

CONSENT AGENDA  
ITEM NO. 11

**CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Malcolm Matthews, Director, Parks and Recreation Department

**SUBJECT:** Lease Agreement in Building Number 14 at La Villita

**DATE:** February 10, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the execution of a lease agreement with Claudia Griselda Paz and Salvador Carzres Negrete dba Casa Clasal for use of 642 square feet of retail space in Building Number 14, upstairs and downstairs, in La Villita in City Council District 1 for a term which commenced on August 15, 2004 and which will expire on June 30, 2007, at an initial rent of \$6,329.75 per year and increasing to \$7,440.69 per year in 2007.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Building 14 in La Villita was vacated when the previous tenant decided not to renew their lease. The space, which has 642 square feet, was offered to the tenants within La Villita, as is the policy, but no existing tenants were interested in moving to this location. A Request for Proposals (RFP) was issued to solicit proposals for use of the space.

A total of four proposals were received and were subsequently reviewed and evaluated by a committee comprised of representatives of the La Villita Tenants Association and City staff. Criteria used in evaluation and ranking included retail proposal, responsiveness to RFP, and qualification and experience. The firm with the highest score, the Blue Lady, was disqualified because the owner had lease payment issues as a prior tenant at La Villita. Claudia Griselda Paz and Salvador Carzres Negrete dba Casa Clasal had the second highest score and was selected by the evaluation committee to fill the vacancy. The store will sell copper gifts and merchandise, crafts made of copper, wood crosses, small crafts, and small wooden furniture.

The term of the lease agreement is from August 15, 2004 through June 30, 2007, which will coincide with all other lease agreements in effect in La Villita. The tenants are required to pay building rent, utility costs, a promotional fee and exterior building maintenance fee; abide by use clauses and minimum hours of operation; provide for all improvements and maintenance of the leased space and provide insurance levels specified by the City's Risk Manager.

### **POLICY ANALYSIS**

It is the long-standing policy of the City of San Antonio to lease public property in La Villita for art, cultural and retail sales purposes. The approval of a lease agreement requires passage of a City ordinance.

### **FISCAL IMPACT**

Ms. Paz and Mr. Negrete will continue payments established in 2000 through a market rate study for all of the La Villita properties based upon square footage, location and purpose of use. The tenants are presently in year five of the rate schedule. The City will receive the following rental income from this lease agreement:

Lease Year One:	\$6,329.75/annual
Lease Year Two:	\$7,347.01/annual
Lease Year Three:	\$7,440.69/annual

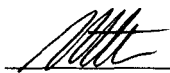
These rental fees are deposited into the City's General Fund.

### **COORDINATION**

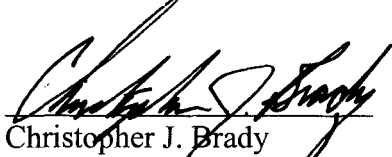
This lease was coordinated with the City Attorney's Office and the Asset Management Department.

### **SUPPLEMENTARY COMMENTS**

A Discretionary Contracts Disclosure Form is attached.



Malcolm Matthews  
Director of Parks and Recreation



Christopher J. Brady  
Assistant City Manager



J. Rolando Bono  
Interim City Manager

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**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

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

and the name of:

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

N/A

(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;

N/A

(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.

N/A

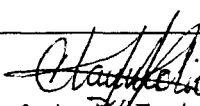
### Political Contributions

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:
N/A		

### Disclosures in Proposals

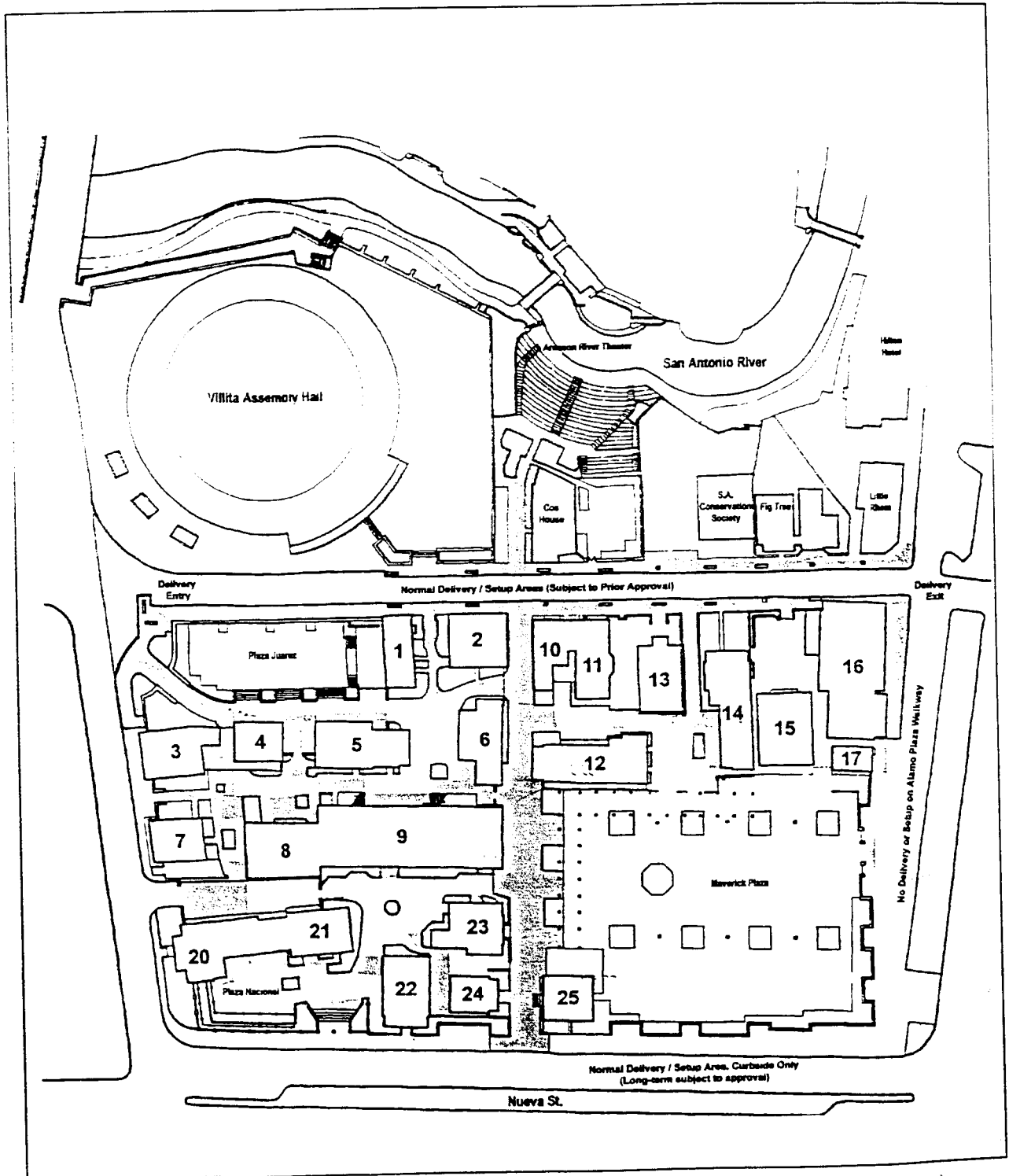
Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official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

Signature:  CLAUDIA FDEZ SALVADOR NEGRET	Title: OWNERS Company: CASA CLASAL	Date: JAN/11/05

<sup>1</sup> 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.

