

CONSENT AGENDA
ITEM NO. **23**

**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: Ordinance Consenting to Sublease of Public Space on the River Walk from Aztec on the River, Ltd. to Iron Cactus San Antonio Riverwalk Limited Partnership, Inc.

DATE: August 25, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance consents to a sublease of approximately 1409 square feet of public space on the River Walk in City Council District 1 from Aztec on the River, Ltd. to Iron Cactus San Antonio Riverwalk Limited Partnership, Inc.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On December 9, 1999, through Ordinance 90983, City Council approved a lease agreement with Aztec on the River, Ltd., a Texas Limited Partnership, whose general partner is Euro-Alamo Management, Inc. for public space on the River Walk in City Council District 1 to be developed for outdoor dining. This was part of the comprehensive Crockett Street Development Project. The lease agreement permits the lessee to operate and assign, sublease or license the Leased Premises, subject to City Council approval. The area has never been developed into usable space, since this has been pending completion of other improvements in the area, and no lease rate has been applied.

This ordinance will consent to Aztec on the River, Ltd.'s sublease of the property to Iron Cactus San Antonio Riverwalk Limited Partnership, Inc., who will develop the area into dining space. The lease area has been resurveyed to 1409 square feet. The five year lease term will begin after improvements are completed. The lease agreement that is being subleased allows for four, five-year renewal options, which was stipulated in the original Crockett Street Development Project agreement. The established lease rate of \$1.25 per square foot per month will be applied in the initial lease year. Subsequent years will include an annual Consumer Price Index (CPI) adjustment.

POLICY ANALYSIS

Ordinance 90983, passed and approved on December 9, 1999, approved a lease agreement with Aztec on the River, Ltd. for public space on the River Walk for outdoor dining. A sublease is permitted in the current agreement and requires City Council approval.

FISCAL IMPACT

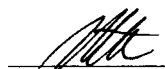
The City will begin to derive lease revenue when the construction development is completed. The lease payment is designated as \$1.25 per square foot per month (\$1,761.25) or \$21,135.00 during the first year. Subsequent years will include an annual CPI adjustment that will not be less than \$15.00 per square foot on an annual basis. Revenue is deposited into the River Walk Capital Improvements Fund.

COORDINATION

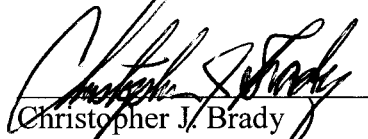
This sublease was coordinated with the City Attorney's Office.

SUPPLEMENTARY COMMENTS

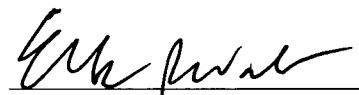
A Discretionary Contracts Disclosure Form is attached.



Malcolm Matthews
Director of Parks and Recreation



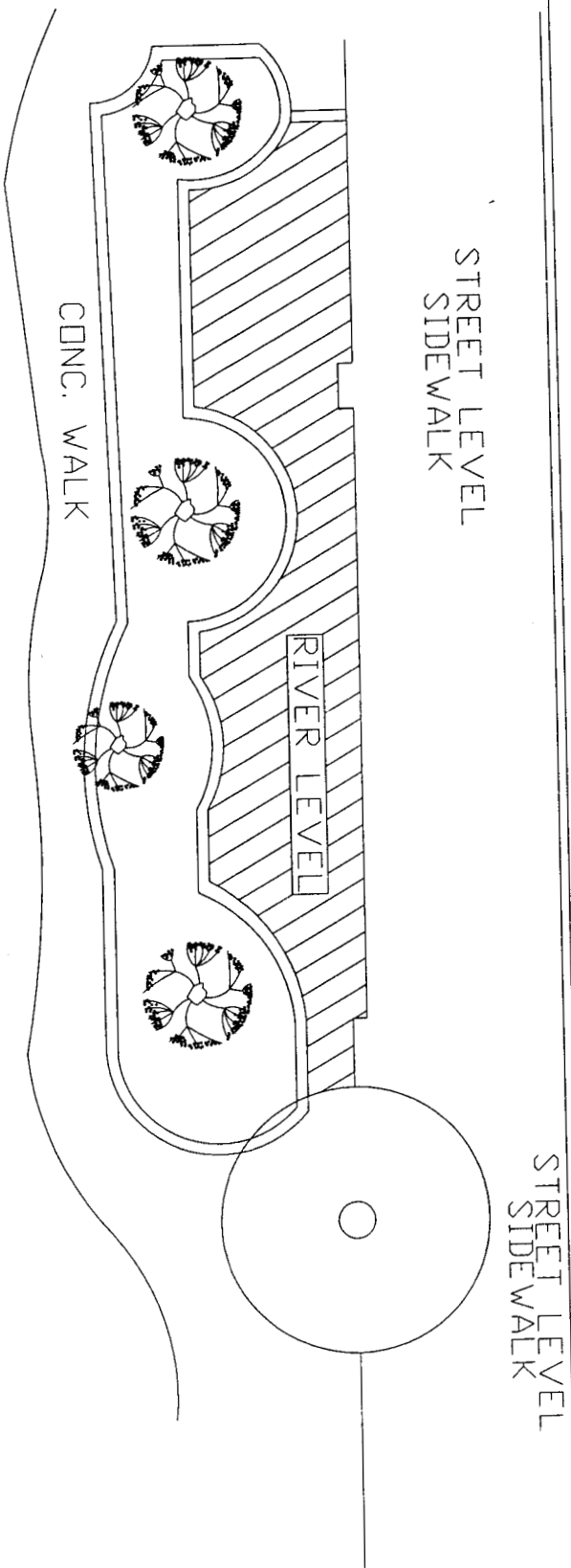
Christopher J. Brady
Assistant City Manager



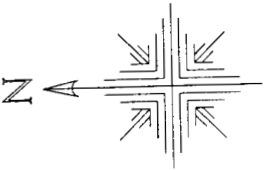
J. Rolando Bono
City Manager

AZTEC RIVERWALK


CROCKETT STREET



A DRAWING SHOWING
AN AREA OF 1409 SQ.FT.
OUT OF C.B. 116



SCALE: 1"=20'

 San Antonio Parks and Recreation Department	Date: Revision: Submitted: 8.15 CAD Drawing	CITY OF SAN ANTONIO PARKS AND RECREATION DEPARTMENT PARK PROJECT SERVICES DIVISION 516 DOLOROSA ST. P.O. BOX 839966 TEL. (210) 207-2879 SAN ANTONIO, TX. 78204 78283-3966 FAX (210) 207-2721	AZTEC RIVERWALK CROCKETT ST & S. ST. MARY'S ST. SAN ANTONIO, TEXAS LEASE AREA	Approved By: SANTOS CANTU Drawn By: Date: 06-27-05 Project No.: File name: contract aztec
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City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

AZTEC ON THE RIVER, LTD. - A TEXAS LIMITED PARTNERSHIP

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☐ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party: AZTEC PROJECT DEVELOPMENT, LLP. A TEXAS LTD. LIABILITY COMPANY

EULO - ALMS MANAGEMENT, INC. A TEXAS CORPORATION (MANAGER)

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☐ No subcontractor(s); or

List subcontractors: DEERY SOUTHWEST INC.; FLO-AIR INC.; MARTIN ELECTRIC; SCIENCE NORTH ENTERPRISES; IWERKS ENTERTAINMENT; RESTORATION ASSOCIATES; TRAVIS PAINTING; VARIOUS OTHERS.

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

<input checked="" type="checkbox"/> No contributions made; If contributions made, list below:			
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

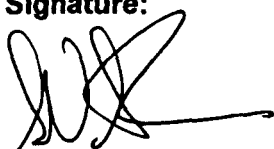
(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

Signature: 	Title: REQUEST Company or D/B/A: Euler-Arno Management, Inc. MANAGER	Date: 6/24/05
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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.

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

IRON CACTUS SAN ANTONIO RIVERWALK L.P.
GARY MANLEY
MIKE POTTOFF

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☒ **No contributions made; If contributions made, list below:**

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ **Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or**

Party aware of the following facts:

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Signature:



Title:

GENERAL PARTNER

Company or D/B/A:

IRON CACTUS SAN ANTONIO
RIVERWALK L.P.

Date: 7-7-05

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.

SUBLEASE AGREEMENT

THIS SUBLEASE (the "Sublease") is entered into between Aztec Project Development, Ltd., assignee and partner of Aztec on the River, Ltd., a Texas limited partnership ("Sublandlord") and Iron Cactus San Antonio Riverwalk Limited Partnership, a Texas limited partnership ("Subtenant").

1. Demise and Description of Property. Sublandlord leases to Subtenant, and Subtenant leases from Sublandlord, the property ("the Subleased Premises" or "the Premises") located in Bexar County, Texas, described as follows:

that certain number of square feet of lease space, located on the San Antonio River Walk between the north side of the Hugman Wall and the San Antonio River adjacent to the subsurface of that portion of Crockett Street between North St. Mary's Street and Navarro Street abutting LESSEE's property located at Lots 2, 3, 4, 5, 6, 7, 8 and 9, Block 3, New City Block 116, according to Bexar Appraisal District Records, and the W/2 of Corcoran Alley, situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being the same property more particularly described in Special Warranty Deed dated August 20, 1993, from San Antonio Conservation Society to Aztec Theater, Ltd., a Texas limited partnership, recorded in Volume 5768, Pages 1777-1802 of the Official Public Records of Real Property of Bexar County, Texas, and in Warranty Deed dated November 19, 1998, from Aztec Theater, Ltd., to Security Trust Company, a California corporation, recorded in Volume 7737, Pages 0451 of the Official Public Records of Real Property of Bexar County, Texas, and in Warranty Deed from Security Trust Company to Euro-Alamo Investments, Inc., a Texas corporation, recorded in Volume 7961, Pages 749-752, of the Official Public Records of Real Property of Bexar County, Texas, said Leased Premises being more particularly described in EXHIBIT "A" Plat Plan and Legal Description attached hereto and made a part hereof.

2. Term. The sublease term is for a primary term of five (5) years from the "Commencement Date", as that term is defined in the "Main Lease" as hereafter defined, along with four (4) "Renewal Options" as that term is defined in the Main Lease (the "Sublease Term"). But this Sublease will terminate earlier in the event of termination of the lease executed December 30, 1999 (the "Main Lease"), between the City of San Antonio, a Texas municipal Corporation, as ("Landlord"), and Aztec On The River, Ltd., a Texas limited partnership, as Tenant, leasing the property described above. A copy of the Main Lease is attached as Exhibit A.

