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CITY OF SAN ANTONIO AGENDA ITEM NO. 1
ECONOMIC DEVELOPMENT DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM

TO: Mayor and City Council

FROM: Ramiro A. Cavazos, Director

SUBJECT: Development Agreement for the Aztec Theatre Redevelopment Project

DATE: December 16, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance approves a Development Agreement between the City of San Antonio and Aztec Project Development, Ltd. for the redevelopment of the historic Aztec Theatre, located at 104 East Commerce Street. Aztec Project Development, Ltd. will renovate the Aztec Theatre building into a state-of-the-art Aztec themed tourist attraction theatre, office restaurant and retail space. The Development Agreement dictates requirements of the developer and contractor for construction work at the site.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This project is part of a larger joint redevelopment partnership between Euro Alamo and Drury Southwest, Inc. Included in the overall plan is the historic restoration and renovation of the Aztec Theatre, the Alamo National Bank Building and the extension of the Riverwalk from Gate 3 to Gate 4 on the main channel.

The redevelopment of the Aztec Theatre that has stood vacant for fifteen years, is being privately financed by a partnership between Euro Alamo and Drury Southwest Inc. It was not part of the request by Drury Southwest, Inc. for tax-exempt Empowerment Zone Bonds to renovate and redevelop the Alamo National Bank building and parking garage.

The total capital investment in the Aztec Theatre project is projected to be \$16 million. The Aztec Theatre Redevelopment Project is estimated to create 20 permanent jobs once the theatre is operational. Furthermore, it is estimated that 50 additional jobs may result once the river-level restaurant and retail space are completed.

POLICY ANALYSIS

Benefits that will accrue to the City from the Project include: renovation and major redevelopment of an historic downtown theater into a large screen, experiential and educational facility that will attract both tourists and student groups. The Project will also create new

permanent employment opportunities. Additional office space for smaller tenants will become available and will include modern amenities with an historic look and feel.

Completion of the Crockett Street Redevelopment Project will take place with the installation of a bust of the Aztec corn goddess overlooking the River level entrance to Aztec Theatre, and the repair of the existing plant irrigation system. At the River level, there will be new retail space, a restaurant and restrooms available to the general public.

FISCAL IMPACT

The value of the building prior to this development was approximately \$2.2 million. Upon completion of the project, the exact future value of this property cannot be determined, but is expected to be significantly increased.

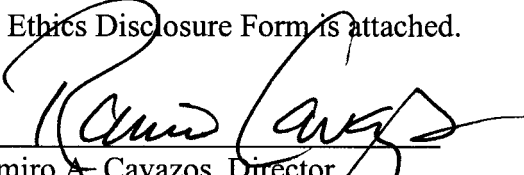
Because the Aztec Theatre is a nationally recognized historic landmark property, staff anticipates that the Aztec will pursue a historic property tax exemption. That exemption will postpone collection of City property taxes on the property for five years, and a 50% reduction for an additional five years.

COORDINATION


This item has been coordinated with the City Attorney's Office and the Departments of Public Works and Asset Management.

SUPPLEMENTARY COMMENTS

An Ethics Disclosure Form is attached.



Ramiro A. Cavazos, Director
Economic Development Department

Jelynne LeBlanc Burley
Assistant City Manager

J. Rolando Bono
Interim 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:

N/A	RECEIVED CITY OF SAN ANTONIO CITY CLERK 2004 DEC - 8 P 1:35
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(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

AZTEL PROJECT DEVELOPMENT, LTD.	RECEIVED CITY OF SAN ANTONIO CITY CLERK 2004 DEC - 8 P 1:35
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and the name of:

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

D2027 SOUTHWEST, INC. OTHERS UNKNOWN AT THIS TIME.

and the name of:

(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;

D2027 SOUTHWEST, INC. EURO-ALAND INVESTMENTS, INC. EURO-ALAND MANAGEMENT, INC.
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¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (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

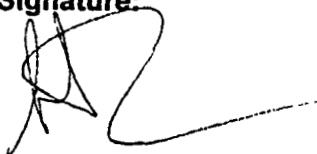
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *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:	Amount:	Date of Contribution:
NONE		

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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 question² 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.

Signature: 	Title: PRESIDENT AZTEC PROJECT DEVELOPMENT, L.P. Company: 4701 E. Loop - Adams Immigrant, Inc., DEVELOPMENT AGENT	Date: 12/2/04

² 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.

DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO
AND
AZTEC PROJECT DEVELOPMENT, LTD.

Pursuant to City of San Antonio Ordinance No. _____

Passed and Approved on _____

**DEVELOPMENT AGREEMENT BETWEEN
CITY OF SAN ANTONIO AND AZTEC PROJECT
DEVELOPMENT, LTD.**

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS**
COUNTY OF BEXAR §

This Development Agreement (hereafter "Agreement") is entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereafter "CITY"), acting by and through its Interim City Manager, pursuant to Ordinance No. _____ passed and approved on December 16, 2004, and Aztec Project Development, Ltd., a Texas limited partnership, headquartered in San Antonio, Texas (hereafter "DEVELOPER"), acting by and through Euro Alamo Management, Inc., a Texas corporation, its Managing Agent, and is as follows:

ARTICLE 1. PURPOSE/CONSIDERATION

1.1 DEVELOPER shall renovate the existing structure located at 104 East Commerce in San Antonio, Bexar County, Texas on real property legally described as Lots 2 through 9 and the west ½ of the Corcoran Alley between Lots 9 and 10, all of said lots being in Block 3, New City Block 116, in the City of San Antonio, Bexar County, Texas, commonly known as the Aztec Theatre Building (hereafter referred to as the "Theatre Development"). The Theatre Development and Infrastructure Improvements (including the Public Improvements as described in Article 4 below) shall be known together as the Aztec Theatre Redevelopment Project (hereafter referred to as the "Project").

1.2 During the construction activities associated with the Project, DEVELOPER may require CITY to permit DEVELOPER temporary intermittent physical access to certain City-owned property (hereinafter referred to as "City Premises" and further described in Exhibit "A"), including CITY's rights-of-way. In accessing the City Premises, DEVELOPER may coordinate with CITY the closing off and barricading of various lanes and/or portions of the City Premises (further described in EXHIBIT __ entitled "DEVELOPER'S Access") to pedestrians and vehicular traffic, as needed for the safety and welfare of the citizens.

1.3 In consideration of and for the agreements contained herein including the improvements and enhancements set forth in ARTICLE 4 below, both private and public, to be made by DEVELOPER, at DEVELOPER's sole cost and expense, and for the benefit and use of the general public of those certain public improvements as described in ARTICLE 4, CITY agrees and grants permission to DEVELOPER to enter upon the City Premises, as needed, so long as such entry is coordinated through the necessary City Departments and is for the sole purpose of developing the Project and associated public improvements.

ARTICLE 2. TERM AND EXTENSIONS

2.1 Term. The term of this Agreement and DEVELOPER'S right of access to the City Premises shall be for a period of not more than 26 months. Such term commenced at 6:00 a.m. Central Standard time on May 01, 2004, the date that DEVELOPER first entered the City Premises, and shall end upon the earlier of:

- (A) substantial completion of the Project and acceptance by the CITY of the Public Improvements described in ARTICLE 4 below ("Construction Completion"), or
- (B) 10:00 p.m. Central Standard time on the date following 26 months after DEVELOPER entered the City Premises, at which time reopening of the City Premises by DEVELOPER shall have occurred, subject to extensions allowed at Section 2.2 below.