La Villita Lease Agreement  
Building 14

Casa Clasal



## LA VILLITA RETAIL 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. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, (hereinafter referred to as "CITY"), and **Claudia Griselda Paz and Salvador Cazares Negrete**, d/b/a **Casa Clasal**, a sole proprietor (hereinafter referred to as "TENANT"), 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 TENANT, does hereby lease and demise to TENANT, and TENANT does hereby rent and accept from CITY for the term hereinafter set out, the real property owned by the CITY as outlined on the drawing which is attached hereto as Exhibit A 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:

All the real property and improvements, which contain approximately **642 square feet**, and identified as Building Number Fourteen (14), UPSTAIRS and DOWNSTAIRS, at 418 La Villita and incorporated by reference herein for all purposes. Any and all attached porches and stairways plus the area located under the building overhang.

- 1.1.2 Any and all attached porches and stairways plus the area located under the building overhang, if any. Said real property, improvements, and overhang area are hereinafter called the "**Leased Premises**" and lie within the area commonly known as La Villita (hereinafter called "La Villita").
- 1.2 CITY'S Reservation of Rights - In addition to the CITY'S Reservations set out in **Article Nineteen (19) Reservations** and other sections of the Lease Agreement, CITY reserves the right to a public right-of-way along areas not included in the lease premises description, reference Exhibit A, and to follow a path designated by the CITY for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as Exhibit B. TENANT shall keep said right of way free of obstructions in the form of either fixed or movable objects, in said public right of way. Failure to comply with this section may, at CITY'S option, constitute a default under this Lease Agreement.

### **2. USE OF PREMISES, ASSOCIATES AND HOURS OF OPERATION**

- 2.1 CITY hereby agrees to permit TENANT use of above described CITY-owned property located at **La Villita**, San Antonio, Bexar County, Texas. TENANT agrees that the Leased Premises shall be utilized for the sole purpose of arts, craft and skills display, and retail sales and 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.

- 2.1.1 It is agreed by TENANT that TENANT will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable. The TENANT covenants and agrees that, during the term hereof, he or she will use or permit to be used any part of the premises covered by the lease to which this lease agreement is attached solely for the use and purposes of manufacture or sale of the classes of goods set forth below:
- 2.1.1.1 CLASS 1: which shall constitute 80% of the total inventory of merchandise sold and/or manufactured and/or crafted on the Leased Premises.  
**Copper gifts and merchandise and crafts made of copper.**
- 2.1.1.2 CLASS 2: which shall constitute 20% of the total inventory of merchandise sold and/or manufactured and/or crafted on the Leased Premises.  
**Wood crosses, small crafts and small wooden furniture.**
- 2.1.2 The foregoing use(s) and purpose(s) may be changed only by written approval of CITY, acting by and through the Director of the Department of Parks and Recreation of the City of San Antonio.
- 2.1.3 Any use by TENANT of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at CITY'S option, for termination of this Lease Agreement upon ten (10) days written notice to TENANT. If, prior to the end of the ten (10) day period, TENANT satisfies CITY that said TENANT is making a reasonable effort to halt such use by removing the unauthorized goods, wares, merchandise or other paraphernalia from the premises or by ceasing to perform such unauthorized services or talents and not offering same for sale, trade, barter, gift, free performance or other transacting of business or providing of services upon said premises, then CITY, at its sole discretion, may extend the ten (10) day period not to exceed a total time lapse of thirty (30) days. TENANT agrees, if not conforming to the use terms hereof, to peacefully quit and surrender the premises without any liability of CITY'S part of without any legal action necessary by CITY.
- 2.1.4 Further TENANT covenants and agrees, in keeping with the intent and spirit of La Villita, to operate the business conducted on the Leased Premises in an "owner presence" capacity, physically participating in the day-to-day operations of TENANT'S business, as opposed to employing a non-owner manager of said premises, hence an "absentee owner" posture, unless such management is first approved by the Director, Department of Parks and Recreation or his designee. Failure to operate the business on the Leased Premises in such a manner will constitute an act of default hereunder and will be grounds at City's option to terminate this Lease Agreement upon ten (10) day's written notice to TENANT.
- 2.2 In using the Leased Premises for the purposes(s) hereinbefore described, TENANT may, with the prior written permission of the Director, Department of Parks and Recreation, which permission shall not be unreasonably withheld, arrange for associates(s) to learn,

demonstrate, exhibit or practice a specific art or craft on said Leased Premises. Such clause herein, TENANT understands and agrees that for purposes of this Lease Agreement such associate(s) shall be considered as invitee(s) of TENANT and not a sublessee(s).

2.3 TENANT covenants and agrees that, continuously and uninterruptedly from and after the effective date of this Lease Agreement, it will operate and conduct within the Leased Premises the business it is permitted to operate and conduct under the provisions of the Lease Agreement, except while the Lease Premises are untenable by reason of fire or other casualty. TENANT agrees to conduct its business in the Leased Premises at all times in a first-class manner consistent with reputable business standards and practices for such business.

2.4 TENANT agrees that the **PRINCIPAL USAGE AND PURPOSE** of TENANT'S Lease space will be for the sale and/or manufacture and/or crafting of a specific class of goods as described in CLASS 1 (**SECTION 2.1.1.1**) of the Use Clause above and agrees to maintain the following minimum hours of operation: **10:00 a.m. to 6:00 p.m. Monday through Saturday**, provided, however, that TENANT is not required to maintain operations on the following traditional holidays: Easter Sunday, Memorial Day, President's Day, Thanksgiving Day, Christmas Day, New Year's Day. It is understood that Thanksgiving Day, Christmas Day and New Year's Day are the only holidays during which the entire La Villita area may be closed. It is understood and agreed that TENANT may remain open additional hours should TENANT so desire. However, TENANT must remain open at least those hours stated above or for any seasonally adjusted hours as designated and mutually agreed upon by the Facilities Manager of La Villita and the La Villita Tenants Association, acting by and through its Board of Directors. Any deviation being less than those hours stated above will require the approval in writing of the Facilities Manager of La Villita. Except as otherwise provided herein, failure of TENANT to comply herewith for two (2) or more successive days shall be deemed a breach of the Lease Agreement and grounds for CITY'S immediate termination of the Lease Agreement upon three (3) days' written notice to TENANT at the address set forth hereafter.

