property or damage to lessee's business, including subrogation claims by lessee's insurers.

14. RULES AND REGULATIONS

- 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 of Parks and Recreation 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 will be allowed to place chairs and tables, as indicated by approved site plan attached as Exhibits A on the river walk 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.

14.5 The operation of a massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.

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 agrees, upon provision by the CITY of notice to LESSEE of any employee in lessee's operations that may be reasonably deemed to be discourteous or objectionable or rude, to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Leased Premises.

14.9 LESSEE shall not place speakers or amplified music on or near the patio of the Leased Premises or in any other location outside the enclosed building on any side of the premises which can be seen from the San Antonio River. LESSEE shall comply with City's laws pertaining to noise. LESSEE agrees to comply with any requests by the City's park rangers, 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.

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 this Lease Agreement shall be automatically 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 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. CONFLICT OF INTEREST

- 16.1 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.
- 16.2 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.

17. HOLDING OVER

- 17.1 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 double 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.

18. QUIET ENJOYMENT

- 18.1 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.

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:

Director of Parks and Recreation
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

City Clerk
City of San Antonio
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time. Notices to LESSEE shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to LESSEE at:

Dick's Last Resort of Texas, Inc.
4514 Travis Street, Suite 220
Dallas, Texas 75205

or to 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 LEASE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

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 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 venturers, or any other similar such relationships between the parties hereto other than that of LESSOR and LESSEE.

25. GENDER

- 25.1 Words of any 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 attached exhibits and the authorizing ordinance, 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.

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of _____, 2003.

LESSOR:

City of San Antonio, Texas, a
Municipal Corporation

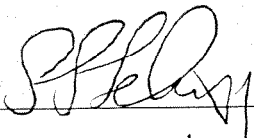
ATTEST:

City Clerk

By: _____

LESSEE:

Dick's Last Resort of Texas, Inc.
d/b/a Dick's Last Resort

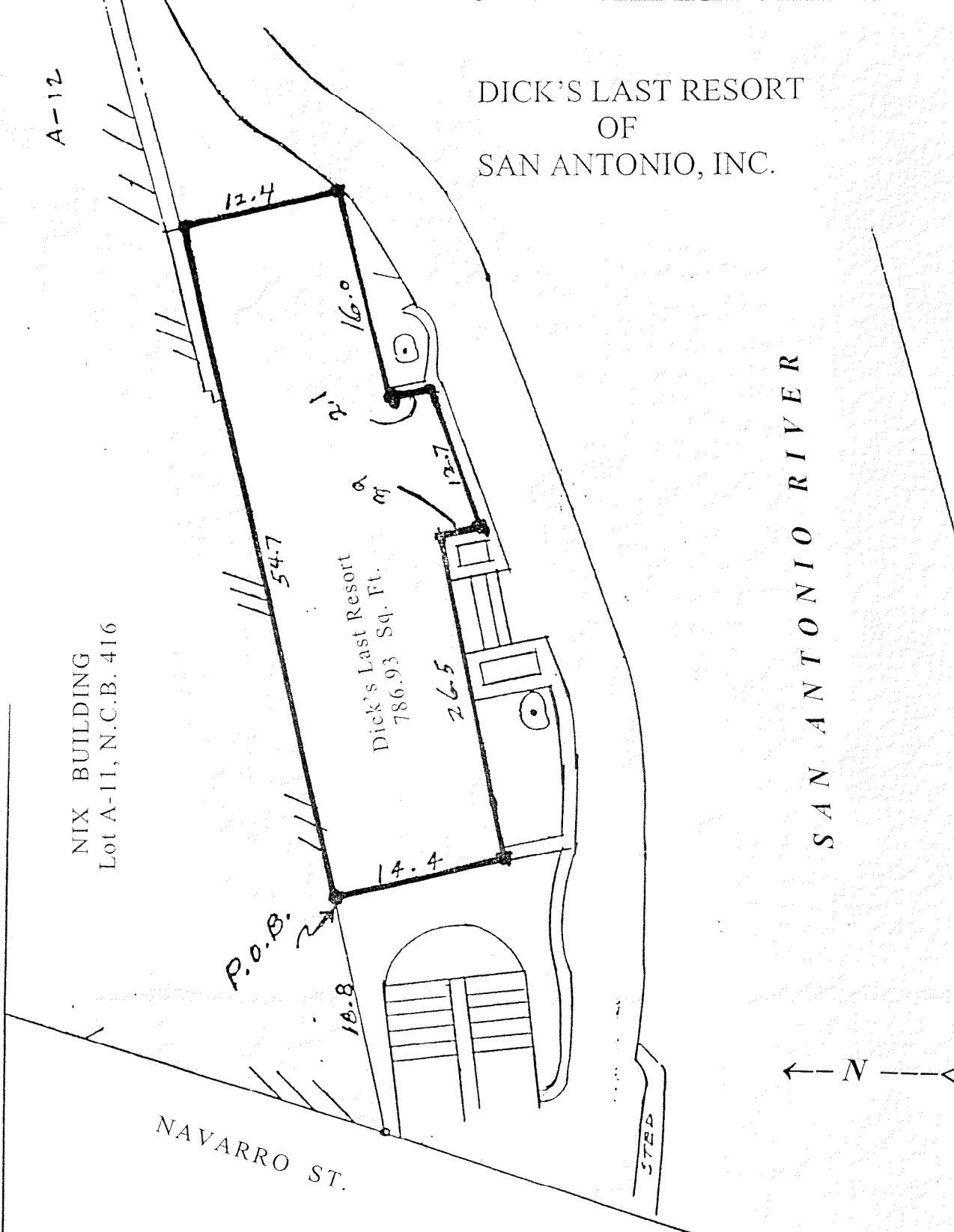
By: 

Title: President

APPROVED AS TO FORM:

City Attorney

DICK'S LAST RESORT OF SAN ANTONIO, INC.