DEVELOPER has provided CITY written notice of the date of Construction Commencement, and such notice, along with a "Memorandum of Term Commencement Date" executed by both Parties, will be attached hereto as Exhibit "B."

The phrases "Construction Commencement" and "Term Commencement" shall be synonymous herein.

2.2 Extensions. CITY and DEVELOPER agree that the term of this Agreement may be extended for no more than three (3) consecutive thirty (30) day periods. DEVELOPER shall request an extension in writing and each extension request is subject to the written approval of the CITY through an action of the City Council.

2.2.1 Force Majeure. Acts of God, civil riot, flood, fire or other calamity or condition beyond the reasonable control of DEVELOPER shall be grounds for the extension of this Agreement provided that written notice of the force majeure is given to CITY within three business days of its occurrence or as soon as practicable thereafter. CITY and DEVELOPER agree that rain days with accumulations of less than three (3) inches per day are not subject to this provision.

ARTICLE 3. CITY'S SUPERIOR INTEREST

3.1 DEVELOPER acknowledges that this Agreement is personal in nature and vests no right, title or interest in any public rights-of-way on, over, under or proximate to the City Premises, or in any of the publicly-owned surface, subsurface or air rights on which the Project is to be constructed. CITY and DEVELOPER agree that the use of any such land, subsurface and/or air rights ("Publicly-owned Property") by DEVELOPER under this Agreement shall never be construed as abandonment by CITY of such Publicly-owned Property.

3.2 CITY grants DEVELOPER the right to use the City Premises, subject to the terms and conditions contained in this Agreement, but reserves the right at any time to enter upon the City Premises for the purpose of asserting CITY's superior fee title interest and for the purposes of

inspection, public use, or for any emergency which may occur during the term of this Agreement. DEVELOPER explicitly agrees to provide CITY unhindered access to the City Premises, and City agrees to provide DEVELOPER at least two business day's written notice (absent any emergency) of CITY's intent to enter said City Premises for the purposes of exercising CITY's superior rights and for said public purposes and any other purposes deemed reasonably necessary by CITY.

3.3 DEVELOPER, its agents, employees, contractors, and subcontractors shall not impede or hinder the CITY'S Fire Department, Police Department, Public Works Department, Development Services Department or Code Compliance Department or any other emergency vehicle or CITY-owned vehicle access or egress to the City Premises.

ARTICLE 4. WORK TO BE PERFORMED

4.1 Developer's Work. Subject to the conditions set forth in Article 10, DEVELOPER agrees to fund the design, development, and construction of the Improvements, both private and public, as described below. It is understood by CITY and DEVELOPER that the Improvements are to be performed by third-party design and construction professionals pursuant to design and construction documents whose specifications are accepted and authorized by CITY. Upon the completion of the Public Improvements, DEVELOPER shall convey to CITY, by Deed Without Warranty or Bill of Sale (as applicable), said Public Improvements. The Public Improvements shall include the following:

- (A) repair of an irrigation system, with a connection to a CITY-provided water source, for currently existing landscaped beds, as mutually approved by CITY and DEVELOPER;
- (B) installation of a bust of the Aztec corn goddess at the main column of the Aztec Theatre Building entrance facing the Riverwalk entrance.

4.2 DEVELOPER's Private Improvements. DEVELOPER shall renovate the existing Aztec Theatre Building into a tourist themed attraction and office building. Such renovations and improvements are as follows:

- (A) renovation of the building into a tourist attraction theatre;
- (B) renovation of offices on floors three through six;
- (C) creation of retail/restaurant space and restrooms owned, maintained and under the control of DEVELOPER, but for general public use at the Riverwalk level.
- (D) Cooperation with CITY and river barge operator for potential development of a river barge station under terms and conditions to be mutually agreed upon by CITY and DEVELOPER.

4.3 Work to Be Performed by CITY.

- (A) CITY shall review and authorize PROJECT plans in a timely fashion and coordinate between all CITY departments associated with development of the Project in such a manner that will allow DEVELOPER to complete its Project within the term of this Agreement
- (B) CITY shall designate responsible CITY staff to facilitate the resolution of conflicting directives, approval of architectural design, reasonable cost control and coordination with other CITY departments throughout the entire term of this Agreement.

4.4 Plans and Specifications. Plans and specifications associated with Public Improvements under this Agreement shall be authorized and accepted in advance and in writing by CITY. The CITY's Director of Public Works, or his designee, must approve any changes to construction plans and/or specifications relating to construction of the Public Improvements in writing.

4.5 Taxes and Fees. DEVELOPER shall pay all local taxes, license fees, and fees which are now or may hereafter be levied upon the Project, on or before their respective due dates and to the appropriate collecting authority, with the exception of those fees waived herein, and with the exception of that portion of ad valorem taxes abated in connection with the renovation of an historic property, and shall maintain in current status all local licenses and permits required for the operation of the business conducted by DEVELOPER. CITY agrees that any proposed special assessments that may impact this Project shall be subject to all applicable laws of the State of Texas.

4.6 Right-of-Way Permits. Permits for access to all City Premises, including permits for right-of-way closures, shall be issued by the CITY'S Public Works Department, Engineering and Traffic Division, and such permits shall be issued in increments of ninety (90) days or less. The term of this Agreement may be extended in accordance with Section 2.2. Should DEVELOPER require an extension of the term of this Agreement, Developer shall pay \$0.105 per square foot daily for the Use of Public Right of Way for each month an extension is granted until completion of Project, unless such extension is granted under Section 2.2.1.

4.7 Other Conditions (Construction-Related). DEVELOPER agrees to comply and require any of its contractors to comply with the following construction-related conditions associated with access to the City Premises and development of the Project:

- (A) to close off and barricade the City Premises, when determined to be in the interest of public safety, in accordance with CITY closing procedures for public thoroughfares, and in a safe and reasonable manner, for the duration of construction on or adjacent to the City Premises in order to prevent unauthorized pedestrian and vehicular access;
- (B) to designate pedestrian and vehicular detours and install, fabricate, and maintain signage to denote the pedestrian and vehicular detour routes around the closed and

barricaded areas of the City Premises, at DEVELOPER's sole expense, as directed and approved by the CITY'S Public Works Director or his designee;

- (C) to make reasonable efforts to minimize noise and dust pollution during construction by making reasonable efforts to limit outdoor construction activities to, at most, the period between the hours of 7:00 a.m. to 7:00 p.m. daily ("Construction Time"); to abide by CITY Code provisions and to respond to CITY'S requests in order to minimize noise and dust pollution during construction, particularly during demolition and excavation periods;
- (D) to provide to CITY (from the date of conveyance and rededication to CITY of the completed Public Improvements, as described in 4.1) a one (1) year product and performance Warranty on equipment and materials used on the Public Improvements that complies with the standards of the New Unified Development Code (adopted by CITY on May 3, 2001); as well as, any warranties or guarantees provided by said DEVELOPER's contractor, subcontractors, and manufacturers, which provision may include assignments;
- (E) to allow CITY to have access to City Premises at all reasonable times and to provide, in a timely manner, electrical and other inspections required by code and conducted by the CITY's Development Services Department as part of CITY's governmental functions;
- (F) to secure a final inspection and approval in writing from CITY of the Public improvements that CITY's Development Services Department will inspect and to prepare CITY's Public Works Department's letter of acceptance for future maintenance;
- (G) to provide to CITY five (5) sets of "as-built" plans of record for all Public Improvements and any other improvements made on CITY Premises;
- (H) to submit an impact and pavement restoration proposal if any utility relocations are required to the CITY'S Public Works Department for any DEVELOPER-funded street resurfacing required to accommodate utility relocation(s);
- (I) to comply with the requirements outlined by City Public Service;
- (K) to comply with requirements as outlined by San Antonio Water System (SAWS);
- (L) Except as described in Section 4.8, to ensure that all fencing, walls and other such barriers are located at least one foot (1') behind the curb, and all construction fencing (other than gates) providing access to the site shall be continuous, with no gates or breaks.
- (M) TO POST UNIFORMED OFF-DUTY PEACE OFFICERS, as required by CITY, to ensure vehicular and pedestrian safety;

- (i) during times when the right-of-way closures are in effect,
- (ii) during times of construction when vehicular or pedestrian traffic is effected; and
- (iii) continuing until Project completion.