2.4.1 Those breaches of, and acts of default under, Sections 2.1, 2.2, and 2.3 of this Lease Agreement, as well as, the covenant to remain open under Section 2.4, if violated, shall each constitute a separate act of default outside the scope of **Article Thirteen (13) Default and Remedies**.

2.5 Should TENANT have to close its business for more than one day or for any period of time not to exceed thirty (30) calendar days, due to illness or for planned vacation, buying trips or any other reasons, TENANT must notify the Facilities Manager of La Villita of said closing. If such notice is given, such closing shall be deemed authorized by CITY and not in violation of the provisions of Section 2.4, above.

### **3. TERM AND TERMINATION**

3.1 The term of this Lease is for approximately a three (3) year period beginning on **August 15, 2004**, and ending on **June 30, 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 is deemed to be inconsistent with the public use of the property; or



- 3.1.2 In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction; or
- 3.1.3 In the event TENANT 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.
- 3.1.4 In the event of termination by City Council in relation to 3.1.1. or above, the CITY shall give TENANT notice in writing at least thirty (30) days prior to the termination date.
- 3.2 TENANT may cancel this Lease by giving thirty (30) days' written notice to the CITY.
- 3.3 **TENANTS must extend current work authorizations issued by Department of Immigration and Naturalization Service on Form 1797A, a minimum of 30 days prior to their expiration, which is March 31 2006 or lease agreement will be terminated. Appropriated name changes must also be accomplished on revised form.**

#### **4. RENTAL**

- 4.1 TENANT shall pay rental in either one lump sum in advance or in monthly installments in advance on the first day of each month, except for the first month as described in 4.4, and in accordance with the following payment schedule and as calculated in **Exhibit C**:

##### **Reference Exhibit C**

- 4.1.1 April rent for all Lease Years shall be abated under the terms identified in **Article Twenty-three (23), Night in Old San Antonio Event and Other Events**, included hereinafter.
- The monthly rental installments to be paid as set forth above include amounts which are currently equal to ten (10¢) cents per square foot per month for exterior maintenance and common area maintenance, and ten (10¢) cents per square foot per month for advertising and promotional fees, based on the number of retail square feet only contained in the Leased Premises. The La Villita Tenant's Association, acting by and through its Board of Directors, shall recommend a budget for CITY for expenditures of promotional fees. CITY agrees to undertake to spend not less than the amount of promotional fees collected on promotion of La Villita. TENANT acknowledges that said rental does not include the payment of utilities, as set forth in **Article Twenty-Six (26) Utilities** hereafter.
- 4.2 Payment shall be submitted to:
- Treasury Supervisor  
City Hall Annex  
P.O. Box 839975  
San Antonio, Texas 78283-3975
- 4.3 **ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LEASE AGREEMENT.**

- 4.3.1 Any rent not paid by the tenth (10th) day of the calendar month shall be considered past due. All past due rentals under the terms of the Lease Agreement shall bear interest at a rate of 12% per annum from the date due until paid by tenant.
- 4.4 Each succeeding monthly rental payment shall be due, owing and payable, as stated above, in advance, on the first (1<sup>st</sup>) day of each calendar month thereafter of the term of this Agreement without any right or setoff or deduction, except as otherwise provided herein.

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

- 5.1 TENANT has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. TENANT'S taking possession of the Leased Premises shall be conclusive evidence of TENANT'S acceptance thereof in good order and satisfactory condition, and TENANT hereby accepts the Leased Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION** as suitable for the purpose for which leased. TENANT accepts the Leased Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for TENANT'S intended commercial purposes.
- 5.2 TENANT 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 TENANT unless the same are contained herein or made a part hereof by specific reference herein.

## **6. LIENS PROHIBITED**

- 6.1 TENANT covenants that he/she will not bind, or attempt to bind, CITY for payment of any money in connection with construction, repair, alteration, addition or reconstruction work in, on, or about the Leased Premises.
- 6.2 TENANT hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all authorized improvements of, and duly authorized modifications to, the Leased Premises, except such as are the responsibility of CITY hereunder, that may hereafter be made during the term hereof. TENANT covenants and agrees to fully indemnify and hold harmless the CITY against all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished to TENANT during the performance of such authorized improvements and authorized modifications. TENANT agrees to get authorization in writing from CITY prior to the performance of any improvements or modifications to the Lease Premises referenced herein.
- 6.3 In the event any mechanic's, materialman's, or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or CITY-owned property located therein, during the term hereof, TENANT shall within thirty (30) days cause the same to be cancelled and discharged of record, by bond, payment directly (or in the registry of an appropriate court) or otherwise in the manner chosen by TENANT and at the expense of TENANT and shall also defend on behalf of CITY, at TENANT'S sole cost and

expense, any action, suit, proceeding which may be brought thereon or for the enforcement of such lien or order.

- 6.4 Failure of TENANT to comply with any requirement of this Section or Article shall be cause for immediate termination of the Lease Agreement by CITY in accordance with provision set forth elsewhere herein.

## **7. IMPROVEMENTS**

- 7.1 TENANT shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall TENANT 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 TENANT 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, TENANT 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.

## **8. SIGNS**

- 8.1 TENANT hereby agrees not to install or display any signs(s) in La Villita outside the Lease Premises or in any window or on the exterior of the Leased Premises without the prior approval of said sign(s) by the CITY through the Facilities Manager of La Villita and the Historic Design and Review Commission (HDRC). TENANT further agrees to comply with such prospective sign design criteria and sign review procedures as may be established and amended from time to time by duly authorized CITY authority and to comply with established sign review procedures for proposed new signs.

## **9. MAINTENANCE OF PROPERTY**

- 9.1 TENANT agrees, at TENANT'S own expense, to keep the interior of the Leased Premises, including interior plumbing, plumbing fixtures, plumbing lines and plumbing connections and interior electrical fixtures, lamps and/or bulbs, wiring and connections, and interior walls, flooring, doors (interior and exterior) locks, and other interior improvements, including heating and air conditioning equipment, including air handling units (AHU's) in good order and repair, and in clean, safe, and sanitary condition and to paint the interior when necessary to maintain interior of the Lease Premises, or any part thereof, in a manner satisfactory to CITY, and the replacement of equipment and fixtures as necessary.
- 9.2 CITY agrees to keep and maintain the roof, foundation, main beams and exterior walls of the Leased Premises including shutters, window frames and glass in good repair, but CITY shall not be liable to TENANT for any damage caused by the same being or becoming out of repair until CITY has had reasonable opportunity to have same repaired after being notified in writing of the need of same by TENANT. City shall not be liable to TENANT for any damage to merchandise, trade fixtures, or personal property of TENANT in the

Leased Premises caused by water leakage from the roof, water lines, sprinkler, or heating and air condition equipment or supporting apparatus.