3. Rent. For the Sublease Term, Subtenant will pay Sublandlord as rent for the Premises the "Rent" as that term is defined in that Lease Agreement by and between Alamo Aztec Development Partnership, LLP, by and through Aztec Project Development, Ltd. and Iron Cactus San Antonio Riverwalk Limited Partnership dated

_____, 2004 concerning the premises and improvements adjacent to the Subleased Premises, (the "Restaurant Lease").

4. Use of Premises. Subtenant will use the Premises only for dining, including the service of food and alcoholic and non-alcoholic beverages and other uses if such uses are permitted under the terms of the Main Lease.

5. Assumption Agreement and Covenants.

(a) Subtenant will comply with all of the provisions of the Main Lease that are to be performed by the Sublandlord as Tenant during the Sublease term, provided, however, the rent provisions of the Main Lease will not apply to Subtenant. Paragraph 3, above, governs and defines Subtenant's payment of rent for the Premises.

(b) If the Main Lease is ever canceled or is terminated before its expiration date and before the expiration date of this Sublease or any extensions and renewals, or if the Main Lease is surrendered, whether voluntarily, involuntarily, or by operation of law, Subtenant will make full attornment to the Landlord for the balance of the Sublease Term, including any extensions and renewals, based on the same covenants and conditions of this Sublease, so as to establish direct privity of estate and contract between the Landlord and Subtenant, with the same force as though this Sublease was originally made directly from the Landlord to the Subtenant. Subtenant will then make all rent payments directly to Landlord.

(c) The provisions of the Main Lease, to the extent that they do not conflict with specific provisions of this Sublease, are fully incorporated into this Sublease. The Subtenant agrees to be bound to the Sublandlord by the Main Lease and to assume toward Sublandlord the same role and perform all of the obligations and responsibilities that Sublandlord by the Main Lease assumes toward the Landlord, and to indemnify and hold harmless Sublandlord from any claim or liability under the Main Lease except for Sublandlord's obligation to pay rent to the Landlord as the Main Lease provides. The relationship between the Subtenant and Sublandlord under this Sublease is the same as that between the Sublandlord and the Landlord under the Main Lease.

6. Signs. Subtenant may erect or attach to the building such signs as may be allowed in the Main Lease. Subtenant may remove any sign placed on or about the exterior of the Premises when this lease expires or terminates. Any damage to the building or Premises resulting from the removal will be repaired at Subtenant's sole cost and expense.

7. Furniture and Fixtures. All furniture and fixtures and equipment placed in the Premises by Subtenant will remain Subtenant's property, subject to Sublandlord's rights as provided by law. Subtenant may, when the Sublease Term expires, remove the furniture and fixtures if removal is done so as not to damage the Premises.

8. Assignment and Subletting.

(a) Subtenant will not assign or Sublease the Premises or any part of them without Sublandlord's prior written consent, which may withheld at Sublandlord's sole and absolute discretion. Notwithstanding the foregoing, in the event Subtenant is allowed to assign or sublease the premises leased from Sublandlord as described in and governed by the terms of the Restaurant Lease, Sublandlord will allow Subtenant to assign or sublease the Premises, subject to Sublandlord receiving the prior written consent of the Landlord as required by the terms of the Main Lease.

(b) If there is an assignment as provided in (a) above, the assignee will agree in writing to assume all the terms and covenants of this Sublease to be performed by Subtenant. A duplicate original of that agreement will be delivered to Sublandlord within ten (10) days following the date of its execution or its effective date, whichever is earlier. Subtenant's liability under this Sublease, and that of any assignee of this Sublease, will survive any assignment or subletting, and such liability will be unaffected by any extension of time that Sublandlord may grant to any assignee or subtenant for paying rent or other charges due under this Sublease, or for performing any other term or covenant of this Sublease.

9. Default.

(a) Sublandlord may terminate this Sublease upon the happening of any one, or more, of the following events:

(i) Subtenant's making an assignment for the benefit of its creditors;

(ii) The levying on or against Subtenant's property of a writ of execution or attachment that is not released or discharged within thirty (30) days;

(iii) The institution in a court of competent jurisdiction of proceedings for the reorganization, liquidation, or involuntary dissolution of Subtenant, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the Subtenant's property, if the proceedings are not dismissed, and any receiver, trustee, or liquidator appointed therein is not discharged within thirty (30) days after the proceedings are instituted;

(iv) Subtenant's doing or permitting to be done any act that creates a mechanics' lien or claim against the land or building of which the Premises are a part that is not released or otherwise provided for by indemnification satisfactory to Sublandlord within thirty (30) days; and


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(v) Subtenant's failing to pay any rental installment, or other charge or money obligation required by this Sublease or the Restaurant Lease, within ten (10) days of the date when due, or to perform any other covenant under this Sublease or the Restaurant Lease within fifteen (15) days after written notice by Sublandlord plus such additional time not to exceed an aggregate of ninety (90) days, as is needed to cure the same so long as Subtenant has commenced such cure within such fifteen (15) days period and such cure thereafter is continuously and diligently undertaken by Tenant.

(b) On any termination of the estate, Sublandlord may exercise any and all remedies provided by the Main Lease.

(c) If Subtenant breaches this Sublease, Sublandlord may immediately or at any time thereafter, without notice, cure the breach for the account and at the expense of Subtenant. If Sublandlord at any time, by reason of the breach, must pay, or elects to pay, any sum of money or do any act that will require paying any sum of money, or must incur any expense, including reasonable attorney's fees, in instituting or prosecuting any action or proceeding to enforce Sublandlord's rights under this Sublease, the sums paid by Sublandlord, with interest at the rate of ten percent (10%) annually from the date of payment, will be considered additional rent and will be due from Subtenant to Sublandlord on the first day of the month following payment of the respective sums or expenses.

(d) All Sublandlord's rights and remedies enumerated in this Sublease are cumulative and will not exclude any other right or remedy allowed by law. These rights and remedies may be exercised and enforced concurrently, whenever necessary. If Sublandlord is in default under this Sublease, Sublandlord will have reasonable and adequate time to cure the default after written notice to Sublandlord by Subtenant.

10. Miscellaneous Provisions

10.1 Texas Law to Apply. This Sublease will be construed under Texas law, and all obligations of the parties are performable in Bexar County, Texas.

10.2 Parties Bound. This Sublease will bind and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as this Sublease otherwise specifies.

10.3 Legal Construction. If any one or more of the provisions of this Sublease is for any reason held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision of this Sublease, which will be construed as if it had never included the invalid, illegal, or unenforceable provision.

10.4 Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret this Sublease, the prevailing party is entitled to recover reasonable attorney's fees from the other. The fees may be set by the court in the trial of the action or may be enforced in a separate action for that purpose, and the fees will be in addition to any other relief that may be awarded.

10.5 Counterparts, One Agreement. This Sublease and all other copies of it, as they relate to the rights, duties, and remedies of the parties, will be considered one agreement. This Sublease may be executed concurrently in one or more counterparts, each of which will be considered an original, but all of which together will constitute one instrument.

10.6 Notice. All notices and other communications to either party hereto shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify by notice to the other party. Each such notice shall be effective (a) if given by mail, three (3) business days after such communication is deposited in the mail, prepaid certified mail, return receipt requested, addressed to the party at the address below; or (b) if given by personal delivery when delivered at the address specified below by a courier obtaining signature of the person accepting delivery for such party.

To Landlord: AZTEC PROJECT DEVELOPMENT, LTD.
by and through its general partner
Aztec Project Management, LLC
Attn: Steven V. Stendebach, its President
450 N. St. Mary's Street, Suite 350
San Antonio, Texas 78205
(210) 271-7077

with a copy (which shall not constitute notice) to:

Barry G. Benton
Glast Phillips & Murray, P.C.
219 E. Houston Street, Suite 400
San Antonio, Texas 78205
(210) 244-4199 Facsimile

To Tenant: IRON CACTUS SAN ANTONIO RIVERWALK LIMITED
PARTNERSHIP
Attn: Gary Manley
Iron Cactus Restaurant
4501 Spicewood Springs, # 1020
Austin, Texas
(512) 692-3691 Facsimile


GM

with a copy (which shall not constitute notice) to:

Randy S. Schumacher
2313 Lockhill Selma, # 124
San Antonio, Texas 78230

or to such other place as either party shall subsequently notify the other in writing.

11.7 Time of Essence. Time is of the essence in this Sublease.

Dated: 8-20-04

SUBLANDLORD

AZTEC PROJECT DEVELOPMENT,
LTD., a Texas limited partnership,
by and through its general partner,
Aztec Project Management, LLC

By: 

Name: Steven V. Stendebach

Title: President

SUBTENANT

IRON CACTUS SAN ANTONIO
RIVERWALK LIMITED PARTNERSHIP,
a TEXAS limited partnership

By: _____

its sole general partner

By: 

Name: GARY MANLEY

Title: PARTNER

LEASE AGREEMENT
(AZTEC-RIVER WALK PROPERTY)

This Lease Agreement (the "Lease") 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. 90983, dated December 9, 1999 A.D., passed and approved by the City Council (hereinafter referred to as "CITY"), and AZTEC ON THE RIVER, LTD., a Texas Limited Partnership, whose general partner is EURO-ALAMO MANAGEMENT, INC., a Texas corporation (hereinafter referred to as "LESSEE"), acting by and through its duly authorized officers, WITNESSETH:

I.
DEMISE OF PREMISES

1.1 CITY, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by LESSEE, does hereby lease and demise to LESSEE, and LESSEE does hereby rent and accept from CITY for the term hereinafter set out, the real property, including certain improvements located thereon, ("Property"), owned by the CITY out of the San Antonio River Walk area, as shown on the Plat Plan and Legal Description which are attached hereto as EXHIBIT "A" and incorporated by reference herein for the purposes of this Lease, the same as if fully copied and set forth at length. Said property (hereinafter referred to as the "Leased Premises") is further described as follows:

that certain number of square feet of lease space, located on the San Antonio River Walk between the north side of the Hugman Wall and the San Antonio River adjacent to the subsurface of that portion of Crockett Street between North St. Mary's Street and Navarro Street abutting LESSEE's property located at Lots 2, 3, 4, 5, 6, 7, 8 and 9, Block 3, New City Block 116, according to Bexar Appraisal District Records, and the W/2 of Corcoran Alley, situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being the same property more particularly described in Special Warranty Deed dated August 20, 1993, from San Antonio Conservation Society to Aztec Theater, Ltd., a Texas limited partnership, recorded in Volume 5768, Pages 1777-1802 of the Official Public Records of Real Property of Bexar County, Texas, and in Warranty Deed dated November 19, 1998, from Aztec Theater, Ltd., to Security Trust Company, a California corporation, recorded in Volume 7737, Pages 0451 of the Official Public Records of Real Property of Bexar County, Texas, and in Warranty Deed from Security Trust Company to Euro-Alamo Investments, Inc., a Texas corporation,

recorded in Volume 7961, Pages 749-752, of the Official Public Records of Real Property of Bexar County, Texas, said Leased Premises being more particularly described in EXHIBIT "A" Plat Plan and Legal Description attached hereto and made a part hereof.