One officer shall be posted at a strategic location designated by the CITY'S Traffic Engineer or his designee during times of construction as described in (i) and (ii) above to ensure adequate traffic control. An officer must also be present at any time that the right-of-way closure requires temporary gates to remain open; and

- (N) to use and provide to CITY a copy of a written safety/traffic control plan for review by the CITY'S Risk Management Division, and a safety supervisor shall be provided by DEVELOPER's contractor, who shall be available on-site during Construction Time and shall be identified at the time of permit issuance to include a 24-hour telephone number or numbers for contacting this person.

4.8 Traffic-Related Conditions. DEVELOPER agrees to the following traffic-related conditions associated with the use of the right-of-ways and construction of the Project and related Infrastructure Improvements:

- (A) Vehicular traffic lanes of Crockett, East Commerce and North St. Mary's streets shall not be closed for the purposes of construction between 6:00 a.m. and 9:00 p.m., Monday through Saturday; however:
 - (i) If such lane closure(s) is required, DEVELOPER must first submit a written request to CITY and receive prior written approval by the CITY'S Traffic Engineer or his designee prior to any action by DEVELOPER; and
 - (ii) CITY's Traffic Engineer has the authority to suspend any right-of-way permit for special events as follows:
 - (1) Fiesta,
 - (2) the period from Thanksgiving Day to New Year's Day, and
 - (3) other special events as provided in writing by the CITY's Traffic Engineer or his designee, with at least thirty (30) days prior notice;
- (B) During construction, DEVELOPER agrees to coordinate with VIA if temporary relocation of bus stops that utilize East Commerce Street is required;
- (C) Closures of East Commerce Street for any of the DEVELOPER's construction activities are permitted only from 11 p.m. to 6 a.m.;

- (D) Special allowances may be granted by CITY through its Traffic Engineer or his designee for one-time or short-term right-of-way vehicular traffic lane closures. Said allowances must be in writing by the CITY, and shall be limited to the hours between 9:00 p.m. and 6:00 a.m. and may include Special Provisions and cost to DEVELOPER.

4.9 Conveyance and Rededication to CITY. DEVELOPER agrees to convey and rededicate to CITY all Public Improvements, as described in 4.1, performed on or within the City Premises, in a manner necessary for CITY to accept such conveyance and rededication by City Ordinance. After the passage of an Ordinance by CITY accepting the conveyance, DEVELOPER shall be released of all related liabilities in connection with the Public Improvements. CITY shall assume all liabilities for the subsequent ownership, administration, upkeep and maintenance of such Public Improvements, with the exception of Warranties as provided under 4.7(D), upon completion thereof by DEVELOPER in accordance with this Agreement. CITY agrees to allow DEVELOPER's contractor and subcontractors to enter the City Premises to perform any necessary warranty work following completion and dedication of the Public Improvements for a period of one (1) year. The CITY will restrict all public access to the City Premises subject to the Public Improvements until after the dedication and conveyance has been wholly ratified and accepted by City Council.

4.10 Disclaimer of City's Liability. Except as otherwise set forth herein, CITY shall assume no liability and no expense by reason of this Agreement for any activities by DEVELOPER and CITY shall not be liable for any damages caused to the City Premises or to the property of DEVELOPER by reason of construction, installation or maintenance which is performed, authorized or permitted by CITY in the areas covered by this Agreement during the term hereof and up until the time the Public Improvements are accepted by CITY. DEVELOPER will require DEVELOPER's contractors to promptly repair any such damages to the Premises caused by DEVELOPER. CITY shall provide any and all existing utility and street improvement plans to date for DEVELOPER'S use, at DEVELOPER'S sole cost and expense.

4.11 Compliance with Laws. DEVELOPER at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders and regulations of the federal, state, county or local governments, including the Americans with Disabilities Act, as amended. The federal, state and local laws, ordinances and regulations which affect those engaged or employed in the work or equipment used in the work, or which in any way affects the conduct of the work, shall be observed, and no pleas of misunderstanding will be considered on account of ignorance thereof.

ARTICLE 5. LIENS PROHIBITED / SIGNAGE

5.1 No Liens. DEVELOPER covenants that it will not bind, nor will DEVELOPER's contractor or subcontractors bind, or attempt to bind, CITY for the payment of any money in connection with any construction, repair, maintenance, alterations, additions, improvements, adjustments, relocation, or reconstruction work in, on, or about the Premises and any other public rights-of way being improved, whether authorized or unauthorized hereunder.

5.2 Payment. DEVELOPER hereby agrees to promptly pay all persons supplying labor, services, and materials in the performance of any and all construction work, including any current work during the term hereof or any future construction, repair, maintenance, alterations, additions, adjustments, relocation or reconstruction that may hereafter be made after the end of the term as to any improvements not dedicated to CITY, but which may be encroaching on CITY-owned property.

5.3 **DEVELOPER will require DEVELOPER's contractor and subcontractors TO FULLY INDEMNIFY AND HOLD HARMLESS the CITY against any and all claims, liens, suits, or actions asserted by any person, persons, firms or corporation on account of the acts or omissions of said contractors or subcontractors during the performance of any said construction and against any claim for injury or death to persons or damage to property, provided DEVELOPER shall have no obligation to indemnify CITY when the negligent act or omission of CITY is the sole cause of said resultant injury, death, or damage.**

5.4 Signage. DEVELOPER will have DEVELOPER's contractor and subcontractors agree to install all signs, including location, direction and warning signs, as required by applicable CITY and Bexar County ordinances, as well as, State and Federal laws, in case construction, maintenance, or operations of the improvements warrant same.

ARTICLE 6. BREACH OF CONTRACT

All terms, conditions and specifications of this Agreement shall be considered material, and failure to perform any part of this Agreement shall be considered a breach of contract. Should a Party in default fail to remedy any breach of contract within thirty (30) days after written notification from the other party ("Non-defaulting Party") to the Party of the violation in reasonable detail ("Defaulting Party"), the Non-defaulting Party may terminate this Agreement at its option, in addition to any other remedies available to it at law or in equity, whether or not stated herein. This Agreement shall not be terminated, however, if the Defaulting Party has commenced to cure the breach within said thirty (30) day period, and thereafter pursues such cure with reasonable diligence and in good faith, but not later than sixty (60) days after written notification from the non-defaulting party, subject to Force Majeure.

ARTICLE 7. INDEMNITY

DEVELOPER will be solely responsible for the cost of all materials, equipment and work connected with the construction, repair, and maintenance of the Public Improvements during the term of this Agreement and any extensions or until dedication and conveyance has been ratified and accepted by City Council. Further, DEVELOPER covenants and agrees to FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS, CITY and the elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants and representatives of 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 injury, death and property damage, (the "Damages") made upon CITY, directly or indirectly arising out of, resulting from or related to DEVELOPER's activities under this Agreement, including any acts or omissions of DEVELOPER, any agent, officer, director, representative, and employee of DEVELOPER in the exercise of the performance of the rights or duties under this Agreement, excluding damages caused by the negligent acts or omissions of CITY, all without, however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. 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. DEVELOPER shall promptly advise CITY in writing of any claim or demand against CITY or DEVELOPER known to DEVELOPER and related to or arising out of DEVELOPER's activities under this Agreement and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost in accordance with the above provisions. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving DEVELOPER of any of its obligations under this Article.