- 9.3 TENANT 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 appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the CITY through the Facilities Manager of La Villita.
- 9.4 Other than as provided herein, TENANT shall be responsible for the condition of the Leased Premises. TENANT shall repair any damage to the Leased Premises caused by TENANT, and shall maintain, or caused to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition.
- 9.5 TENANT 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, the only exceptions being usual wear and tear, acts of God, or unavoidable accident.
- 9.6 TENANT agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other property of TENANT both during the term of this Lease and as so left on the Leased Premises after TENANT vacates the Leased Premises. If said signs, goods and any other property placed by TENANT 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.

#### **10. COMMON AREAS**

- 10.1 "Common Areas" shall mean all areas, space, equipment, facilities, and services provided from time to time by CITY for the common use and benefit of the TENANT'S of the La Villita Area, their employees, volunteers, agents, and customers and other invitees, including exits, entrances, access roads, driveways, sidewalks, landscaped space, washrooms, lounges and shelter, refuse areas, pedestrian walkways or courts within La Villita. The Cos House and its courtyard are expressly excluded from "Common Areas".
- 10.2 CITY shall, subject to events beyond its reasonable control, operate and maintain the common area and keep the common area in good order and repair.
- 10.3 CITY will provide park police and/or security guard patrol for the common area and shall have exclusive control of the manner, method and extent of the services provided. Such patrols shall have the right of entry on and into the Leased Premises as needed to provide said services and to investigate any circumstances conditions, or person that may appear to be suspicious. TENANT expressly understands and agrees that CITY, by providing said patrol services, has not agreed to act and does not act as an insurer of TENANT or his/her property, and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property. CITY agrees that it shall, in any event, provide park ranger and/or security guard patrol which shall be sufficient to carry out CITY'S obligations herein set forth concerning the conduct in La Villita of persons other than TENANT, its employees and invitees.

#### **11. TAXES AND LICENSES**

- 11.1 TENANT 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 TENANT, or upon the business conducted on the Leased Premises, or upon any of TENANT'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 TENANT. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the CITY.

## **12. ASSIGNMENT AND SUBLETTING**

- 12.1 Except as to the parent, subsidiary or affiliated company, TENANT shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet 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 TENANT without such permission shall constitute grounds for termination of this Lease by the CITY.
- 12.2 Without the prior written consent of TENANT, 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.
- 12.3 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 TENANT, or a release of the TENANT from further observance or performance by the TENANT 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 be in writing signed by the CITY.

## **13. DEFAULT AND REMEDIES**

- 13.1 In addition to any other events of default enumerated elsewhere in this Lease Agreement, to include, but not limited to, each breach, default and violation of a covenant, as set forth under Sections 2.1, 2.2, 2.3 and 2.4 above, the following events shall be deemed to be events of default by TENANT under this Lease Agreement:
  - 13.1.1 TENANT shall fail to pay any installment of rent as provided for in this Lease and such failure shall continue for a period of ten (10) days.
  - 13.1.2 TENANT shall, within three (3) months following Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open them or remain open during the times required herein for the conduct of business; or
  - 13.1.3 TENANT deserts or vacates all or any part of the Leased Premises; or
  - 13.1.4 The taking by a court of jurisdiction of TENANT and its assets pursuant to proceedings under the provision of any Federal or State reorganization code or act; or
  - 13.1.5 The entry by an court of a final order with respect to TENANT, providing for modification or alteration of the rights of creditors; or
  - 13.1.6 If the estate hereby created shall be taken by execution or by other process of laws; or

- 13.1.7 If TENANT shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and or TENANT'S part to be performed or any way observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by TENANT of written notice of such neglect or failure (except for the failure or neglect to pay any installment of rental or additional rental, wherein a ten (10) day period applies, or except for the failure to observe the limitations on minimum hours of operation or the business use of the Leased Premises under Section 2.4 herein, wherein a seven (7) day time period applies; or, if under the "thirty (30) day default events", more than thirty (30) days shall be required because of the nature of the default, if tenant shall fail within said thirty (30) days period to commence and thereafter diligently proceed to cure such default).
- 13.1.8 TENANT 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 TENANT.
- 13.1.9 The taking by a court of competent jurisdiction of TENANT 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.
- 13.1.10 TENANT shall fail to obtain any and all work permits required for a foreign national in paragraph 3.3, then this agreement will be in default.
- 13.2 Further, the right is expressly reserved to CITY as follows:
- 13.2.1 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this Lease, and all rights and interest created by it, to be terminated. Upon CITY electing to terminate, this lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. CITY, its agents or attorney, may resume possession of the premises and relet the same for the remainder of the original term at the best rent CITY, its agents or attorney may obtain for the account of TENANT, who shall make good any deficiency. In connection with any such reletting, CITY may make or cause to be made such repairs to the Leased Premises as CITY shall, in good faith, deem advisable and the making of such repairs shall not release TENANT from liability hereunder. CITY shall in no event be liable and TENANT'S liability shall not be affected or diminished in any way whatsoever for failure to relet the leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting.
- 13.2.2 Any termination of this lease as herein provided shall not relieve TENANT 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 TENANT hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from TENANT for any default thereunder. All rights, Options and remedies of CITY contained in this Lease 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 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.

- 13.2.3 Upon any such expiration or termination of this Lease Agreement, TENANT 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 TENANT and remove TENANT and all other persons and property from the Leased Premises.
- 13.2.4 CITY'S repossession of the Leased Premises shall not be construed as an election to terminate this Lease Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to TENANT by CITY. Notwithstanding any reletting without termination by CITY because of any default by TENANT, CITY may at any time after such reletting, elect to terminate this Lease Agreement for any such default.
- 13.2.5 In the event that CITY shall elect to relet, then rentals received by CITY from such reletting shall be applied: First, to the payment of any indebtedness other than rent due hereunder from TENANT to CITY; Second, to the payment of any cost of such reletting; Third, to the payment of the cost of any repairs to the Leased Premises; Fourth, to the payment of rent due and unpaid hereunder; and the residue, if any shall be held by CITY and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by TENANT hereunder, then TENANT shall pay such deficiency to CITY. Such deficiency shall be calculated and paid monthly. TENANT shall also pay to CITY, as soon as ascertained, any costs and expenses incurred by CITY in such reletting or in making such repairs not covered by the rentals received from such reletting of the Leased Premises.
- 13.2.6 If CITY shall terminate this Lease Agreement or take possession of the Leased Premises by reasons of a condition of default, TENANT, and those holding under TENANT, shall forthwith remove their trade fixtures, signs and other personal property (hereafter collectively "good and effects") from the Leased Premises. If TENANT or any such claimant shall fail to effect such removal within ten (10) days after such termination, then TENANT agrees that any such property left shall automatically become the property of CITY, whereupon CITY may, without liability to TENANT or those claiming under TENANT, remove such goods and effects and store the same for the account of TENANT or of the owner thereof at any place selected by CITY with all costs for said removal and storage to be borne by TENANT or at CITY'S option, CITY may retain or dispose of TENANT'S goods and effects without notice, at private or public sale and without liability to TENANT or those claimants under TENANT.