Excluded from the Leased Premises are only those areas devoted solely to (i) public landscaping (ii) the required sidewalk or passageway set out below, (iii) any public rights of way or use, licenses, easements, and privileges of CITY, and (iv) any public rights of way or use, servitudes, licenses, easements, hereditaments and appurtenances now or hereafter pertaining to such. The excluded space shall be retained and maintained by CITY.

The actual number of square feet contained in the Leased Premises shall be calculated by the City Parks and Recreation Department following the Historic and Design Review Commission and the City Planning Director's approval upon substantial completion of construction of the All Improvements as defined in the Development Agreement referenced below and River Walk improvements and the square footage of the Leased Premises will be adjusted accordingly. A revised EXHIBIT "A" will be attached hereto.

II. USE OF PREMISES

2.1 CITY hereby agrees to permit LESSEE to operate and sublease, assign or license the Leased Premises, subject to the provisions of ARTICLE X. ASSIGNMENT AND SUBLETTING, which requires prior approval by the City Council of CITY in certain circumstances and ARTICLE XIV. RULES AND REGULATIONS hereinafter; provided, however, that the use of such properties by sublessee, assignees, or licensees shall be for dining, including the service of food and alcoholic and non-alcoholic beverages, and retail and other uses in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, Bexar County and the CITY and such other uses as may be approved by the CITY.

2.2 Any use, either by LESSEE or its sublessee, assignee, or licensee of the Leased Premises which differs from the use authorized in Section 2.1 must first be approved in writing by the CITY through the City Council. The terms "sublessee, assignee, or licensee" as used herein shall mean any of such parties under this Lease. All such parties shall be bound to observe all of the conditions and terms of this Lease in the same manner and to the same degree as LESSEE is bound hereto.

2.3 The Leased Premises and the adjacent subsurface portion of Crockett Street right-of-way transferred by City to Lessee by a deed without warranty, are to be occupied by the same party or an affiliated party under this Lease.

TERM/RENEWAL OPTIONS

3.1 LESSEE, its successors and assigns are to have and to hold its rights to lease those properties described in EXHIBIT "A" for a primary term of five (5) years from and after the Commencement Date of this Lease ("Initial Term") and for such additional term or terms for which this Lease may be extended by LESSEE's exercise of the renewal options provided in Section 3.3 of this Lease. The parties agree to execute a written memorandum in recordable form expressing the Commencement Date and expiration or termination date of the Initial Term hereof, when such exact dates have been determined and confirming the square footage contained in the Leased Premises and the initial monthly rental, being in substantially the same form as the Memorandum of Lease Agreement attached hereto as EXHIBIT "B" and made a part hereof. Any recordation shall be approved in writing in advance by both parties.

3.2 Provisions have been made for (1) the construction of improvements on and in the subsurface portion of Crockett Street adjacent to the Leased Premises, rebuilt public street, sidewalk, and other related public improvements (the "Crockett Street Improvements"), as well as, (2) River Walk Improvements and (3) Disability Access Improvements, (collectively "All Improvements") as part of LESSEE's portion of the "Crockett Street Development Project", all to be constructed pursuant to a Development Agreement between the adjacent Crockett Street Property Owners, including LESSEE, and the CITY. The completion of LESSEE's portion of All Improvements is a condition precedent to LESSEE's performance hereunder and must be completed prior to the time this Lease takes effect; otherwise, this Lease shall be of no force or effect. It is the further intention of CITY and LESSEE, as well as the other Property Owners that completion of All Improvements be achieved at the same time; however, if LESSEE's portion of Crockett Street Improvements, River Walk improvements, and CITY's Disability Access Improvements are completed and the Leased Premises is accessible for LESSEE's patrons, then in such event, this Lease shall take effect, subject to the time parameters under "Commencement Date" set forth hereafter, even if the improvements to be completed by the other Property Owners have not been completed. However, the parties agree that "Occupancy for Construction Date" for LESSEE shall be that date on which the Property Owners along Crockett Street, acting by and through the Crockett Street Improvements contractor, take possession of the Crockett Street public right-of-way area between North St. Mary's Street and the west boundary line of the ("Presidio Plaza Project") for the purpose of commencing construction of the Crockett Street Improvements, but not earlier than, April 1, 2000. Construction of All Improvements shall be completed no later than the date set forth in the Development Agreement. Failure to complete construction of LESSEE's portion of All Improvements by the date prescribed in the Development Agreement shall be an event of default hereunder, unless such failure is caused in whole or in part by events beyond the control of LESSEE, the other Property Owners, or CITY regarding its funding of necessary Disability Access Improvements, or such date is extended by CITY, through the City Director of Public Works and Director of Parks and Recreation. "Commencement Date" for purposes of the

Term of this Lease shall be the date LESSEE or its sublessee, assignee, or licensee opens its operations to the public for business. LESSEE agrees to complete LESSEE'S portion of All Improvements, pursuant to the Crockett Street Development Plans ("Plans") therefor, as defined and detailed in the Development Agreement.

3.3 Renewal Option. CITY hereby grants to LESSEE four (4) renewal option(s) (the "Option(s)") to extend the lease term for additional consecutive term(s) of five (5) years each (the "Extended Term(s)"), on the same terms, conditions and covenants set forth in this Lease, if still in effect and legally enforceable, provided, however, that LESSEE will, throughout the Initial Term and Extended Terms of the Lease comply with current and future CITY River Walk policies, as set forth in the River Walk Policy Manual, a copy of which will be provided to LESSEE's at LESSEE's request and expense, and in CITY ordinances, codes and the CITY Charter related to such River Walk policies, whether stated in this Lease or not. Renewal Rental will be calculated as set forth in ARTICLE IV. Unless the LESSEE notifies CITY of its desire not to extend at least one hundred eighty (180) days prior to the expiration of the current Initial or Extended Term of this Lease, each Option shall be deemed to be exercised by LESSEE on the express condition that at the time of the Renewal, LESSEE shall not be in default beyond the lapse of any applicable cure period under any of the provisions of this Lease. If LESSEE holds over after such termination, it shall be considered a tenancy at sufferance and the provisions of ARTICLE XVI. HOLDING OVER will apply.

IV. RENTAL

4.1 In consideration of this Lease, rent for the Leased Premises shall be paid to the CITY by LESSEE in either one lump sum in advance or in monthly installments in advance, at LESSEE's option, on the first day of each month in accordance with the following payment schedule:

- a. First 12 months \$1.25 per square foot per month, in an amount estimated to be \$23,685.00 in one lump sum, or \$1,973.75 monthly, to be adjusted pursuant to Section 1.1.
- b. Thereafter for each succeeding twelve (12) month period during the Initial Term of this Lease, the monthly rental shall be calculated by means of the following formula:

$$\text{ADJUSTED RENTAL} = \text{BASE RENTAL} \times (\text{CPI-2}/\text{CPI-1})$$

In applying the above formula for rental adjustment, the following definitions shall prevail; however, the rent, as adjusted annually, shall never be less than \$15.00 per square foot on an annual basis:

- (a) "Base Rental" means the monthly rental for the first twelve (12) month period following the Commencement Date.
 - (b) "Bureau" means the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue the indexes or data referred to in Section 4.2 below.
 - (c) "CPI-1" means the CPI for the Calendar Month two (2) months prior to the Commencement Date of the Lease.
 - (d) "CPI-2" means the CPI for the Calendar Month two (2) months prior to the period for which the adjusted rental is to be calculated.
- c. Subject to the provisions of Section 4.4 of this Lease. The adjusted Base Rental shall be calculated by means of the CPI formula described above in this Section 4.1, provided that in no event shall the Base Rental increase for any twelve month period, when calculated by means of the CPI formula described above, exceed one hundred fifteen percent (115%) of the Base Rental in effect during the preceding twelve month period.

4.2 The Consumer Price Index as used herein ("CPI") shall mean the National Consumer Price Index U.S. City Average for all items for all Urban Consumers (1982-1984 average = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event that (i) the Bureau ceases to use the 1982 - 1984 average of 100 as the basis of calculation, or (ii) a substantial change is made in the number or character of "market basket" items used in determining the CPI, or (iii) CITY and LESSEE mutually agree in writing that the CPI does not accurately reflect the purchasing power of the dollar, or (iv) the CPI shall be discontinued for any reason, LESSEE, at its sole expense, shall request the Bureau to furnish a new index comparable to the CPI together with information which will make possible the conversion to the new index in computing the adjusted rental. If for any reason the Bureau does not furnish such an index and such information, the parties shall thereafter accept and use such other index or comparable statistics on the cost of living for San Antonio, or the city nearest to San Antonio, as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority then to be selected by CITY (but subject to reasonable approval by LESSEE).

4.3 SAMPLE CALCULATION OF ADJUSTED RENTAL: Assume the CPI-2 is 125 and CPI-1 is 115 monthly and the per square foot rental prior to adjustment is \$1.25 as of the adjustment date. Monthly rent for the next twelve (12) month period would therefore be the monthly rental prior to adjustment x 125/115 or \$1.36.

4.4 Renewal Rental. The Base Rental for each year of an Extended Term of this Lease shall be computed in the manner set out in Section 4.1b. above, that is, based on CPI increases, but never any decreases or at a rate lower than the previous year of the Initial Term or then current Extended Term except that it is expressly agreed that in addition to any increase in the Base Rental resulting from the application of the CPI as provided above in Section 4.1b., there may be, at the option of CITY, additional adjustments to the Base Rental effective with the first year of each Extended Term (specifically Years 6,11,16, and 21), provided that such adjusted Base Rental shall in no event exceed one hundred fifteen percent (115%) of the Adjusted Rental in effect during the preceding twelve month period of the Initial Lease Term or then current Extended Term. Furthermore, CITY agrees that such increase will be supported by a current rental study of other leases of CITY property on the San Antonio River Walk which are found to be comparable to the subject Lease which study will include all relevant market factors.