DRAWING SHOWING

An area containing a total of 786.93
Square Feet; South of Nix Building,
Lot A-11 N.C.B. 416.

STATE OF TEXAS COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT
ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER
MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR
ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT
ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS
SHOWN ABOVE.

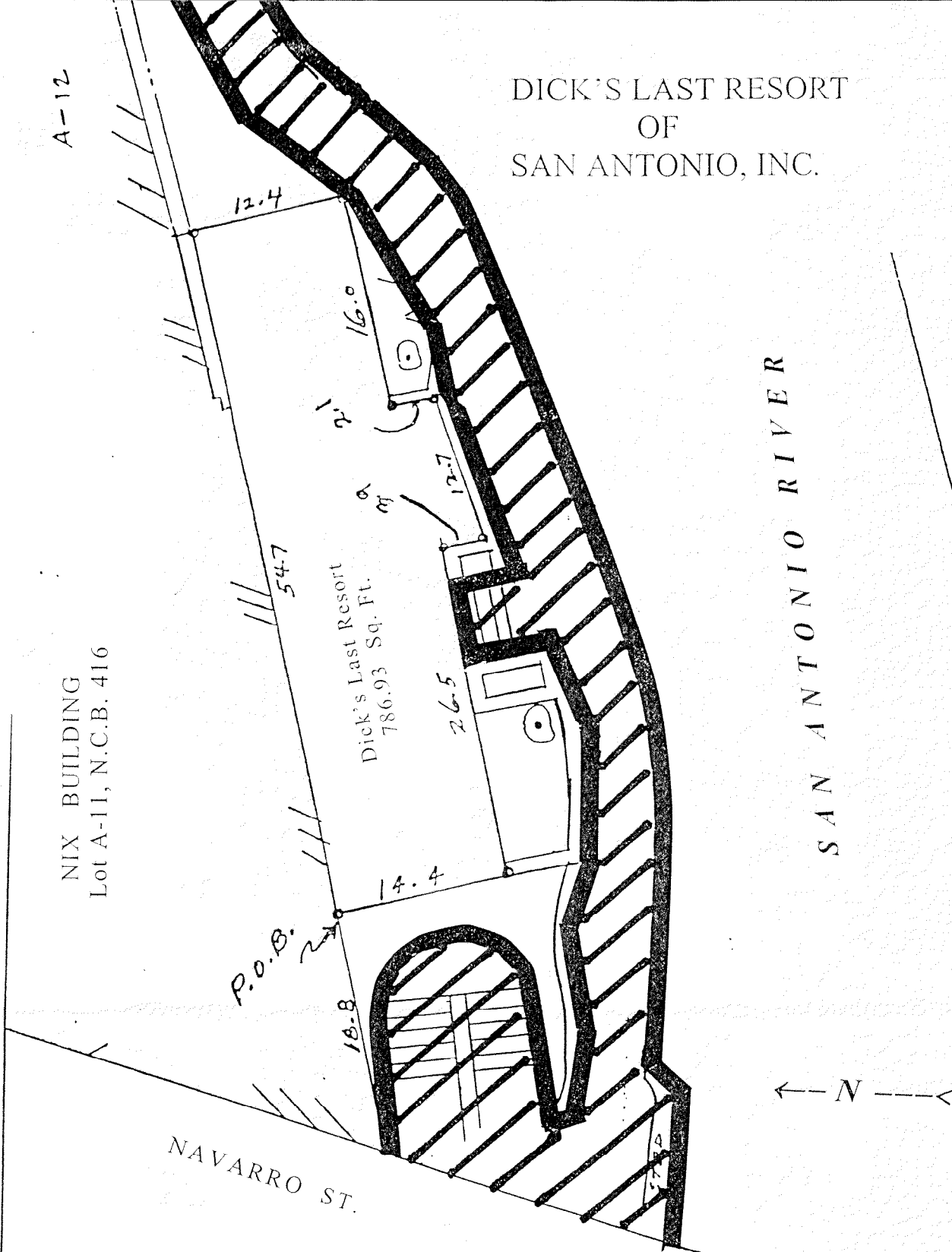
This _____ day of _____, 19____ A. D.

Reference

Field Book _____ Page _____

Job No. _____

DICK'S LAST RESORT OF SAN ANTONIO, INC.



DRAWING SHOWING

An area containing a total of 786.93 Square Feet; South of Nix Building, Lot A-11 N.C.B. 416.

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This _____ day of _____, 19____ A. D.

Field Book _____ Page _____

Job No. _____

Reference