13.2.7 If CITY shall enter into and repossess the Leased Premises for reason of the default to TENANT in the performance of any of the terms, covenants or conditions herein contained, then and in that event TENANT hereby covenants and agrees that TENANT will not claim the right to redeem or reenter the said premises to restore the operation of this Lease Agreement and TENANT hereby waives the right to



such redemption and reentrance under any present or future law.

The words "reenter" and "reentry" as used in this Lease Agreement are not restricted to their technical legal meaning.

- 13.2.9 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby TENANT shall be permitted to retain possession of said premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or of this Lease Agreement.
- 13.2.10 Any amount paid or expenses or liability incurred by CITY for the account of TENANT may be deemed to be additional rental and the same may, at the option of CITY, be added to any rent then due or thereafter falling due hereunder.
- 13.2.11 Should CITY default, under the terms herein, TENANT agrees to give written notice to CITY of such default and if such default continues for a period of thirty (30) days after receipt of notice, unless CITY is actively pursuing a cure of such default, then TENANT may pursue any remedy or relief available at law or in equity.

#### 14. INDEMNIFICATION

- 14.1 **TENANT 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 TENANT'S activities under this AGREEMENT, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of TENANT, 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. TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand**

at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

- 14.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 14), is an INDEMNITY extended by TENANT 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. TENANT 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.

## **15. INSURANCE REQUIREMENTS**

- 15.1 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, License Agreement, 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.
- 15.2 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 reference or indicated thereon. The original certificate(s) 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 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.
- 15.3 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.

- 15.4 A **LESSEE'S** financial integrity is of interest to **CITY**, therefore, subject to 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 and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.* Explosion, collapse, underground	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3.	Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
4.	Property Insurance: For physical damage to the property of <b>TENANT</b> , including improvements and betterment to the Leased Premises	Coverage for named perils with a minimum of eighty percent (80%) of the replacement cost of <b>TENANT'S</b> property
5.	Plate Glass Coverage for the Leased Premises	Replacement cost of Insurance Coverage

\*If applicable

- 15.5 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 TENANT shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 15.6 TENANT agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 15.6.1 **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;**
- 15.6.2 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;
- 15.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
- 15.7 TENANT 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

- 15.8 If TENANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of TENANT to maintain said insurance or secure said endorsements. In addition to any other remedies the CITY may have upon TENANT'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 TENANT to stop work hereunder, and/or withhold any payments(s) which become due to TENANT hereunder until TENANT demonstrates compliance with the requirements hereof.

- 15.9 Nothing herein contained shall be construed as limiting in any way the extent to which TENANT may be held responsible for payments of damages to persons or property resulting from TENANT'S or its subcontractors' performance of the work covered under this Lease Agreement.
- 15.10 All personal property placed in the Leased Premises shall be at the sole risk of TENANT. CITY shall not be liable, and TENANT waives all claims for any damage either to the person or property of TENANT 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. TENANT shall save and hold harmless CITY from any claims arising out of damage to TENANT'S property or damage to TENANT'S business, including subrogation claims by TENANT'S insurers.

#### **16. FIRE AND OTHER CASUALTY**

- 16.1 In the event that the Leased Premises, or any portion thereof, shall be partially damaged by fire, the elements, civil disorder, or other casualty, TENANT shall give immediate notice thereof to the CITY and the same shall be repaired at the expense of CITY, without unreasonable delay, unless CITY determines that the damage is so extensive that repair or rebuilding ("restoration") is not feasible since the damage has rendered the Leased Premises untenable. In the event that the damage should be so extensive as to render the Leased Premises untenable, in the judgment of CITY, then, at the option of CITY, and upon written notice to TENANT ("date of determination"), this Lease shall cease and come to an end, as of such date of determination. TENANT shall receive an abatement of rent proportionate to the damage to the Leased Premises unless such damage to the Leased Premises was caused by the negligence of TENANT, its agents, employees, contractors, subcontractors or invitees whereupon the rent will not abate, until such time as both the exterior and interior premises shall again be put in repair and become tenantable, but in the event of the building being damaged by fire or other casualty to such an extent as to rendered it necessary in the exclusive judgement of CITY not to rebuild the same, then, at the option of the CITY, and upon written notice to TENANT, this Lease Agreement shall cease and come to an end, and the rent shall be apportioned and paid up to date of such damage. If CITY elects to rebuild the Leased Premises and continue this Lease, CITY shall notify TENANT of such restoration intention within sixty (60) days after the date of the damage. If CITY fails to meet the sixty (60) day requirement, unless extended by mutual agreement of the parties, then, this Lease Agreement shall be deemed canceled and of no further force or effect, as of such sixtieth (60th) day, with any Rent Fees or other sums due to CITY to be paid by TENANT no later than ten (10) days thereafter.
- 16.2 CITY'S obligation to perform restoration under this **Article Sixteen (16)**, shall in any event be limited to restoring the Leased Premises to substantially the condition that existed prior to the finish out work performed by TENANT and shall further be limited to the extent of the insurance proceeds available to CITY and, as applicable, to TENANT for such restoration, if CITY elects to contribute any insurance proceeds to such restoration, being under no obligation to do so. TENANT agrees that promptly after completion of the aforementioned restoration, TENANT will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore such of its signs, fixtures, equipment and

other items provided and/or installed by TENANT ("TENANT items") to the extent of the insurance proceeds it may receive from such damage.