4.5 Payment shall be submitted to:

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

4.6 THE RENT PAYMENTS ESTABLISHED IN SECTIONS 4.1 AND 4.4 SHALL BE DUE AND PAYABLE TO THE CITY ON OR BEFORE THE FIRST DAY OF EACH MONTH DURING THE TERM HEREOF, STARTING ON THE COMMENCEMENT DATE SET FORTH IN EXHIBIT "B", WHETHER OR NOT ANY OR ALL OF THE LEASED PREMISES ARE SUBLEASED BY LESSEE, AND SHALL BE DEPOSITED INTO INDEX CODE NO. 015842 ACTIVITY CODE NO. 260101.

V.

ACCEPTANCE AND CONDITION OF PREMISES

5.1 LESSEE will have had full opportunity to examine the Leased Premises and acknowledges that as of the Commencement Date there will be in and about them nothing patent that is dangerous to life, limb or health, and (ii) LESSEE waives any claim for damages that may arise from defects of that character after occupancy. The occurrence of the Commencement Date shall be conclusive evidence of LESSEE's acceptance of the Leased Premises in good order and satisfactory condition, and LESSEE accepts the Leased Premises in its then present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. LESSEE accepts the Leased Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LESSEE's or any sublessee's, assignee's or licensee's

intended commercial uses or purposes or that improvements to be constructed by LESSEE, or LESSEE's contractor, will be so suitable.

5.2 LESSEE agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by CITY or its agents to LESSEE unless the same are contained in this Lease or made a part hereof by specific reference.

VI. UTILITIES

6.1 LESSEE shall provide utilities to the Leased Premises, at its sole cost and expense, including furnishing and installation of all gas, water, electricity, sewer, cable TV and other utilities that may be necessary for its operations during the Lease Term, as authorized herein. LESSEE further agrees to pay all monthly charges associated with its use of said utilities. Should connection or reconnection of any utility become necessary, except by reason of CITY's sole fault or except as otherwise provided herein, LESSEE agrees to pay any expenses therefor and for the cost of installation of any separate meters, if required.

VII. IMPROVEMENTS

7.1 If LESSEE elects to construct or install any "tenant improvements," including awnings on the Leased Premises, then LESSEE shall not construct any permanent or temporary improvements or structures that affect the Leased Premises nor shall LESSEE make any alterations to the Leased Premises without the prior written approval of CITY through the Director of the Department of Parks and Recreation or his designee, and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, City's Planning Director upon recommendation of the Historic and Design Review Commission.

7.2 LESSEE covenants that, except as provided by the Development Agreement, between, among other parties, CITY and LESSEE, it shall not bind, or attempt to bind, CITY for the payment of any money in connection with any of LESSEE's construction, repair, alteration, addition or reconstruction in, on or about the Leased Premises or on any CITY-owned property used in connection with the Leased Premises. Further, LESSEE agrees to remove or secure releases of, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises attributable to LESSEE's improvements to the Leased Premises and to indemnify CITY in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by CITY.

7.3 LESSEE's tenant improvements to the Leased Premises shall be constructed to be accessible in accordance with the Americans with Disabilities Act of 1990, and modified as required by such statute as such statute may be amended from time to time.

7.4 All tenant improvements, including any foundations, buildings, alterations, additions, annexed fixtures, or other improvements of any kind hereinafter made upon the Leased Premises by LESSEE, but specifically excluding those River Walk Improvements to be constructed or installed pursuant to the Development Agreement which are intended, through re-dedication, if necessary, to be CITY-owned property, are and shall be the property of LESSEE during the continuance of the Lease term hereof. At all times during such term and absent the written approval of the City's Director of Parks and Recreation, the tenant improvements that are owned by LESSEE shall not be conveyed, transferred or assigned unless such conveyance, transfer or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith, or unless such conveyance or assignment is required by a mortgagee of LESSEE, and at all such times the holder of the leasehold interest of LESSEE under this Agreement shall be the owner of the tenant improvements. Absent the written approval of City's Director of Parks and Recreation, any attempted conveyance, transfer or assignment of the tenant improvements, whether voluntary or by operation of law or otherwise, to any person, corporation or other entity, shall be void and of no effect whatever unless such conveyance, transfer or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions hereof. LESSEE may however apply for any CITY ad valorem property tax exemptions available for rehabilitation projects.

7.5 At the sole option of CITY, title to the tenant improvements or any portion thereof shall vest in CITY and such tenant improvements and fixtures shall become the property of CITY at no cost to CITY and without any instrument of conveyance upon the expiration of the Initial Term or last Extended Term, as applicable, of this Lease, or upon the earlier termination of this Lease for any reason. Notwithstanding the foregoing, LESSEE covenants and agrees, upon the demand of CITY, on or after termination of the Lease, to execute any instruments requested by CITY in connection with the conveyance of such tenant improvements. CITY shall notify LESSEE in writing of its intention to take title to the tenant improvements or any portion thereof as herein provided within sixty (60) days of the date of the expiration of the term of this Lease or earlier termination of this Lease. Notwithstanding the foregoing, failure by CITY to provide such notice shall not act as a waiver of CITY's rights hereunder provided that CITY, within a reasonable time after its receipt of a written request from LESSEE shall advise LESSEE, of its election hereunder.

7.6 Should CITY elect not to take title to the tenant improvements or any portion thereof as provided in Section 7.5 above, said tenant improvements or portion thereof to which CITY has elected not to take title in accordance with its written notice to

LESSEE shall be removed by LESSEE or its sublessees, assignees or licensees, as the case may be, at the sole cost and risk of LESSEE or said sublessees, assignees or licensees. Such removal shall be performed in compliance with all applicable laws and regulations and the Leased Premises shall be restored to substantially the condition that existed as of the date of substantial completion of LESSEE's tenant improvements, reasonable wear and tear excepted. LESSEE shall be responsible to CITY for any damages to the property of CITY in the course of such removal and will reimburse CITY for such damages within thirty (30) days after CITY makes written demand therefor, which demand will include an itemization of such damages. Should LESSEE fail to undertake such removal within ninety (90) days, following the expiration or termination of this Lease, CITY may undertake such removal at the expense of LESSEE.

7.7 River Walk Improvements shall be constructed in accordance with the Crockett Street Development Plans as a point of departure, which Plans may be modified.

VIII.

MAINTENANCE OF PROPERTY; SPECIAL PROVISIONS

8.1 LESSEE shall keep the Leased Premises free of debris or other obstructions. CITY agrees to preserve access to the River Walk area, except during periods of public events held on the River Walk or San Antonio River, except for parades, during which parades CITY will use its best efforts to assure access. LESSEE shall at all times maintain, or cause to be maintained, the Leased Premises. CITY shall maintain the River Walk landscaped areas adjacent to the Leased Premises.

8.2 LESSEE shall, at all times, keep or cause to be kept, the Leased Premises free of litter, trash, paper and other waste and shall place same in standard trash containers, to be approved by CITY, in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of CITY.

8.3 Other than as provided herein, LESSEE shall be strictly responsible for the condition of the Leased Premises. LESSEE shall repair any damage to the Leased Premises caused by LESSEE, its sublessees, assignees, employees, representatives, agents, contractors, subcontractors, licensees, or invitees and shall maintain, or caused to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition.

8.4 LESSEE will, at the termination of this Lease, return the Leased Premises to CITY in as good condition as existed at the Commencement Date of the Initial Term hereof, with the exception of usual wear and tear, acts of God, insured casualty or unavoidable accident only, which are excepted. All trade fixtures and personal property installed by LESSEE or its sublessees, assignees, or licensees shall remain the property of LESSEE or its sublessees, assignees, or licensees and same may be removed at the termination of this Lease. LESSEE shall repair any damage caused by removal of such

property and trade fixtures. LESSEE or its sublessees, assignees, or licensees may elect not to remove its personal property and trade fixtures at the termination of the Lease, in which event such personal property and trade fixtures not removed shall become the property of CITY. LESSEE agrees to notify CITY in writing of its or its sublessees, assignees, or licensee's election regarding removal of personal property and trade fixtures within thirty (30) days after the date of such termination. Failure to so notify CITY will be deemed to be abandonment and CITY may sell such items at a public or private sale, without notice or liability to LESSEE or its sublessees, assignees, or licensees.

8.5 LESSEE, ON BEHALF OF ITS ASSIGNEES, SUBLESSEES, LICENSEES AND ALL THIRD PARTIES, AGREES TO HOLD CITY HARMLESS AND INDEMNIFY CITY FROM AND AGAINST ANY CLAIMS FOR LOSSES FOR ANY THEFT, DAMAGES OR DESTRUCTION OF SIGNS, GOODS AND/OR OTHER PROPERTY OF LESSEES OR ITS ASSIGNEES, SUBLESSEES OR LICENSEES OR ANY THIRD PARTIES BOTH DURING THE TERM OF THIS LEASE AND AS SO LEFT ON THE LEASED PREMISES AFTER LESSEE OR ITS ASSIGNEES, SUBLESSEES OR LICENSEES VACATE THE LEASED PREMISES UNLESS SUCH THEFT, DAMAGES OR DESTRUCTION IS DETERMINED TO HAVE BEEN CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF CITY. IF LESSEE'S SIGNS, GOODS, AND ANY OTHER SIGNS, AND PROPERTY PLACED BY LESSEE OR ITS ASSIGNEES, SUBLESSEES OR LICENSEES OR ANY THIRD PARTIES UPON THE LEASED PREMISES ARE NOT REMOVED BY LESSEE OR ITS ASSIGNEES, SUBLESSEES OR LICENSEES ON BEHALF OF ANY OF SAID PARTIES WITHIN THIRTY (30) DAYS AFTER THE LEASED PREMISES IS VACATED, THEN THE CITY MAY REMOVE SAME WITHOUT FURTHER NOTICE OR LIABILITY THEREFOR, AND SELL SAME AS DETAILED IN SECTION 8.4.