ARTICLE 8. INSURANCE

8.1 The basic required types of insurance are workers compensation, employer's liability, commercial general liability in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general aggregate, and business auto. Prior to the commencement of any work in connection with this Agreement, or the execution date of this Agreement, whichever occurs first, DEVELOPER must, in consultation with an licensed Insurance Agent or Broker obtain coverage, in amounts and types of coverage as described above, good and sufficient to indemnify the DEVELOPER and CITY, in consideration of the Scope of Services to be provided herein and the terms, conditions and limitations of standard forms of insurance coverage available and reasonably acceptable to the CITY's Risk Manager.

8.2 DEVELOPER shall furnish an original completed Certificate(s) of Insurance to the CITY's Economic Development Department and City Clerk's Office, and shall be clearly labeled Aztec Theatre Redevelopment Project in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by the Agent or Broker authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 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 CITY's Economic Development Department and the City Clerk's Office, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

8.3 Such submission shall be accompanied by letter, memorandum or document, authenticated by the Agent's/Broker's letterhead, logo or emblem, to include the

Agent's/Broker's business address and telephone number, and signed by the Agency's principal or DEVELOPER's Broker of Record. Such letter, memorandum or document must opine that DEVELOPER's insurance is good and sufficient to meet the terms and conditions of the Agreement. Such letter must further assert that all types and amounts of insurance held or applied for by DEVELOPER are consistent with sound business practices, to indemnify the DEVELOPER and CITY, as required elsewhere in this Agreement, and to the extent permitted by coverage afforded under said policies of insurance or self-insurance.

8.4 Based upon the proposed activity by DEVELOPER, at the sole discretion of the CITY's Risk Manager and contingent upon changes in legislation, case law or verifiable extenuating circumstances surrounding this Agreement, reasonable additional insurance requirements, including types and amounts, may also be imposed for the remaining life of the contracting period. DEVELOPER will be required to meet such additional insurance requirements, and/or obtain such additional insurance when and where possible.

8.5 In the event that the DEVELOPER is self-insured, or carries a self-insured retention equal to or greater than \$100,000 U.S. currency, DEVELOPER will furnish at DEVELOPER's sole expense, in lieu of a standard ACORD Certificate, evidence sufficient to establish self-insured status acceptable to CITY's Risk Manager. Such evidence requested may include, but not be limited to, certified financial documentation of indemnity reserves, legal reserves, IBNR reserves, annual financial statements or reports to DEVELOPER's stockholders and/or Board of Directors; methods, standards and operating procedures for the acceptance, handling and dispensation of claims; loss histories and summaries of litigation not in violation of attorney client privilege.

8.6 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 and to request modification of insurance coverage and their limits when deemed legally unavoidable or necessitated by circumstances surrounding this Agreement by CITY's Risk Manager. Such requests will be based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. All modifications shall be pre-approved by both Parties hereof.

8.7 The facsimile of Insurance, whether a standard ACORD form for commercially purchased policies, or evidence of self-insurance shall be verified by the DEVELOPER's licensed Insurance Agent or Broker prior to the commencement of any work or the execution date of a Agreement, whichever occurs first. Said facsimile shall be submitted, upon notification to DEVELOPER of Agreement Award, and in any event, no less than 10 days prior to Agreement execution, evidence of good and sufficient insurance to meet the terms and conditions of the CITY's Agreement.

8.8 All such Insurance Certificates or facsimiles are subject to review, question, verification, and approval or denial by CITY's Risk Manager.

8.9 If DEVELOPER fails to secure and maintain insurance required under this Agreement, 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 this Agreement. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of DEVELOPER to maintain said insurance or secure said endorsements. In addition to any other remedies the CITY may have upon DEVELOPER'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 DEVELOPER to stop work hereunder, and/or withhold any payment(s) which become due to DEVELOPER hereunder until DEVELOPER demonstrates compliance with the requirements hereof.

8.10 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 require 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). DEVELOPER shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided herein within 10 days of the requested change. DEVELOPER shall pay any costs incurred resulting from said changes.

8.11 It is agreed that DEVELOPER's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.12 DEVELOPER agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (A) Name the CITY and its officers, employees, 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;
- (B) 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;
- (C) Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.

8.13 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, DEVELOPER shall notify the CITY of such and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice after the change, if the DEVELOPER did not know of the change in advance. Such 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
Economic Development Department

City of San Antonio
City Clerk's Office

ATTN: Melissa Shannon
P.O. Box 839966
San Antonio, Texas 78283-3966

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

ARTICLE 9. ASSIGNMENT

This Agreement is personal to DEVELOPER and shall not be assigned, other than to DEVELOPER's parent partnership, corporation, affiliate, or subsidiary, or to the lender providing funds for construction of the Public and or Private Improvements, without the prior written consent of CITY, as evidenced by passage of a future CITY Ordinance. Notification of assignment to Parent Company shall be provided to CITY immediately upon effective date pursuant to Article 18 of this Agreement. Any other changes in DEVELOPER's organization shall require notification to CITY prior to the effective date of said changes.

ARTICLE 10. CONDEMNATION

It is understood and agreed that in the event that the City Premises are taken, in whole or in part, by any governmental authority other than CITY, this Agreement and all rights or permission to use hereunder shall, at the option of CITY, cease on the date title to such land so taken or transferred vests in the condemning authority. DEVELOPER hereby waives all rights to any proceeds of such condemnation.

ARTICLE 11. SEVERABILITY

The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or ordinances of CITY, effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this 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. Notwithstanding the preceding, the foregoing provisions shall not apply in the event a material clause or provision is found to be illegal, invalid or unenforceable.

ARTICLE 12. AMENDMENT

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

ARTICLE 13. GOVERNMENTAL RULES

Nothing contained herein shall relieve or release DEVELOPER or CITY from any applicable federal, state and local laws, ordinances, rules and regulations ("Governmental Rules") relating to the design, construction, development or operation of the Project or the Public Improvements (including Governmental Rules that are procedural, as well as or rather than, substantive in nature). DEVELOPER acknowledges that the CITY is a municipal corporation operating pursuant to a home-rule charter, which exercises certain police powers, taxation powers and other governmental functions of general application, which affect the Project and the Public Improvements. This Agreement shall not in any way affect the good faith exercise of such powers, duties and authorities. The approval or consent by CITY of any matter submitted to CITY pursuant to this Agreement, which matter is specifically provided herein to be approved or consented to by CITY in its capacity as a party to this Agreement, shall not constitute a replacement or substitute for, or otherwise excuse the DEVELOPER from, such permitting, licensing or approval processes under the City Codes or any other Governmental Rules; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse DEVELOPER from, any requirement hereunder for the approval or consent of CITY under this Agreement. Nothing contained or set forth in this Article or elsewhere in this Agreement is intended or shall operate to limit the obligation of CITY under this Agreement to work and cooperate with DEVELOPER, and actively assist DEVELOPER, in good faith and to the fullest extent possible without conflicting with CITY's performance of its governmental functions, in the exercise of DEVELOPER's rights and the accomplishment of DEVELOPER's duties and obligations hereunder.