## **17. RULES AND REGULATIONS**

- 17.1 TENANT covenants and agrees that TENANT, its employees, and invitees, will comply with reasonable rules and regulations set by CITY from time to time for the efficient operation of La Villita, including, but not limited to, those rules and regulations subsequently enumerated.
- 17.2 Subject to TENANT'S right to conduct its business, TENANT will not cause or permit the emission of any excessive noise, smoke, or odor from the Leased Premises, the Common Areas, or any other premises in La Villita, by the operation of any instrument, apparatus, equipment therein, or other means which may, in CITY'S judgement, be deemed offensive or disturbing in natures; nor shall TENANT perform any act or carry on any practice which may be a nuisance or menace to other tenants in La Villita or which is illegal, immoral or disreputable, or which may reduce the market value of the Leased Premises.
- 17.3 TENANT shall not cause the obstruction of streets, sidewalks or other Common Areas of the La Villita Area.
- 17.4 The outside areas immediately adjoining the Lease Premises, including sidewalks, shall be kept free and clear at all times by TENANT and TENANT shall not place or permit any obstructions, garbage, refuse, merchandise or displays in such areas without the prior written approval by the Facilities Manager of La Villita.
- 17.5 No radio or television aerial shall be erected on the roof or exterior walls of the Leased Premises.
- 17.6 Nothing is to be attached or placed on the roof or exterior walls of the Leased Premises without the prior written consent of the CITY.
- 17.7 No loudspeakers, televisions, phonographs, radios, flashing lights, or other devices shall be used in a manner so as to be heard or seen outside of the Leased Premises except as approved in writing by the facilities manager of La Villita.
- 17.8 No auction, fire bankruptcy, going out of business, or other selling-out sales shall be conducted on or about the Leased Premises without the prior written consent of the CITY.
- 17.9 No managerial contracts for individual shops with independent contractor(s) will be allowed when the contract manager(s) is an entity or person other than the TENANT or employee of TENANT.
- 17.10 Only one lease per TENANT in La Villita is allowed. This requirement excludes an existing TENANT or his/her family member or his partner or any other equity holder in TENANT'S

business from having more than one (1) lease in La Villita and any new TENANT having a business interest or family relationship with an existing TENANT from leasing in La Villita.

- 17.11 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. TENANT agrees to remove all signs from the Leased Premises when TENANT vacates the Leased Premises.
- 17.12 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.
- 17.13 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.
- 17.14 Discrimination on account 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.
- 17.15 TENANT 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.
- 17.16 TENANT 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. TENANT shall comply with CITY'S laws pertaining to noise. TENANT 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 TENANT'S business establishment before 6:00 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 a default under this Lease Agreement.
- 17.17 Except as otherwise provided herein, failure of TENANT to comply with the minimum hours of operation for the number of days per week stated in this section for a period of two (2) or more successive days shall be deemed a breach of, and act of default under, this Lease Agreement and grounds for CITY'S immediate termination of this Lease Agreement upon three (3) days' written notice to TENANT at the address set forth hereafter.

## **18. CITY BEST EFFORTS**

- 18.1 CITY agrees to use its best efforts as follows:
- 18.2 CITY agrees to pursue upgrading of the lighting and signage in and around La Villita and to conduct periodic walkthroughs for the benefit of assessing and condition and placement of such lighting and signage.
- 18.3 CITY agrees to augment the maintenance of La Villita through recommendations in future years' budget.

- 18.4 CITY will use its best efforts to insure that the presence of Park Ranger security is evident and maintained in the La Villita areas.
- 18.5 CITY staff will aggressively control the actions of caterers and other non-TENANT users of La Villita to insure that said users will comply with the requirements to avoid "setting up" in the shaded areas shown on Exhibit "B", in order to prevent obstructing the public's access to all tenant shops in La Villita.
- 18.6 To assure that the TENANT'S maintenance obligations set forth in Section 9.1 herein are performed, CITY will incorporate a request for an annual maintenance contract in the CITY Budget for Fiscal Years including in the term of this license agreement, as funds are available, to provide for inspection of the air conditioning units, including filters, in the TENANT'S Leased Premises.

#### **19. RESERVATIONS: CITY**

- 19.1 CITY reserves the right to enter the Leased Premises at all reasonable times install, maintain, repair and replace utility lines, pipes, ducts, and wires passing through the Leased Premises to serve other parts of or premises within the La Villita area. Any such installation, maintenance, repair or replacement shall be placed in locations which shall not unreasonably interfere with TENANT'S use of the Leased Premises, and shall be carried out to the extent possible so as to minimize inconvenience or disruption of TENANT'S business.
- 19.2 TENANT shall not be entitled to an abatement or reduction of rent by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of TENANT from the Leased Premises. Should construction or other activity by CITY prevent TENANT'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 TENANT'S use of Leased Premises was denied.
- 19.3 No provision of this Lease Agreement shall operate in any manner to prevent CITY from permitting temporary displays, tournaments or amusements, or River Walk parades for the benefit of the public in conformance with the rules and regulations of La Villita.
- 19.4 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. TENANT shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the La Villita area. TENANT expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of TENANT'S property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.
- 19.5 CITY retains the right to maintain and secure from TENANT all keys and locking mechanisms used to secure the premises on a regular basis. CITY will utilize these keys only during emergency situations and will not make TENANT keys available to any staff other than emergency safety personnel or to the TENANT upon written permission.
- 19.6 TENANT acknowledges and agrees that the City has the right to control or completely prohibit the sale of any and all food, beverages, merchandise and services on TENANT's exterior patio, as may be included in the demised premises description, during Night In Old San Antonio (NIOA). The ability of TENANT to sell food, beverages, merchandise and services shall be based upon the TENANT securing written approval from the San Antonio Conservation Society (SACS) prior to the four (4) night NIOA event for all such sales. A copy of said written approval shall be provided to CITY at least forty-eight (48) hours prior



to the opening of the first evening of NIOSA.

19.6.1 TENANT also acknowledges and agrees that upon TENANT'S failure to comply with the terms of this section, CITY shall direct TENANT in writing to immediately cease sales of and to remove any and all unapproved food, beverages, merchandise and services from the exterior patio area. Regardless of any other default or notice provisions contained within this agreement, TENANT'S failure to comply with the CITY's written direction to cease operations within one (1) hour after delivery of written notice shall constitute sufficient cause and authority for CITY to enter upon the leased premises and to remove and store all such unauthorized items for sale until the conclusion of the last day of NIOSA.

19.6.2 TENANT covenants and agrees that TENANT will hold the CITY harmless for any damages, claims, causes of action, liability and suits of any kind and nature arising out CITY'S actions in enforcing the provisions of this section, including any losses or damages arising from the loss, theft, destruction of any items so seized and stored by CITY.

## **20. HOLDING OVER**

20.1 Should TENANT 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 rate equal to the rent paid for the last month of the term of the Lease Agreement plus ten percent (10%) of such amount. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the TENANT to hold over.

## **21. TENANT'S ASSOCIATION**

21.1 CITY agrees to encourage an active La Villita Tenant's Association.

21.2 TENANT acknowledges that an active Tenant's Association is in the overall best interest of all La Villita tenants and agrees to actively participate in such organization subject to TENANT'S rights to conduct its business.

## **22. PARTICIPATION IN COMMON AREA ARTS AND CRAFTS SHOWS**

22.1 As a condition of permission to hold annual or periodic arts and crafts shows or events in the La Villita common area, CITY agrees to require the sponsors of such arts and crafts shows or events to offer all Tenants of La Villita the opportunity to participate in such shows or events. TENANT understands and agrees that such participation will be arranged by and effected through the sponsor of any such show or event and subject to the rules and regulations of that sponsor and that CITY'S responsibility is limited to its agreement herein.