8.6 Unless the parties agree otherwise by separate agreement, CITY agrees to move the ticket booth for barge excursions along the San Antonio River, which ticket booth is currently located near, but not on, the Leased Premises, to other property that is not in proximity to the Leased Premises. In addition, CITY agrees that dinner barge loading and/or barge unloading by the CITY's barge concessionaire shall be permitted (i) on, along, or in front of the Leased Premises, only if requested by LESSEE in writing and agreeable to CITY, with CITY's intent being to locate 1 or 2 loading/unloading docks for tour barges ("barge excursions") on the River Walk frontage between Navarro Street and St. Mary's Street; (ii) on, along, or in front of any other property located within the block on which the Leased Premises are located, at a location approved by CITY, but not in front of LESSEE's Leased Premises, without LESSEE's written consent; or (iii) under the Navarro Street and/or St. Mary's Street bridges that are located near the Leased Premises. LESSEE and CITY agree that a River Taxi stop may be located adjacent to the Leased Premises, but not in front of LESSEE's Leased Premises, without LESSEE's written consent, and which River Taxi is not a part of the CITY river barge concession. LESSEE may permit loading and unloading of river barges contracted through LESSEE or its

sublessees or licensees. No one owner can prevent the relocation of a barge loading/unloading to another site in the frontage area. If the parties are not able to agree then the mediation provisions herein will apply.

IX.

TAXES AND LICENSES/COMPLIANCE WITH LAWS

9.1 LESSEE shall pay, before delinquency, all current and future taxes, assessments, license, and permit fees and governmental impositions of whatever kind or nature imposed with respect to the Leased Premises, including, but not limited to, taxes, assessments, license and permit fees, and governmental impositions of any kind or nature on LESSEE's leasehold interest, leasehold improvements and personal property, and, if in the future, the fee simple interest of CITY is subject to any taxation, assessments, license and permit fees or governmental impositions of any kind or nature then such taxation, assessments, license or permit fees, or governmental impositions, as the case may be, will be included in the charges payable by LESSEE, including its assignees, sublessees or licensees, as the case may be. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease by CITY. LESSEE or its assignees, sublessees or licensees shall however, have the right to contest the imposition of or the amount of any such tax, assessment, or fee or imposition; provided that such contest shall be prosecuted with diligence and pursuit of such contest even when such taxes, assessments, fees or impositions remain unpaid shall not constitute a default under this Lease. If prosecution of such contest is not, in CITY's sole judgment, being conducted with diligence and pursuit, then LESSEE, or its assignees, sublessees or licensees, as the case may be, shall be deemed to be in default under this provision and if CITY shall have paid such tax, assessment, license fee, permit fee, or governmental imposition in the first instance (provided CITY was legally obligated to pay the same) then LESSEE shall reimburse CITY forthwith upon request, with interest thereon at the maximum rate of interest under applicable law.

9.2 LESSEE agrees to maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by LESSEE. Failure to comply with this provision shall constitute grounds for termination of this Lease by CITY.

9.3 LESSEE, during construction of all improvements, installation of trade fixtures and throughout the entire term of this Lease, agrees to comply with all federal and state laws and CITY and county ordinances and regulations of said entities. Failure to comply with this provision shall constitute grounds for termination of this Lease by CITY.

9.4 CITY agrees to continue to use its best efforts to protect the River Walk in order to prevent flooding in the Leased Premises. However, CITY disclaims any warranty against flooding.

X.
ASSIGNMENT AND SUBLETTING

10.1 LESSEE shall not assign this Lease or allow same to be assigned by operation of law or otherwise, or sublet or license the Leased Premises or any part thereof without the prior written consent of CITY acting through passage of a City Council Ordinance. For the purposes of this Lease, assignment shall include, but not be limited to, licensing use of the Leased Premises, provided, however, assignment, subletting or any transfer of all or any part of LESSEE's interest in the Leased Premises to a parent, subsidiary, or affiliated company or entity, or the organization of a partnership (limited or general), including LESSEE as a partner, or association including LESSEE as a joint venturer, or limited liability company, including LESSEE as a member, and the contribution or transfer to such entity by LESSEE of all or part of LESSEE's interest in this Lease shall not require the prior written consent of CITY, and shall not be deemed a violation of this provision, provided that LESSEE remains liable under this Lease. Provided CITY is granted advance written notice at least thirty (30) days prior to such transfer, along with written evidence that the proposed transferee is financially able to meet LESSEE's obligations hereunder, perform LESSEE's non-monetary commitments hereunder, and will agree in writing to be liable hereunder, regardless of its limited partnership or similar limited liability for other legal purposes, then transfer to an entity that is more than fifty percent (50%) owned by or that is controlled by the General Partner or a Limited Partner of LESSEE is also expressly permitted. All assignments, subleases and licenses shall be subject to ARTICLE XIV. RULES AND REGULATIONS of this Lease, and such transferees, either assignees or sublessees or licensees shall agree to be bound to the terms hereof. Any assignment or subletting or licensing by LESSEE without such permission shall constitute grounds for termination of this Lease by the CITY. LESSEE may collaterally assign, mortgage or hypothecate this Lease as well as any tenant lease (a sublease hereunder) or license, to obtain financing for the operation of its business without the prior consent of CITY and in the event thereof, the CITY agrees as follows:

(1) Any party that receives such collateral assignment, mortgage or hypothecation shall be entitled to notice of LESSEE's default, as provided in ARTICLE XI., and a period of forty-five (45) additional days notice (beyond that accorded to LESSEE) to cure any default of LESSEE, as LESSEE hereunder, or its assignees, sublessees or licensees, prior to CITY pursuing any remedy for default; and

(2) Provided that no default exists under the terms of this Lease as of the date of transfer of this Lease, whether by means of foreclosure or sale or transfer in lieu of foreclosure, the party that finances the operation of LESSEE's business or its assignee's, sublessee's or licensee's business or its successor or any party receiving an assignment of the rights of LESSEE or sublessees or licensees by means of

foreclosure, or sale or transfer in lieu of foreclosure, may continue to occupy and enjoy the Leased Premises and such transfer shall not be deemed to be an assignment that violates the provisions hereof, provided such party pays rent and fulfills LESSEE's obligations hereunder.

LESSEE its assignees, sublessees and licensees may grant security interests in personal property and trade fixtures installed in the Leased Premises and CITY agrees to subordinate its landlord's liens, both contractual and statutory to such security interest provided (i) CITY is to receive prior written notice of any action to take possession of the personal property or trade fixtures; (ii) CITY is afforded the opportunity to be present if any such property or trade fixtures are to be removed; (iii) the secured party repairs any damage occasioned by its removal of such property and trade fixtures; and (iv) CITY's fee simple interest in the Leased Premises is NOT subordinated to such security interests.

10.2 Without the prior written consent of LESSEE, CITY shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease, and in the Leased Premises referred to herein; and, to the extent that such assignee assumes and to LESSEE'S reasonable satisfaction, is capable of keeping and performing the obligations of CITY hereunder, CITY shall, by virtue of such assignment, be released from such obligation.

10.3 The receipt by CITY of rent from an assignee, sublessee, licensee or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease against assignment and subletting or an acceptance of the assignee, sublessee, licensee or occupant as a LESSEE or a release of LESSEE from further observance or performance by LESSEE of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by either party hereto unless such waiver be in writing signed by the party claimed to have made such waiver.

XI.

DEFAULT AND REMEDIES/TERMINATION

11.1 DEFAULT. The following events shall be deemed to be events of default by LESSEE under this Lease:

- A. Monetary Default. LESSEE which herein includes assignees, sublessees, licensees and other parties who hold the leasehold interest herein shall fail to pay any installment of rent as provided for in this Lease and such failure shall continue for a period of thirty (30) days following receipt of written notice of failure to pay any installment of rent when due and owing, provided however, in the event LESSEE, has assigned or subleased or licensed the Leased Premises with the consent of CITY, and CITY accepts installments of rent directly from such assignee, sublessee, or licensee, then

LESSEE shall be entitled to notice of such assignee's, sublessee's or licensee's default and provided an additional ten (10) days within which to cure such default.

- B. Non-Monetary Default. LESSEE shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after receipt of written notice thereof to LESSEE provided, however, in the event LESSEE has assigned or subleased or licensed the Leased Premises with the consent of CITY, and CITY accepts performance of LESSEE's obligations under this Lease directly from such assignee, sublessee, or licensee, then LESSEE shall be entitled to notice of such assignee's, sublessee's or licensee's default and provided an additional thirty (30) days within which to cure such default, provided further, that if any such failure cannot reasonably be cured within such thirty (30) day period, then CITY shall not have the right to exercise its remedies hereunder provided LESSEE or its assignee, sublessee or licensee proceeds in good faith and with due diligence to remedy and correct any such failure, provided that LESSEE, or its assignee, sublessee or licensee has commenced to cure such failure after the effective date of such notice within such thirty (30) day period.
- C. The taking by a court of competent jurisdiction of LESSEE and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

11.2 REMEDIES/TERMINATION

A. Upon the occurrence of an event of default and the expiration of any cure period, as heretofore provided, CITY may, at its option, (i) treat such default as an anticipatory breach of the Lease, or (ii) declare this Lease, and all rights and interest created by it, terminated. Upon CITY electing to treat such default as an anticipatory breach, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Initial Term or then current Extended Term, hereof. CITY shall be entitled to recover from LESSEE the net present value of the difference, if any, between the rent contracted for hereunder for the remainder of the Initial Term or then current Extended Term, and the reasonable rental value of the Leased Premises for the remainder of the Initial Term or then current Extended Term. Alternately, CITY, its agents or attorney may, at its option, terminate LESSEE's right to occupy the Leased Premises, resume possession of the Leased Premises and relet the same for the remainder of the Initial Term or then current Extended Term for the best rent CITY, its agents or

attorney may obtain for the account of LESSEE without relieving LESSEE of any liability hereunder, as to rent still due and owing in this Lease, or any extension thereof, as applicable. LESSEE shall make good any deficiency.

B. Upon resuming possession of the Leased Premises, whether or not this Lease is terminated and notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, LESSEE and CITY agree that CITY's duty to relet the Premises or otherwise to mitigate damages under this Lease, shall be limited to those requirements set forth in the Texas Property Code, as amended. LESSEE agrees that CITY shall in no event be liable and LESSEE's liability shall not be affected or diminished in any way whatsoever for CITY's failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rental under such reletting provided CITY uses objectively reasonable efforts to comply with said Texas Property Code. CITY and LESSEE agree that any such duty shall be satisfied and CITY shall be deemed to have used objectively reasonable efforts to relet the Premises and mitigate CITY's damages by: (1) posting a "For Lease" sign on the Premises; (2) advising CITY's leasing agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity with River Walk leasing experience of the availability of the Premises.

C. If CITY receives any payments from the reletting of the Premises any such payment shall be applied: First, to the payment of any indebtedness due hereunder from LESSEE 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; which CITY, in good faith deems advisable; and the residue, if any, shall be applied to rent due by LESSEE under this Lease. LESSEE 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 Premises.