ARTICLE 14. NONDISCRIMINATION

DEVELOPER covenants that it, or its officers and employees will not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Infrastructure Improvements which said discrimination DEVELOPER acknowledges is prohibited.

ARTICLE 15. WAGES

DEVELOPER shall pay wages that are not less than the minimum wages if and as required by Federal and State statutes and City ordinances, to persons employed in the construction of the Infrastructure Improvements.

ARTICLE 16. NO SUBSTANTIAL INTEREST

DEVELOPER acknowledges that it is informed that Texas law prohibits contracts between CITY and any local public official ("official"), such as a CITY officer and employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that

an action on the matter would confer an economic benefit on the business entity. DEVELOPER certifies (and this Agreement is made in reliance thereon) that neither it, its individual officers, employees, agents, or representatives, or, to the best of DEVELOPER's knowledge and belief, its contractor and subcontractors, nor any person having a substantial interest in this Agreement, is an officer or employee of CITY or any of its agencies.

ARTICLE 17. NOTICES

Notices to CITY required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, addressed to City of San Antonio ATTN: City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3996 (with a copy to the CITY's Director of Development Services Department at the same address) or to such other address as may have been designated in writing by the City Manager or Interim City Manager of the City of San Antonio, from time to time. Notices to DEVELOPER shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to Euro Alamo Management, Inc., 405 N. St. Mary's St, Suite 350, San Antonio, Texas 78205, Attn: Steven Stendebach, or to such other address on file with the City Clerk. All notices will be deemed received by the fifth (5th) day after the date of mailing.

ARTICLE 18. APPROVAL OF THE CITY

18.1 CITY and DEVELOPER understand and agree that all references herein to the term "contemporaneously with" shall mean a date "not later than ten (10) days after the date of passage of the City of San Antonio Ordinance referenced on Page 1 hereof."

18.2 Whenever this Agreement calls for approval by CITY, unless otherwise explained herein, such approval shall be evidenced by the written approval of, as applicable, the City Manager, Interim City Manager, or her designee, including any Assistant City Manager, Director of the Development Services Department of the CITY, Director of the Public Works Department of the CITY or any of their respective designees.

ARTICLE 19. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

ARTICLE 20. TEXAS LAW TO APPLY

20.1 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. Further, the privileges granted hereunder shall be construed to be only those authorized by pertinent Texas Statutes and the CITY Charter of the CITY of San Antonio, Texas and not to include anything inconsistent with the rights of the public in the aforementioned right-of-way.

DEVELOPER, in connection with construction of the Public Improvements, agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations.

20.2 Should any action, whether real or asserted, at law or in equity, arise out of the execution of this Agreement, venue for said action shall lie in Bexar County, Texas.

ARTICLE 21. GENDER

Words of any gender used in this 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 requires otherwise.

ARTICLE 22. CAPTIONS

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

ARTICLE 23. COVENANTS

The covenants and obligations of DEVELOPER contained herein shall be binding upon its successors, legal representatives and assigns.

ARTICLE 24. ENTIRE AGREEMENT

This Agreement, with its attachments and the authorizing ordinance (a copy of which is attached hereto as Exhibit "X"), in writing, constitute the entire Agreement, with any other written or oral agreement with DEVELOPER being expressly waived by DEVELOPER. It is understood that the CITY Charter requires that all contracts with CITY be in writing and adopted by ordinance.

ARTICLE 25. AUTHORITY

The signer of this Agreement for DEVELOPER hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of DEVELOPER in accordance with the terms and conditions stated herein. The signer of this Agreement for CITY hereby represents that he or she has full authority to execute this Agreement on behalf of CITY in accordance with the terms and conditions stated herein. The City Council of CITY, by Ordinance No. _____, dated December 16, 2004, authorized the Interim City Manager or her designated representative to negotiate and execute this agreement. DEVELOPER further represents and warrants that he has fully read and understands this Agreement and has been provided the benefit of legal counsel for such purposes.

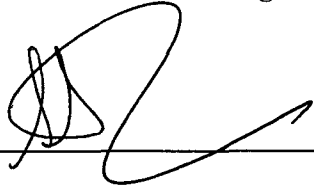
Signatures appear on next page.

Executed in triplicate on the dates below each signature to be effective ten (10) days after the date of passage of the Ordinance set forth on Page 1 of this Agreement ("Effective Date").

City of San Antonio,

Aztec Project Development, LTD.
By Euro-Alamo Management, Inc.,

J. Rolando Bono
Interim City Manager

By  _____
Name: Steven V. Stendebach
Title: President

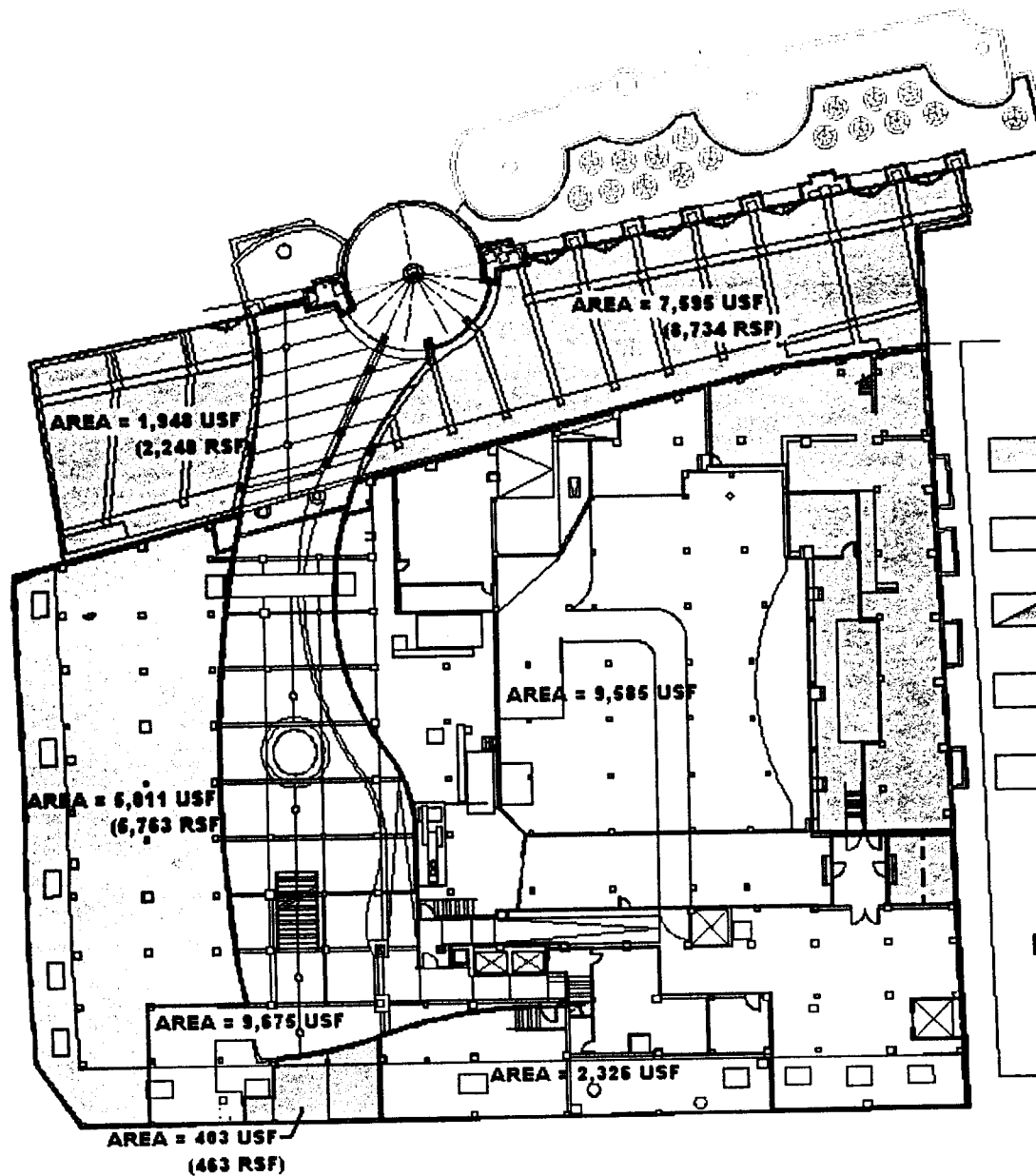
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