### **23. NIGHT IN OLD SAN ANTONIO EVENT AND OTHER EVENTS**

- 23.1 The CITY reserves the right to grant the San Antonio Conservation Society (hereafter "Society"), or to its successors, assigns or subcontractors, a Lease of all or any portion of adjacent property and/or a concession to sell beverages, food and other items on all or any portion of La Villita, other than premises hereby expressly demised, during specified hours on those dates in each year of the duration of the Lease in which the Society may sponsor all or any part of the event known as "A Night in Old San Antonio" (hereafter NIOSA) within La Villita. TENANT expressly recognizes that any right, privilege, or leasehold interest granted to the San Antonio Conservation Society for "NIOSA" under a separate lease and/or concession contract controlling access to La Villita is superior to any such right, privilege or leasehold interest granted TENANT under this Lease Agreement.
- 23.2 As a condition of the NIOSA agreement with the San Antonio Conservation Society, CITY agrees to require Society coordination with the La Villita Tenant's Association in the preparation for, and conduct of NIOSA.
- 23.3 The rental described in **Article Four (4) Rental** for the fifteen days annually in which the event known as "NIOSA" occurs shall be abated during said period however, the rent attributed to utilities, exterior maintenance and common area maintenance, and promotional fees as described in Sections 4.1.1 and 26.2, shall not be abated.
- 23.4 Except in the case of NIOSA, the "Starving Artist's Show", and holidays stated in Section 2.4, the gates to La Villita will remain open from 7:00 a.m. until 6:00 p.m. daily. However, TENANT understands, acknowledges and agrees that CITY will also from time to time accommodate various functions or events, such as those enumerated in Section 2.4 and/or other events approved by City Council. Such accommodation may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises entrance free of charge before 6:00 P.M., except for those events approved by City Council for closing the area and/or charging admission prior to 6:00 p.m., which events may be in addition to NIOSA and the Starving Artist's Show. TENANT expressly recognizes that any such accommodation and also any and all of CITY'S fee simple ownership rights and interest as Landlord hereunder are superior to any right, privilege or leasehold interest granted TENANT under this Lease Agreement and TENANT hereby agrees to cooperate fully with CITY upon notification of such accommodation. TENANT further waives any and all claims for damages, including but not limited to, loss of business, which TENANT may suffer as a result of any such accommodation by CITY as limited by this paragraph.
- 23.5 Further, CITY reserves the right at its option to lease or license any and all areas in La Villita which are not part of the Leased Premises (including but limited to the plazas, streets, and open areas) to groups, conventions, organizations, associations, individuals, or any other entity, either public or private, at any time on a short time basis for any purpose. CITY will use its best efforts to assure that the use thereof by such entity or entities, except for NIOSA, the Starving Artist Show, do not conflict with CITY'S undertaking under this Lease Agreement. CITY agrees that such leases or licenses, except those for NIOSA and the Starving Artists Show, will prohibit the lessees or licensees thereunder from locating booths in or otherwise obstructing the areas so designated by shading on the map of the La

Villita area attached hereto as Exhibit "A". Provided, however, that the CITY reserves the right to adjust such area(s) without the consent of TENANT, if special circumstances warrant, so long as the area(s) so adjusted are located at least ten (10) feet on either side of the main entrance to the Leased Premises, measured in each instance from the center of said entrance.

#### **24. DEMONSTRATION AND TRAINING**

- 24.1 TENANT acknowledges that one of the general overall purposes of La Villita is to stimulate interest and training in the arts and crafts. In pursuit of this purpose, TENANT agrees to actively encourage and promote demonstrations and/or training in his/her particular specialty for students, interns helpers and/or trainees.

#### **25. NONDISCRIMINATION**

- 25.1 Any discrimination by TENANT or his/her agents or employees, on account of race, color, sex, age, religion, handicap, or nation origin, in employment practices or in the use of/or admission to the premises, is prohibited.

#### **26. UTILITIES**

- 26.1 TENANT shall bear all expense for the installation and extension of the following utilities on or to the premises, maintenance (if applicable):
- 26.1.1 Cable Television
  - 26.1.2 Telephone
  - 26.1.3 Any other utility line maintenance expenses, except gas, electric, water, sewer and chilled water, unless such lines were installed by TENANT, who will thereby be responsible for such maintenance.
- 26.2 TENANT agrees to pay the amount of seventy-five (75%) of all monthly utility services including gas, electric, and chilled water, up to the amount of twenty (20¢) cents per square foot per month multiplied by the total number of square feet in the Leased Premises. TENANT also agrees to pay in full of the following monthly utility services:
- 26.2.1 Cable Television
  - 26.2.2 Telephone
- 26.3 CITY agrees to review utility costs on or before November 1<sup>st</sup>. of each year of the Lease Term and to adjust said costs upward or downward on or before January 1<sup>st</sup>. of the following calendar year during the term of this Lease Agreement. TENANT agrees to pay the adjusted cost not to exceed said amount of twenty (20¢) cents per square foot per month.

#### **27. WAGES**

- 27.1 TENANT shall pay wages that are not less than the minimum wages required by Federal and State statutes and CITY ordinances, to persons employed in its operations hereunder.

#### **28. QUIET ENJOYMENT**

- 28.1 CITY covenants and agrees, subject to the provisions of this Lease Agreement, that TENANT, 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.

## **29. CONFLICT OF INTEREST**

- 29.1 TENANT acknowledges that it is informed that Texas law prohibits contracts between the CITY and any local public official, such as a CITY officer or 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. TENANT certifies (and this Lease Agreement is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this Lease Agreement, is an officer or employee of the CITY or any of its agencies. Further, TENANT agrees to comply with the CITY'S Ethics Ordinance and to provide Disclosure Statements to CITY.

## **30. SEPARABILITY**

- 30.1 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.

## **31. NO SUBSTANTIAL INTEREST**

- 31.1 TENANT acknowledges that he/she is informed that Texas law prohibits contracts between the CITY and any local public official ("official"), such as a city officer or 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. TENANT certifies (and this Lease Agreement is made in reliance thereon) that neither it, its individual officers, employees, or agents, nor any person having a substantial interest in the Lease Agreement is an officer or employee of the CITY or any of its agencies.

## **32. NOTICES**

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

City of San Antonio  
Director of Parks and Recreation  
Contract Services Division  
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 TENANT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to TENANT at:

**Claudia Griselda Paz and Salvador Cazares Negrete, d/b/a Casa Clasal  
418 La Villita, Building 14  
San Antonio, Texas 78205**

or to such other address on file with the City Clerk as TENANT may provide from time to time in writing to CITY.

### **33. PARTIES BOUND**

- 33.1 If there shall be more than one party designated as TENANT in this Lease, they shall each be bound jointly and severally hereunder.
- 33.2 The covenants and agreements herein contained shall inure 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.