D. Any reasonable amount paid or expense or liability incurred by CITY for the account of LESSEE which LESSEE would otherwise be obligated to incur under this Lease, may be deemed to be additional rental and the same may, at the option of CITY, be added to any other sums then due or thereafter falling due hereunder.

E. Termination of this Lease shall not relieve LESSEE or any assignees, sublessees, licensees or said other parties from the payment of any sum or sums that shall be due and payable as of the date of such termination or which become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LESSEE or any assignees, sublessees or licensees, or other said parties hereunder, and shall not prevent CITY from collecting any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from LESSEE or said assignees, sublessees, or licensees or said other parties, as applicable, for any default hereunder. 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. LESSEE individually and on behalf of its assignees, sublessees, licensees and other parties hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease.

F. Upon any such expiration or termination of this Lease, LESSEE or an assignee, sublessee, licensee or other party, as applicable, (collectively "LESSEE") shall quit and peacefully surrender, within thirty (30) days after the effective date of termination, the Leased Premises to CITY, and CITY, upon or at any time after the expiration of thirty days after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess LESSEE and remove LESSEE and any and all other persons and all property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Leased Premises without liability on the CITY's part, and such action by CITY shall not constitute CITY's acceptance of abandonment and surrender of the Leased Premises by LESSEE nor prevent CITY from pursuing all legal or equitable remedies available to it. CITY may retain or dispose of LESSEE's property, without notice at a public or private sale and without liability to LESSEE or those claiming under LESSEE.

G. Further, following an event of default and the expiration of any applicable cure period, CITY may repossess the Premises without termination and such repossession of the Premises shall not be construed as an election to terminate this Lease 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 LESSEE by CITY. Notwithstanding any reletting without termination by CITY because of any default by LESSEE, CITY may, at any time after such reletting, elect to terminate this Lease for any such default.

XII. INDEMNIFICATION

12.1 LESSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, agents, officers, directors, volunteers and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, including but not limited to Mechanic's and Materialman's and Laborers liens created during construction of River Walk improvements by LESSEE or its contractor, subcontractor, assignee, sublessee or licensee or other occupant of the Leased Premises or subsequent alterations, additions, renovations, remodeling, reconstruction or other improvements, if any, 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 or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to LESSEE's activities or CITY's activities or the activities of any

assignee, sublessee, licensee or third party whatsoever in, on or about the Leased Premises or in connection with LESSEE's use of the Leased Premises or from any condition of the Leased Premises caused by LESSEE, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant, subconsultant, contractor or subcontractor assignee, sublessee or licensee of LESSEE or any third party, and their respective officers, agents, employees, directors, volunteers, and representatives or any other person whom LESSEE controls or has the right to control, while in the exercise or performance of the rights or duties under this LEASE, all without, however, waiving any governmental immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE ANY SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSE OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall promptly advise the CITY in writing of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE's activities or CITY's activities or the activities of any assignee, sublessee, licensee or third party whatsoever under this LEASE and shall see to the investigation and defense of such claim or demand at LESSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this Article.

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

XIII. INSURANCE

13.1 Any and all employees, representatives, assignees, sublessees, licensees, contractors, subcontractors, agents, consultants, subconsultants or volunteers of LESSEE

while engaged in the performance of any work required by CITY or any work related to a lease of space with the CITY shall be considered employees, representatives, assignees, sublessees, licensees, contractors, subcontractors, agents, consultants, subconsultants or volunteers of LESSEE only and not of 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, assignees, sublessees, licensees, contractors, subcontractors, agents, consultants, subconsultants or volunteers shall be the sole obligation and responsibility of LESSEE.

13.2 Prior to occupancy of the Leased Premises for commencement of the construction work called for herein, LESSEE shall furnish an original completed Certificate of Insurance or CITY's Standard Certificate of Insurance Form to the City Clerk, the City Risk Manager, City Director, Department of Parks and Recreation and the City Director of Public Works, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agents original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City Clerk and City Risk Manager, with copies to the other City parties named. CITY shall have no duty to pay or perform under this Lease until such certificate shall have been delivered to the City Clerk, City Risk Manager, and other parties named herein and no officer or employee of CITY shall have authority to waive this requirement.

13.3 CITY reserves the right to review the insurance requirements of this ARTICLE XIII, during the effective period of this Lease, including any renewal and extension hereof at the time of such renewal and extension and to amend or modify insurance coverage(s) and their limits when deemed reasonably necessary and prudent by City's Risk Manager, including, but not limited to, additional limits and/or coverages based on amendments made by LESSEE or based upon changes in statutory law, court decisions, the claims history of the industry, as well as, of LESSEE, and/or circumstances surrounding this Lease, but in no instance will CITY allow modification whereupon CITY may incur increased risks.

13.4 LESSEE's financial integrity is of interest to CITY, therefore subject to LESSEE's right to maintain reasonable deductibles in such amounts as are approved by CITY, LESSEE shall procure, pay for and maintain in full force and effect with respect to the Premises from the Effective Date of this Lease Agreement and for the duration of this Lease Agreement and any extensions thereof, at LESSEE's sole cost and expense, insurance coverage written on an occurrence form, 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 CITY, in the following types and amounts:

TYPE:	AMOUNT:
1. Worker's Compensation, or an alternative program, which alternative program shall be subjective to review and approval by CITY's Risk Manager	Statutory, with a Waiver of subrogation in favor of CITY
Employer's Liability or an alternative program, which alternative program shall be subjective to review and approval by CITY's Risk Manager,	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of CITY.
2. Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury, Death, and Property Damage in the amount of \$1,000,000 per occurrence or its equivalent. \$ 2,000,000 aggregate
(1) Premises/Operations	
(2) Independent Contractors	
(3) Products/Completed Operations Liability	
(4) Contractual Liability	
(5) Personal Injury Liability	
(6) Broad-Form Property Damage, to include Fire Legal Liability	
(7) Host Liquor Liability if Liquor is served on the Leased Premises	
3. Business Automobile Liability to include coverage for:	
a. Owned/Leased Automobiles	Combined Single Limit for Bodily Injury, Death, and Property Damage of

b. Non-owned Automobiles	\$1,000,000.00 per occurrence or its
c. Hired Automobiles	equivalent.
4. Property Insurance for physical damage to the property of LESSEE, including improvements and betterments made to the Leased Premises.	Replacement Cost Coverage for a minimum of 100% of the replacement cost of LESSEE's improvements and betterments made to the Leased Premises by LESSEE, with a Waiver of Subrogation in favor of CITY.
5. Plate Glass Coverage for the Leased Premises*	Replacement Cost Insurance or, at option of LESSEE, self insurance
6. Liquor Legal Liability, if Liquor is sold on the Leased Premises	\$1,000,000
7. Professional Liability* (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
8. Umbrella Excess Liability	\$5,000,000 per occurrence and aggregate

* If Applicable

13.5 CITY shall be entitled, upon request and without expense, to receive by mail directly to City's Risk Manager and the City Clerk from LESSEE's insurance carrier or agent, copies of the policies and all endorsements thereto as they apply to the limits required by CITY. CITY 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). If so requested, LESSEE shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

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

Name CITY and its officers, employees, elected officials, directors, and volunteers as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with CITY, with the exception of the workers' compensation and employer's liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where CITY is an additional insured shown on the policy;

Insurance provided by LESSEE is primary to any insurance or self-insurance maintained by the CITY.

13.7 LESSEE shall notify 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 CITY at the following addresses:

(a) CITY Clerk, CITY of San Antonio
CITY Hall/Military Plaza
P.O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Director, Department of Parks and Recreation
CITY of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

13.8 In those cases where LESSEE installs LESSEE's River Walk improvements, equipment, trade fixtures, signs, lights, etc. and any future construction, installation, alterations, additions, repairs, and remodeling during the Initial Term or any Extended Term of this Lease, then LESSEE shall further provide the following coverage and amounts: Commercial General Liability (\$2,000,000 coverage), including ECU, Builder's Risk insurance coverage as follows: covering the amount of each construction contract; Contractors Pollution Liability insurance in the minimum amount of \$1,000,000, with a two (2) year extended reporting period; Workers' Compensation; Employers' Liability; Architect's Professional Liability (\$1,000,000 per claim); Engineer's Professional Liability (\$1,000,000 per claim); Business Automobile Liability insurance (any auto) with a combined single limit for Bodily Injury or Property Damage in the amount of \$1,000,000 per occurrence, Motor Truck Cargo insurance, including loading and unloading coverage, written on an inland marine form and an all risk basis (\$1,000,000); Motor Carriers Pollution Liability insurance (\$5,000,000 coverage); Pollution or Fuel Storage

Tank liability insurance (\$1,000,000); Environmental Liability insurance (in the amount of the contract, if environmental abatement or remediation is necessary), and any other liability or other insurance coverage in the amounts and types of coverage requested and approved by CITY's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by CITY. LESSEE shall procure and maintain said insurance, as well as, other insurance coverage enumerated above, in full force and effect during any construction phase. Also, payment and performance bonds naming CITY as indemnitee shall be provided by LESSEE or its contractors or subcontractors. Should the size and/or the scope of a construction contract be limited in nature, LESSEE may request, in writing, from CITY's Risk Manager, a waiver of the requirements in this article. A waiver may only be granted by CITY's Risk Manager, and said decision shall be final; however, no waiver shall be required for any improvements or installations if total costs under the contract do not exceed \$75,000.00

13.9 Nothing herein contained shall be construed as limiting in any way the extent to which LESSEE may be held responsible for payments of damages to persons or property resulting from LESSEE's activities or the activities of LESSEE's agents, employees, assignees, sublessees, licensees, or invitees under this Lease.

13.10 CITY, its elected officials, agents, representatives employees, consultants, subconsultants, contractors, subcontractors or volunteers shall not be liable, and LESSEE waives all claims for any damage to persons or property sustained by LESSEE or any person claiming through LESSEE, which may occur on the Leased Premises, or for the loss of or damage to any property of LESSEE or of others by theft or otherwise, whether caused by other parties or persons in the adjoining CITY-owned property or in the Leased Premises or by occupants of adjacent property or the public. LESSEE shall save and hold harmless CITY from any claims arising out of damage to LESSEE's property or damage to LESSEE's business, including subrogation claims by LESSEE's insurers.