City Clerk

Approved as to Form:

Andrew Martin
City Attorney

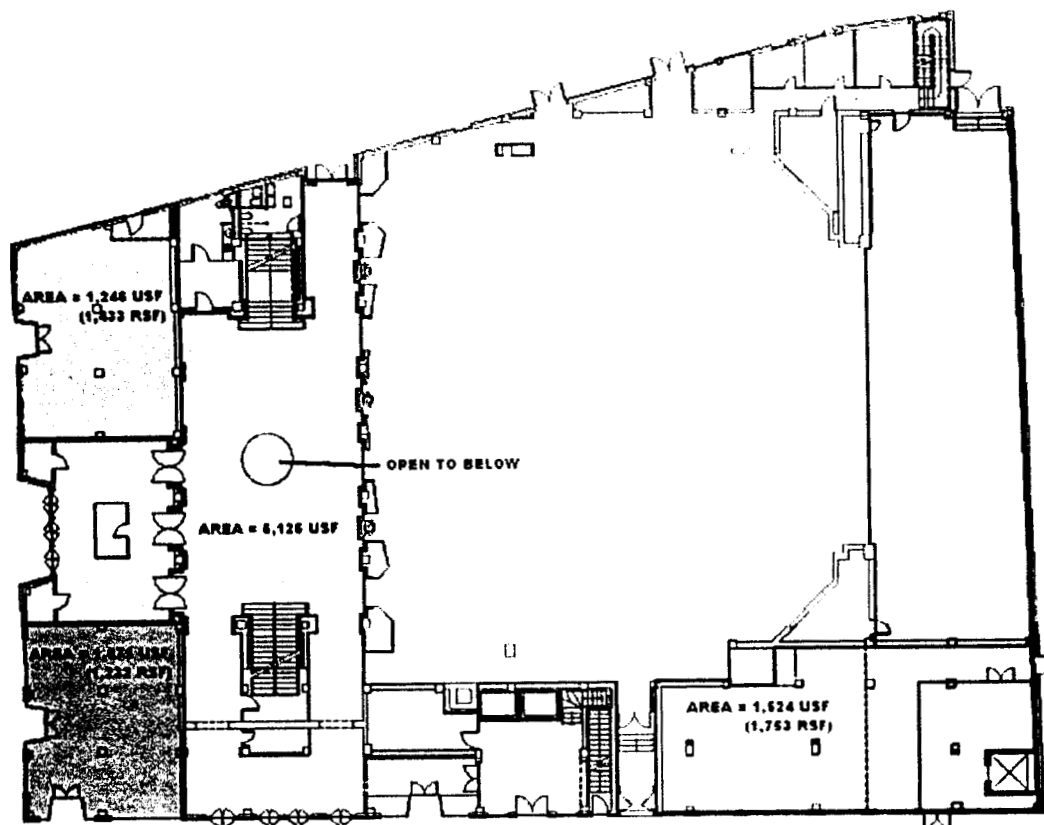
**Exhibit “A”
City Premises**







	RESTAURANT USF: 9,752 RSF: 11,214
	MECHANICAL COMMON SF: 11,911
	LEASEABLE USF: 5,414 RSF: 6,226
	RIVERWALK LEASE AREA USF: 1,928 RSF: 2,217
	PUBLIC COMMON USF: 9,675 TOTAL GROSS USF: 38,680

**NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE**

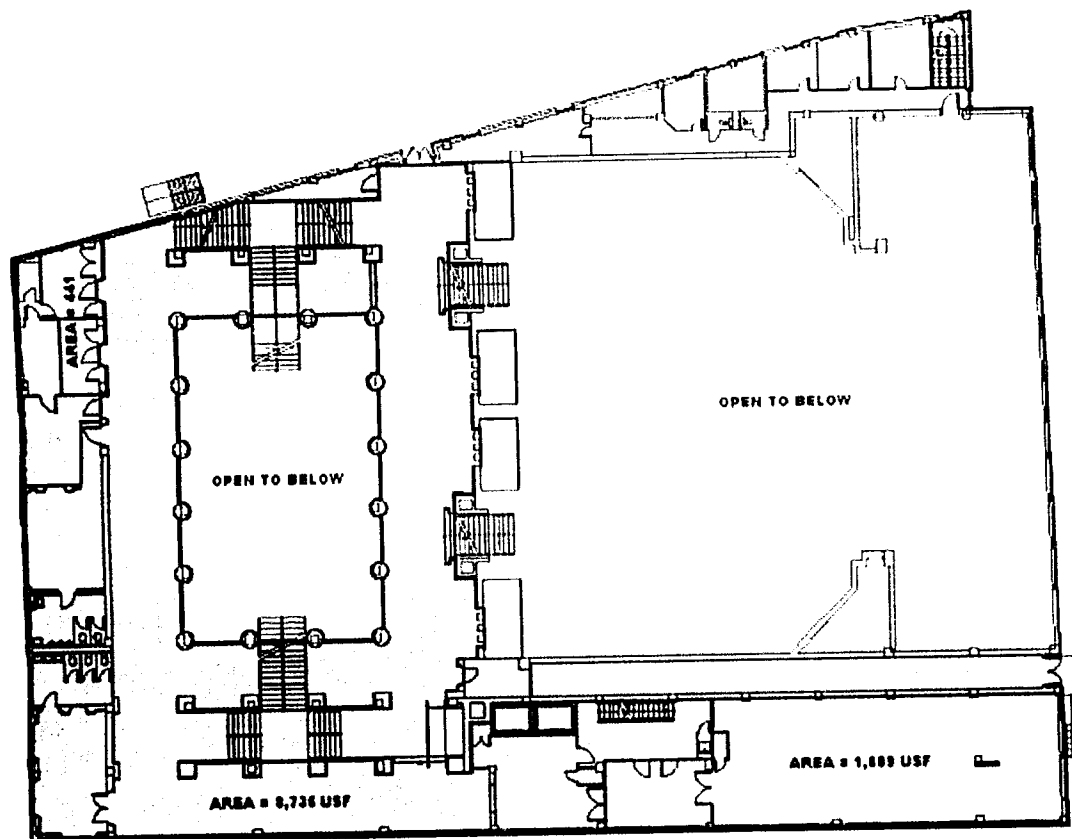
AZTEC ON THE RIVER RIVERWALK LEVEL



	THEATRE USF: 11,006
	THEATRE LOBBY COMMON USF: 9,486
	LEASEABLE USF: 1,524 RSF: 1,753
	THEATRE GIFT SHOP USF: 2,317 RSF: 2,665
	TOTAL GROSS USF: 24,333

**NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE**

AZTEC ON THE RIVER STREET LEVEL



MEZZANINE COMMON USF = 8,735

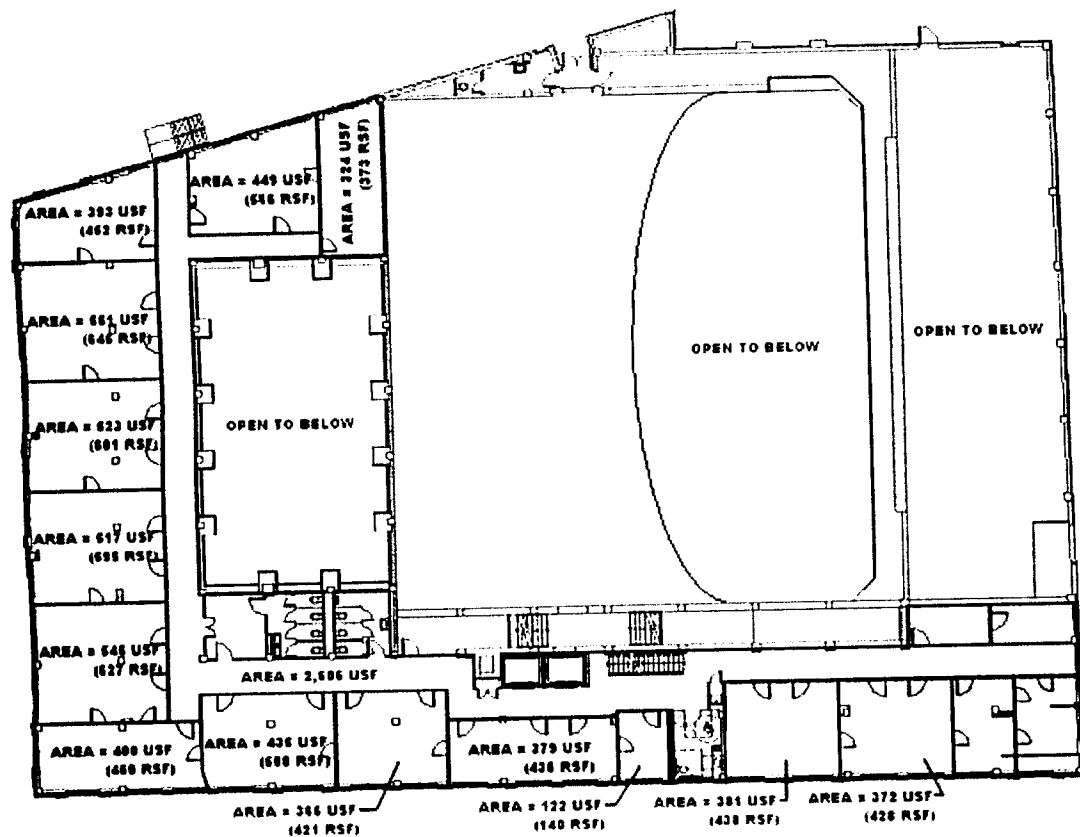
MEETING ROOM USF = 1,809

OFFICE USF = 441

TOTAL GROSS USF: 10,985

NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE

AZTEC ON THE RIVER MEZZANINE LEVEL



BALCONY USF: 4,494

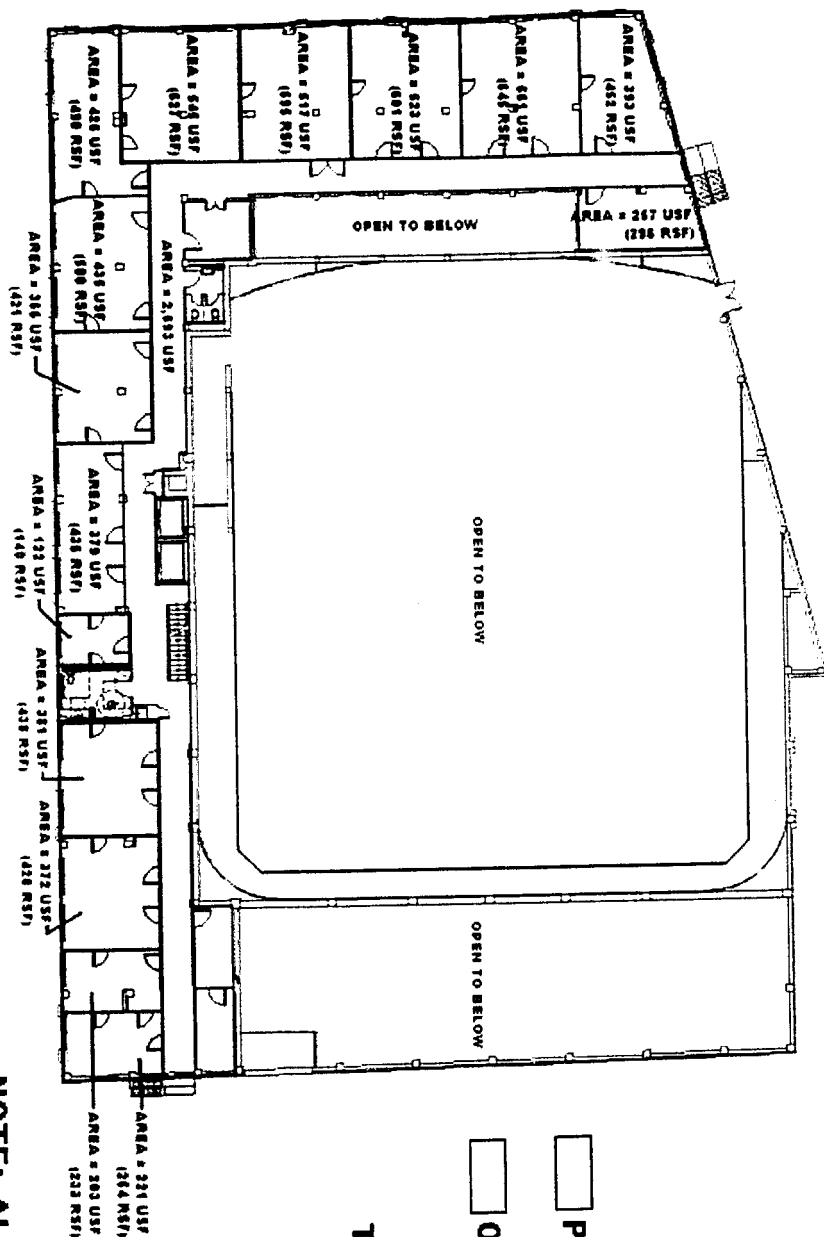
PUBLIC COMMON USF: 2,606

OFFICE USF: 6,191
RSF: 7,120

TOTAL GROSS USF: 13,291

NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE

AZTEC ON THE RIVER THIRD FLOOR LEVEL



☐ PUBLIC COMMON USF: 2,693

☐ OFFICE USF: 5,740
RSF: 6,601

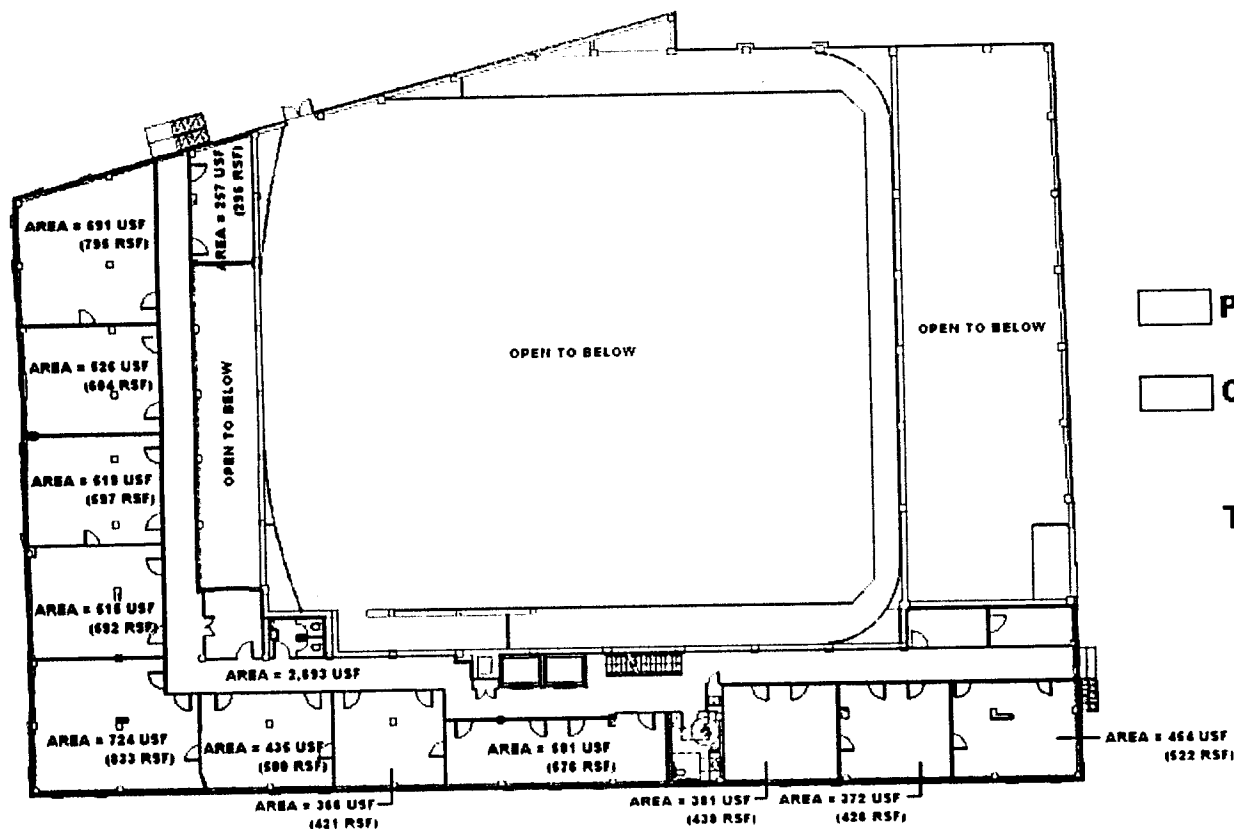
TOTAL GROSS USF: 8,433

NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE

AZTEC ON THE RIVER

FOURTH FLOOR LEVEL

AZTEC ON THE RIVER FIFTH FLOOR LEVEL



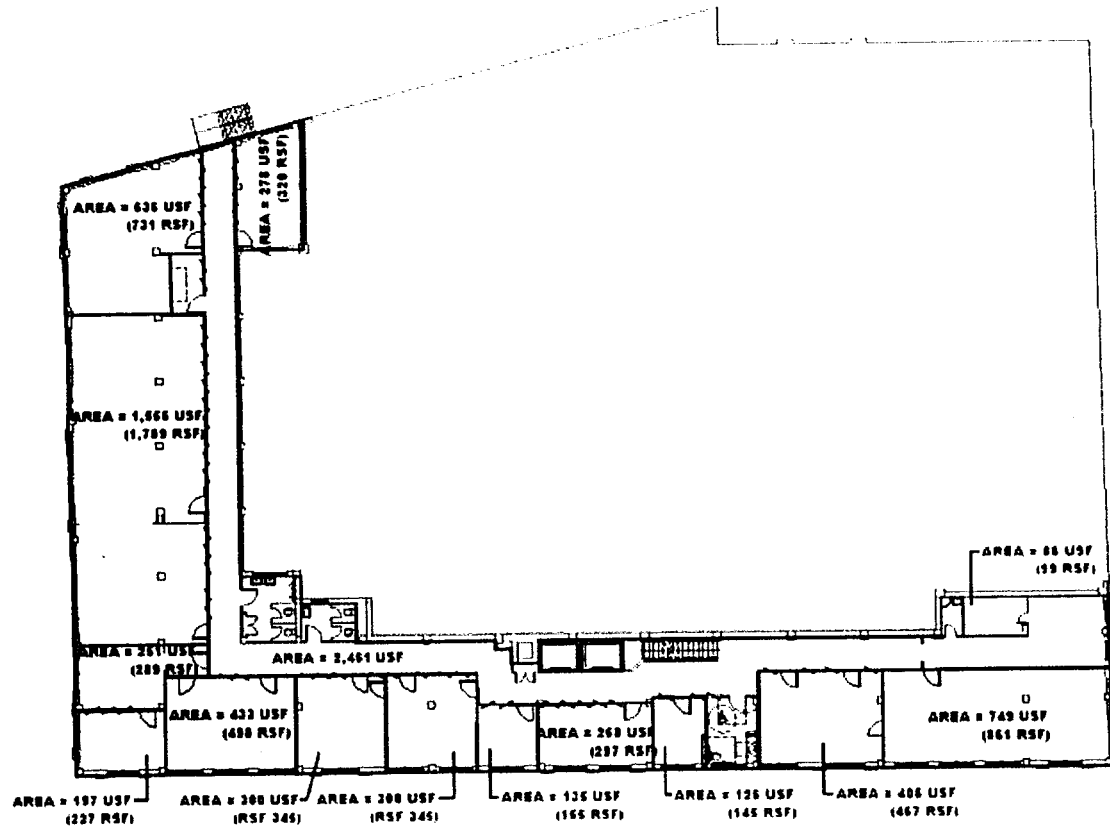
☐ PUBLIC COMMON USF: 2,693

☐ OFFICE USF: 5,740
RSF: 6,601

TOTAL GROSS USF: 8,433

**NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE**

AZTEC ON THE RIVER SIXTH FLOOR LEVEL



☐ PUBLIC COMMON USF: 2,451

☐ OFFICE USF: 5,625
RSF: 6,469

TOTAL GROSS USF: 8,076

**NOTE: ALL MEASUREMENTS ARE
APPROXIMATE AND SUBJECT
TO CHANGE WITHOUT NOTICE**

Exhibit "B"
Memorandum of Term Commencement Date

**AZTEC PROJECT DEVELOPMENT, LTD.
405 NORTH ST. MARY'S STREET, SUITE 350
SAN ANTONIO, TEXAS 78205
Phone: (210) 227-3930**

December 9, 2004

Hand Delivered

Leticia M. Vacek
City Clerk, City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

RE: MEMORANDUM OF TERM COMMENCEMENT DATE

Development Agreement between the City of San Antonio ("City") and Aztec
Project Development, Ltd. ("Developer") (the "Development Agreement")

Dear Ms. Vacek:

This letter will serve to confirm that the Developer commenced the Theatre
Development, as that term is defined in the Development Agreement, on May 1, 2004. This
letter, when signed by both the City and the Developer, will constitute the "Memorandum of
Term Commencement Date" required under Section 2.1 of the Development Agreement and will
be attached thereto as Exhibit "B".

Very truly yours,

Aztec Project Development, Ltd.

By: Euro-Alamo Management, Inc., its
Managing Agent

By: 
Steven V. Stendebach, its President

RECEIPT ACKNOWLEDGED

City of San Antonio

By: _____

Title _____

Ms. Leticia M. Vacek
City Clerk, City of San Antonio
December 9, 2004
Page 2

cc: Mr. Florencio Pena
Development Services Director
P.O. Box 839966
San Antonio, Texas 78283-3966