### **34. TEXAS LAW TO APPLY**

- 34.1 **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.**

### **35. LIEN FOR RENT**

- 35.1 In consideration of the mutual benefits arising under this Lease Agreement, TENANT does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto CITY, upon all property of TENANT 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 TENANT herein. At CITY'S request, TENANT 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.

### **36. CONDEMNATION**

- 36.1 It is agreed and understood that in the event that the Lease Premises are taken, in whole or in part, by any governmental authority other than the CITY, this Lease and all rights, title, and interest hereunder shall at the option of the CITY cease on the date title to such land so

taken or transferred vests in the condemning authority. TENANT hereby waives all rights in any proceeds of such condemnation.

### **37. SURRENDER OF PREMISES**

- 37.1 No act or thing done by the CITY or its agents during the term hereby granted shall be deemed an acceptance or a surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid unless the same be made in writing and subscribed by the CITY.

### **38. RELATIONSHIPS OF PARTIES**

- 38.1 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 TENANT.

### **39. GENDER**

- 39.1 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.

### **40. APPROVAL OF THE CITY**

- 40.1 Whenever this Lease calls for approval by CITY, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of Parks and Recreation of the City of San Antonio or his designees.

### **41. CAPTIONS**

- 41.1 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.

### **42. ENTIRE AGREEMENT/AMENDMENT**

- 42.1 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 parol agreement with CITY being expressly waived by TENANT.
- 42.2 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.
- 42.3 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.

**43. AUTHORITY**

43.1 The signer of this Lease Agreement for TENANT hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of TENANT.

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

LESSOR:

CITY OF SAN ANTONIO, a Texas  
Municipal Corporation

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

TENANT:

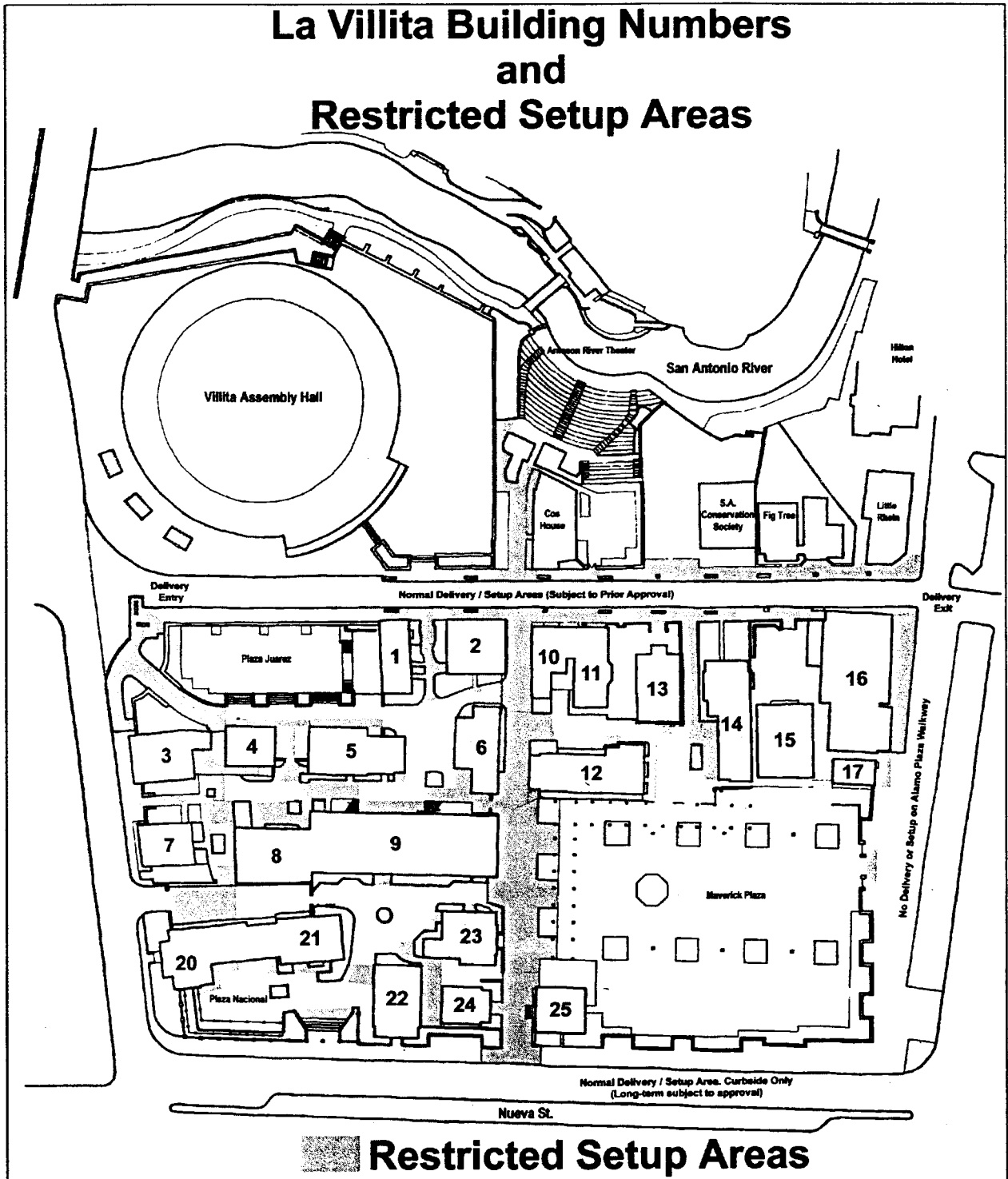
**Claudia Griselda Paz**  
**Salvador Cazares Negrete,**  
d/b/a Casa Clasal

By: Claudia G. Paz  
Title: Owner  
By: SALVADOR C. NEGRETE  
Title: OWNER.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**Exhibit A**





## Exhibit B

Photos of Lease Space - La Villita Bldg. 14



## **Exhibit C**

### **Lease Rate Summary Contract Years One (1) through Three (3)\***

#### **TERM 1 – 10.5 MONTHS AUGUST 15, 2004 – JUNE 30, 2005**

Month 1 \$309.27  
Month 2-11 \$618.53  
\$6,329.75 Annual Rent\*\*

#### **TERM 2 – 12 MONTHS JULY 1, 2005 – JUNE 30, 2006**

\$626.31 per month  
\$7,347.01 Annual Rent\*\*

#### **TERM 3 – 12 MONTHS JULY 1, 2006 – JUNE 30, 2007**

\$634.46 per month  
\$7,440.69 Annual Rent\*\*

\* The lease rates are established for a twelve (12) month period from July 1, through June 30. Since the Tenant started mid-August on the first year of the contract the term of the contract for the first year will ten and one-half (10.5) months. Years two (2) and three (3) will have a full twelve (12) months.

\*\* Annual rate includes the April rent reduction for Fiesta (NIOA) as established in Articles Four (4) and Twenty-three (23) of the proposed lease agreement.