XIV. RULES AND REGULATIONS

14.1 LESSEE and all assignees, sublessees, licensees and other occupants of the Leased Premises shall conduct their operations in compliance with CITY's noise ordinance and in an orderly manner and shall observe and comply with all laws and ordinances of the CITY affecting the business of LESSEE or its assignee, sublessee, licensee, or other occupant of the Leased Premises, including, but not limited to, the provisions concerning operation of businesses in the River Walk area and City of San Antonio Charter and CITY Code provisions.

14.2 No advertisements, signs, decorations or displays shall be placed in or on the exterior of the Leased Premises without the prior written approval of the CITY acting through the CITY Manager or his designee. LESSEE agrees to remove, or cause to be

removed, all signs from the exterior of the Leased Premises when LESSEE or its assignee(s), sublessee(s) or licensee(s), or other occupant(s) of the Leased Premises vacate the Leased Premises.

14.3 No activity or method of operation shall be allowed in or on the Leased Premises which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

- A. Nudity means total absence of clothing or covering for the human body.
- B. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

14.4 The operation of a massage business or "gentlemen's club" or tanning salon shall not be allowed in or on the Leased Premises; provided that services offered by a licensed massage therapist as a part of a health, beauty and fitness operation in a hotel shall not violate this provision.

14.5 Discrimination on account of race, color, gender, age, handicap or national origin, directly or indirectly, in employment or in the use of or admission to the Leased Premises is prohibited.

14.6 LESSEE shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and CITY ordinances to persons employed in its operations within the Leased Premises.

14.7 No casinos or gambling shall be permitted in the Leased Premises

14.8 LESSEE shall not, without CITY's prior written approval, place speakers or amplified music on or near the patio of the Leased Premises which can be seen or heard from the San Antonio River. LESSEE shall comply with CITY's ordinances pertaining to noise. LESSEE agrees to comply with any requests by CITY's park rangers, police officers or noise abatement officers to close the windows and doors of LESSEE's business establishment after the hour of 11:00 p.m., except as necessary for entry to and exit from the establishment. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the CITY Code of the City of San Antonio or its successor provision immediately prior to making such request. Failure to comply with this section may, at CITY's option, constitute a default under this Lease Agreement.

14.9 CITY park rangers and other safety personnel shall have the right of entry on and into the Leased Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. LESSEE shall cooperate with all reasonable

requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. LESSEE expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of LESSEE's property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

XV.

RESERVATIONS: CITY

15.1 CITY reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. LESSEE shall not be entitled to an abatement or reduction of rent by reason of such entry nor shall said entry be deemed to be an actual or constructive eviction of LESSEE from the Leased Premises; provided that should construction continue for more than fifteen (15) consecutive days, an equitable abatement of rental shall be given for the construction period in excess of such fifteen (15) day period. Should construction or other activity by CITY prevent LESSEE's use of the Leased Premises for the purposes outlined herein for longer than ten (10) consecutive days, then this Lease shall be automatically extended for the same number of days LESSEE's use of the Leased Premises was denied.

15.2 No provision of this Lease shall operate in any manner to prevent CITY from permitting displays, tournaments, amusements, or river parades for the benefit of the public on or about the San Antonio River, provided that CITY shall use its best efforts to ensure that access is preserved to the Leased Premises during such events.

15.3 In addition to the foregoing Rules and Regulations set out in ARTICLE XIV. and CITY's Reservations set out in this ARTICLE XV and other sections of this Lease, CITY reserves the right to a public right of way along the River Walk area to follow a path designated by CITY for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as EXHIBIT "A." LESSEE shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into LESSEE's business establishment, in said public right of way. LESSEE shall comply with CITY's ordinances pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along Premises or in any other location outside the enclosed building on any side of the premises the River Walk area for the queuing or waiting of patrons without first obtaining the consent of CITY. Failure to comply with this section may, at CITY's option, constitute a default under this Lease Agreement.

XVI.
HOLDING OVER

16.1 Should LESSEE hold over the Leased Premises, or any part thereof, after the expiration or termination of the Initial Term or any Extended Term of this Lease such holding over shall constitute and be construed as a tenancy at sufferance. However, if CITY accepts any rent payments, without renewal and extension of the Initial Term or then current Extended Term of this Lease, then both parties understand and agree that a tenancy from month to month will be created and LESSEE agrees to pay at a rental equal to double the amount of the rent paid for the last month of the Initial or then current Extended Term of this Lease. The inclusion of the preceding sentence shall not be construed as CITY's consent for the LESSEE to hold over.

XVII.
QUIET ENJOYMENT

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

XVIII.
CONFLICT OF INTEREST

18.1 LESSEE 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. LESSEE certifies (and this Lease is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this Lease is an officer or employee of the CITY or any of its agencies.

18.2 LESSEE certifies that it is not in violation of the CITY's Ethics Ordinance, LESSEE has provided the disclosure statement required by such ordinance.

XIX.
SEVERABILITY

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

XX.
NOTICES

20.1 Notices to CITY required or appropriate under this Lease shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

- (a) CITY Clerk, CITY of San Antonio
CITY Hall/Military Plaza
P.O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
and with a copy to:
- (b) Director,
Department of Parks and Recreation
CITY of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the CITY Manager of the CITY of San Antonio from time to time.

Notices to LESSEE shall be deemed sufficient if in writing and mailed, Registered or Certified Mail, postage prepaid, addressed to LESSEE at:

Aztec on the River, LTD.
Euro-Alamo Management, Inc.
c/o Steve Stendebach, CPA, its President
Alamo National Bank Building
105 S. St. Mary's Street, Suite 750
San Antonio, Texas 78205

With a copy to:

Barry G. Benton
Attorney at Law
Benton Clark & Taylor
Alamo National Bank Building
105 S. St. Mary's Street, Suite 905
San Antonio, Texas 78205

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

All notices shall be deemed to have been given three (3) days after deposit in the United States mail, as described above.

XXI.
PARTIES BOUND

21.1 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 assigns, and if there shall be more than one party designated as LESSEE in this Lease, they shall each be bound jointly and severally hereunder.

XXII.
TEXAS LAW TO APPLY

22.1 THIS LEASE 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.

XXIII.
LIEN FOR RENT

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

use under said Code. Such lien and security interest shall be in addition to and cumulative of CITY's liens provided by law.

XXIV. EMINENT DOMAIN

24.1 If a taking for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof occurs: (a) of a material portion of the Leased Premises (by which is meant such portion of the Leased Premises as would cause the remaining portion of the Leased Premises not to be economically viable), or (b) such that access to the River Walk or to LESSEE'S adjacent building is substantially interfered with or diminished, then LESSEE may elect either to: (i) terminate this Lease and the rent shall be totally abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority; or (ii) maintain this Lease Agreement in full force and effect and receive a pro-rata reduction of rental that fairly accounts for the condemnation.

24.2 If a lesser amount of the Leased Premises is taken than as aforesaid, then LESSEE may either: (i) terminate this Lease and the rent shall be totally abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority; or (ii) maintain this Lease in full force and effect and receive a pro-rata reduction of rental that fairly accounts for the condemnation. Following such partial taking, CITY, at its option and upon approval of its City Council by passage of a future ordinance, and to the extent the amount of the award provided to CITY is sufficient therefor, shall make all necessary repairs or alterations to the remaining Leased Premises. LESSEE shall make all necessary repairs or alterations to any additional portions of the remaining Leased Premises to the extent the amount of the award provided to LESSEE is sufficient therefor and CITY's proceeds are not available.

24.3 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Leased Premises or the adjoining River Walk area and Common Area attributable to the fee interest shall be the property of CITY, provided, however, that LESSEE shall be entitled to file for a separate award for the value of its leasehold interest, and nothing in this Lease shall be construed to limit the evidence that LESSEE may introduce in the condemnation proceeding to establish the value of such leasehold interest, provided, however, the elements which make up such separate award to LESSEE shall be limited in scope to those elements recoverable by a LESSEE under the statutory and common law applicable to the authority exercising the power of eminent domain.

24.4 If termination occurs, both CITY and LESSEE shall therefor be released from any liability thereafter accruing hereunder, except for any liabilities existing as of the date of termination which shall continue until satisfied, regardless of when such pre-termination liabilities are discovered, whether prior to or following such

termination, except that a one (1) year limitation shall apply to LESSEE's discovery of CITY's liabilities and such liabilities, if monetary, are subject to appropriation by the City Council for payment.

XXV. MEDIATION

25.1 As concluded by the parties hereto, and if allowed by State Law and the San Antonio CITY Charter or Code as to the CITY and as evidenced by the signatures of the parties hereto, any controversy between the parties hereto involving the construction or application of any of the terms, covenants or conditions of this Lease shall, on the written request of one party served upon the other, be submitted to mediation. If the parties cannot agree upon the selection of a mediator, then the parties shall jointly request that a local State District Judge appoint a mediator qualified under Section 154.052 of the Texas Alternative Dispute Resolution Act.

XXVI. GENDER

26.1 Words of any gender used in this Lease 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.

XXVII. CAPTIONS

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

XXVIII. ENTIRE AGREEMENT/AMENDMENT

28.1 This Lease, together with its attached exhibits and the authorizing ordinance, in writing, constitute the entire agreement between the parties, any other written or parol agreement with CITY being expressly waived by LESSEE.

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

28.3 It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by an ordinance. All amendments also need approval evidenced by an ordinance.

XXIX.
AUTHORITY

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

EXECUTED this _____ day of _____ 1999, to be effective ten (10) days after the date of passage of the CITY Ordinance referenced on Page 1.

CITY:

CITY OF SAN ANTONIO,
a Texas municipal corporation

LESSEE:

AZTEC ON THE RIVER, LTD.
a Texas Limited Partnership

By:

Name:

Title:

Christopher J. Brady
Christopher S. Brady
Assistant City Manager

ATTEST:

[Signature]
City Clerk

By:

EURO-ALAMO
MANAGEMENT, INC.
a Texas corporation,
its general partner

By:

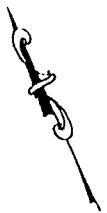
Name:

Title:

[Signature] 12/30/99
Steven V. Stendebach, CPA
President

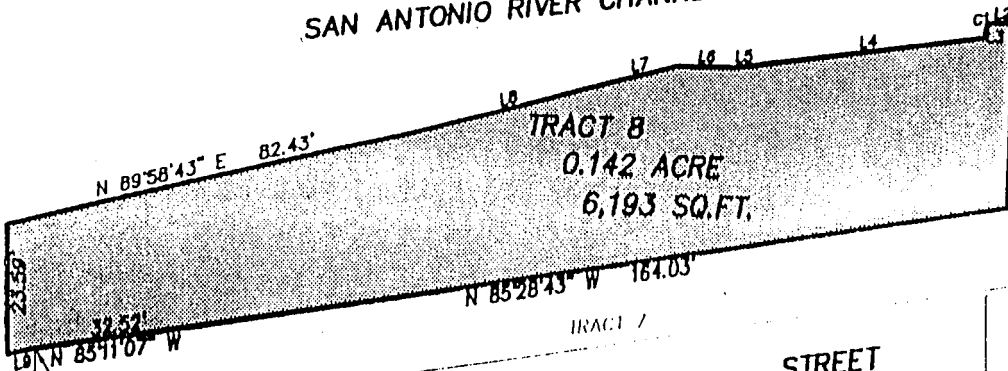
APPROVED AS TO FORM:

Warner F. Fausndge
for the City Attorney [Signature]



SCALE: 1"=30'

SAN ANTONIO RIVER CHANNEL



CROCKETT STREET

LOTS 2-9
(VOL. 5768, PG. 1777)

FOUND "X"
IN CONCRETE

N.C.B. 116

LOTS 10
& 11

KAMPMAN
BLDG.
PROPERTY

LINE TABLE		
LINE	LENGTH	BEARING
L1	35.91	S13°34'54"W
L2	3.98	S77°58'22"E
L3	1.59	N13°37'21"E
L4	46.93	S84°53'28"E
L5	3.48	S82°20'49"E
L6	11.83	S77°08'17"E
L7	14.49	N89°00'15"E
L8	40.15	N88°04'32"E
L9	5.59	N88°35'22"W

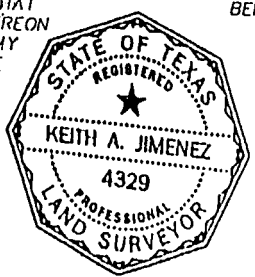
CURVE TABLE			
CURVE NUMBER	DELTA	LENGTH	RADIUS
C1	88°24'17"	2.16	1.40

COMMERCE STREET

STREET

I, THE UNDERSIGNED, DO HEREBY STATE THAT THE INFORMATION SHOWN ON THE MAP HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND THIS SURVEY MEETS THE STANDARDS OF THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING.

Keith A. Jimenez
KEITH A. JIMENEZ
R.P.L.S. NO. 4329



BEING 0.142 ACRES (6,193 SQUARE FEET) OF LAND

VICKREY & ASSOCIATES, INC.
CONSULTING ENGINEERS

7334 Blanco Road, Suite 109, San Antonio, Texas 78216
Telephone: (210) 349-3271

5 M

FIELD NOTE DESCRIPTION

For
Tract 8
0.0142 Ac.
(6,193 Sq. Ft.)

Being a 0.142 acre (6,193 Sq. Ft.) tract of land between the south line of the San Antonio River channel and the north right-of-way line of Crockett Street, and being more particularly described as follows:

Commencing: at a point on the northwest corner of Lots 2 - 9, N.C.B. 116 as recorded in Volume 5768, Page 1777 of the Deed and Plat Records of Bexar County, Texas, said point also lying on the south right-of-way of Crockett Street;

Thence: N 14° 17' 53" E, 46.22 feet to the POINT OF BEGINNING;

Thence: N 88° 35' 22" W, 5.59 feet along the north R.O.W. line of Crockett Street to a point being the southwesterly corner of the herein described tract;

Thence: N 12° 52' 18" E, 23.59 feet along and with the easterly line of the herein described tract to a point for corner, said point also being the northwesterly corner of the herein described tract, and also lying on the southerly line of the San Antonio River channel;

Thence: along and with the southerly line of the said San Antonio River channel and the northerly line of the herein described tract as follows:

N 89° 58' 43" E, 82.43 feet;

N 88° 04' 32" E, 40.15 feet;

N 89° 00' 15" E, 14.49 feet;

S 77° 08' 17" E, 11.83 feet;

S 82° 20' 49" E, 3.48 feet;

S 84° 53' 28" E, 46.93 feet;

N 13° 37' 21" E, 1.59 feet;

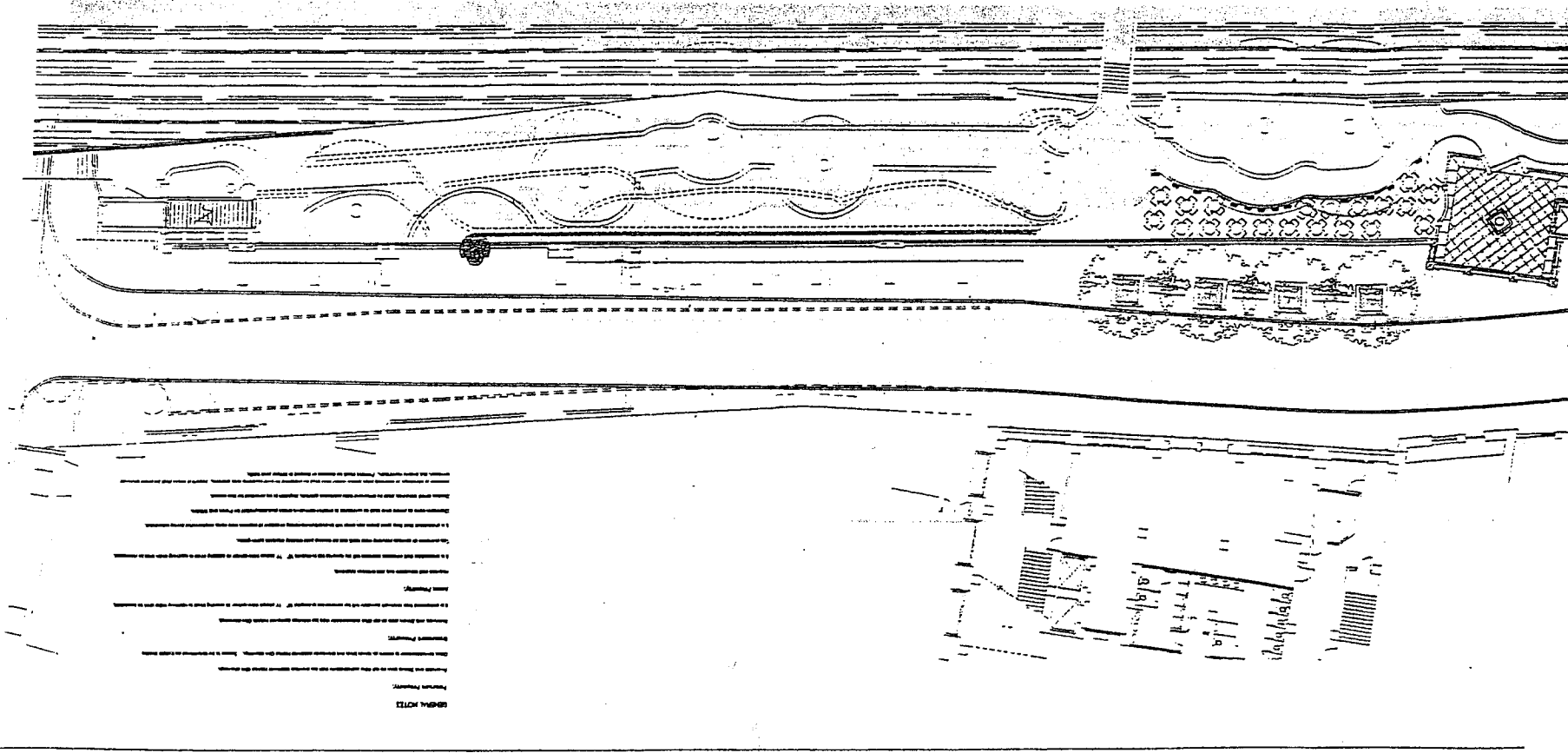
2.16 feet along the arc of a curve to the right, with a radius of 1.40 feet and a chord length of 1.95 feet and a chord direction of N 57° 49' 29" E;

S 77° 58' 22" E, 3.98 feet to a point for corner, said point also being the most northeasterly corner of the herein described tract;

M



PROPERTY WATERMARK AZTEC BUILDING AZTEC BUILDING



GENERAL NOTES:

1. The proposed improvements are shown on this plan view.
2. The proposed improvements are shown on this plan view.
3. The proposed improvements are shown on this plan view.
4. The proposed improvements are shown on this plan view.
5. The proposed improvements are shown on this plan view.
6. The proposed improvements are shown on this plan view.
7. The proposed improvements are shown on this plan view.
8. The proposed improvements are shown on this plan view.
9. The proposed improvements are shown on this plan view.
10. The proposed improvements are shown on this plan view.

EXHIBIT B

**MEMORANDUM OF LEASE AGREEMENT
(AZTEC-RIVERWALK PROPERTY)**

CITY OF SAN ANTONIO, a Texas municipal corporation ("**CITY**"), and AZTEC ON THE RIVER, LTD., a Texas Limited Partnership, whose general partner is EURO-MANAGEMENT, INC., a Texas corporation, hereby agree:

1. The Commencement Date of the Initial Term of five (5) years for the Lease Agreement, as provided for in **Section 3.1.**, is _____, _____, and the Termination Date, unless prior termination occurs, is _____, _____.
2. Four (4) consecutive Extended Terms of five (5) years each are described in **Section 3.3.**
3. The square footage of the Leased Premises, as provided for in **Section 1.1.** is _____ square feet. This figure will replace and supercede the estimated square footage of _____ square feet shown in the original **EXHIBIT "A."**
4. Monthly Base Rent for the first 12 months of the Initial Term shall be \$1.25 per square foot per month or \$_____ monthly. The parties agree that the monthly rent figure will replace and supercede the figure shown in **Section 4.1.**
5. Adjusted Rental for Years 2 through 5 of the Initial Term shall be calculated based on changes in the Consumer Price Index and as further described in **Sections 4.1** through **4.3.**
6. Rental for the Extended Terms shall be calculated as described in **Sections 4.1** and **4.4.**

EXECUTED this _____ day of _____, _____.

CITY:

LESSEE:

CITY OF SAN ANTONIO, TEXAS
a Texas Municipal Corporation

AZTEC ON THE RIVER, LTD.,
a Texas Limited Partnership

By: EURO-ALAMO MANAGEMENT, INC.
a Texas corporation,
Its General Partner

By: _____
City Manager

By: _____
NAME: _____
TITLE: _____

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney