

ORDINANCE 2020-02-20-0115

APPROVING A LICENSE AGREEMENT WITH 114 MAIN PLAZA, LLC FOR PATIO SPACE ADJACENT TO BUILDING IN MAIN PLAZA FOR FIVE-YEAR PERIOD ENDING FEBRUARY 29, 2025.

* * * * *

WHEREAS, the City of San Antonio owns Main Plaza, located in the center of the City; and

WHEREAS, in an effort to re-shape Main Plaza as not only the physical center of San Antonio, but also into the cultural and spiritual center, the City rebrand the plaza and program activities for the plaza; and

WHEREAS, to help further the City's goal of transforming Main Plaza, the City is working with 114 Main Plaza, LLC to renovate vacant structures on the plaza; and

WHEREAS, this project includes the renovation of two historic buildings constructed circa 1870 and 1920 on 0.00637 acres with façade work on the buildings, full exterior restorations, interior work for 2,036 square feet of retail, 2,109 square feet of residential (2 units), and 1,146 square feet of storage for the retail and residential units; and

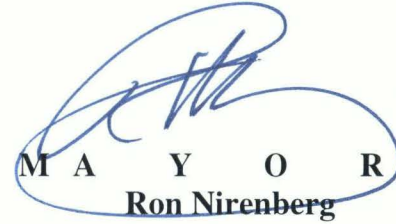
WHEREAS, to facilitate the restoration project, the City will enter into a license agreement for use of the patio space adjacent to the building. The five-year agreement will allow the area to be used for temporary storage during the construction project, and permit the placement of tables, chairs and other amenities to activate the space. The patio improvements and amenities will be available for public use; and **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Director of the Neighborhood Housing Services Department or his designee, is hereby authorized to execute a license agreement between 114 Main Plaza, LLC and the City of San Antonio for use of patio space adjacent to building in southeast corner of Main Plaza for temporary storage and outdoor dining. The lease term will be from March 1, 2020 to February 29, 2025. A copy of the License Agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

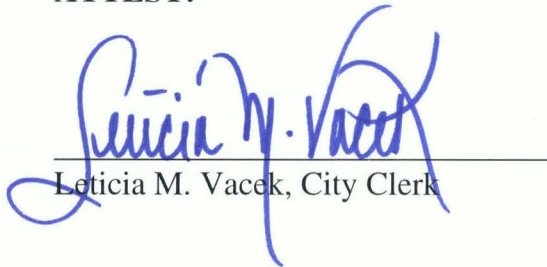
SECTION 2. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 20th day of February, 2020.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

February 20, 2020

Item: 25B

File Number: 20-1970

Enactment Number:

2020-02-20-0115

Ordinance approving a license agreement with 114 Main Plaza, LLC for patio space adjacent to building in Main Plaza for five-year period ending February 28, 2025. Revenue in the amount of \$750.00 per year will be deposited into the General Fund.

Councilmember Roberto C. Treviño made a motion to adopt. Councilmember Jada Andrews-Sullivan seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Absent: 1 Gonzales

DBS
02/20/20
Item No. 25B

ATTACHMENT I

COVERED PATIO LICENSE AGREEMENT

Main Plaza

This License Agreement is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2020, (hereinafter referred to as "CITY"), and 114 Main Plaza, LLC through its Manager Elizabeth Wong (hereinafter referred to as "LICENSEE"), acting by and through its duly authorized officers, WITNESSETH:

1. LICENSING OF PREMISES

- 1.1 CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by LICENSEE, does hereby License to LICENSEE, and LICENSEE does hereby accept from CITY for the term hereinafter set out, the real property owned by the CITY at Main Plaza, San Antonio, Bexar County, Texas, 78207 as outlined on the drawing which is attached hereto as Exhibit A and incorporated by reference herein for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows: Licensed Premises is located adjacent to the front of the building located at southeast corner of Main Plaza in San Antonio, Bexar County, Texas 78207 identified in Exhibit A for a total area of 827 square feet.

2. USE OF PREMISES

- 2.1 CITY hereby agrees to permit LICENSEE use of above described CITY-owned Licensed Premises located at Main Plaza.
- 2.2 **Permitted Uses:**
- 2.2.1 Staging, work area, and storage of construction materials for improvements to adjacent buildings and to the Licensed Premises; provided, however, (i) Licensed Premises shall be kept in a clean and aesthetically pleasing condition for public viewing of Main Plaza, including "wrapped" screening of all construction materials and staging areas with appropriate printed screening materials to be approved by the Director, and (ii) no hazards or blocking of the public right of way.
- 2.2.2 May be used by building owner or individual building tenants for the purpose of outdoor food service operations and the service of alcoholic and non-alcoholic beverages in space adjacent to cafe, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.
- 2.2.3 The area must be open and accessible to the public and no other usage is allowed at this time.
- 2.2.4 Any use other those activities described in section 2.2 must be approved by Director of the Center City Development and Operations Department of ("DIRECTOR") or his designee.

2.3 Prohibited Uses:

2.3.1 **LICENSEE** shall not be allowed to provide entertainment to its customers in any form to include live or recorded music. Exceptions for music may be approved by Director.

2.3.2 Any use prohibited by law including any Ordinances of the City of San Antonio.

2.3.3 **LICENSEE** shall not limit patio space to the private use of retail and/or residential tenants.

2.3.4 **LICENSEE** may not use bull horns, microphones or any amplified system.

2.3.5 **LICENSEE** may not solicit business in the plaza.

2.4 **CITY'S Reservation of Rights** - In addition to the CITY'S Reservations set out in Article 16 and other sections of the License Agreement, CITY reserves the right to a public right-of-way along the common sidewalk area to follow a path designated by the CITY for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as Exhibit A. **LICENSEE** 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 **LICENSEE'S** business establishment, in said public right of way.

3. MAIN PLAZA CONSERVANCY

3.1 **LICENSEE** must coordinate with Main Plaza Conservancy (MPC) for usage of property licensed to Main Plaza Conservancy.

3.2 **LICENSEE** must also coordinate with MPC and Fiesta operators regarding the use of an amplified audio system and the sale of food and beverages (alcoholic and non-alcoholic) during events in Main Plaza. The public may be disallowed from taking food and beverages outside licensed premises.

4. TERM AND EXPIRATION DATE

4.1 The term of this License Agreement is for a period beginning March 1, 2020 and ending on February 29, 2025 unless sooner terminated as provided in this License.

4.2 **EITHER PARTY** may cancel this License by giving thirty (30) Calendar days written notice to **OTHER PARTY PER SECTION 21, NOTICES.**

5. RENTAL

5.1 **LICENSEE** shall pay rental in one lump sum in advance for Annual Payment in accordance with the following payment schedule. Payment is due before March 1st of each year. Any payment of rent received after March 1st of each year of the contract term will be considered late.

5.2 Rent for use of patio space shall be \$750.00 per year.

- 5.3 Payment shall be submitted by **LICENSEE** to:

**City of San Antonio
Treasury Division
Central Billing Section
P.O. Box 839975
San Antonio, Texas 78283-3975**

6. ACCEPTANCE AND CONDITION OF PREMISES

- 6.1 **LICENSEE** has had full opportunity to examine the Licensed Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE'S** taking possession of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Licensed Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed, LICENSEE accepts the Licensed Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.**
- 6.2 **LICENSEE** agrees that no representations respecting the condition of the Licensed Premises, and no promises to decorate, alter, repair or improve the Licensed Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made a part hereof by specific reference herein.

7. UTILITIES

- 7.1 **LICENSEE** shall furnish and pay for all utilities, if any, that may be necessary for its operations as authorized herein on the **Licensed Premises**. **LICENSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LICENSEE** agrees to pay any expenses.

8. IMPROVEMENTS

- 8.1 **LICENSEE** may construct, or allow to be constructed, any new improvements or structures on the City's Right of Way Licensed Premises. **LICENSEE MUST** have the prior written approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the Historic and Design Review Commission (HDRC) before make, or allow to be made, any alterations to the Licensed Premises.
- 8.2 **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on or

about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) calendar days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Licensed Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

- 8.3 **LICENSEE** is responsible, at its own cost, for making any repairs or improvements to the Licensed Premises as well as adjacent building.
- 8.4 **LICENSEE** is required to maintain the improvements and the area in exhibit A.

9. MAINTENANCE OF PROPERTY

- 9.1 **LICENSEE** shall, at all times, maintain the sidewalks adjacent to the Licensed Premises free from obstructions other than approved displays. **LICENSEE** shall keep the front of the business property neat and orderly, and if any tables or other fixed or movable property is placed in this area by **LICENSEE** it shall be organized so as not to create any tripping hazard or block the exit to the business in case of emergencies. **LICENSEE** shall not use any of said sidewalk area outside of the Licensed Premises in the exercise of privileges granted herein, except to pass to and from the Licensed Premises. **LICENSEE'S** use may at no time obstruct public access to the public right-of-way.
- 9.2 **LICENSEE** shall, at all times, keep or cause to be kept the **Licensed Premises** free of litter, trash, paper, boxes and other waste and shall place same in standard trash containers in the appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**. **LICENSEE** shall not place trash, garbage, waste, or any refuse generated at, on, or by **LICENSEE** within City owned or City Licensed dumpsters and/or trash containers.
- LICENSEE** shall be responsible for the condition of the **Licensed Premises**. **LICENSEE** shall repair any damage to the Licensed Premises caused by **LICENSEE**, and shall maintain, or cause to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.
- 9.3 **LICENSEE** shall, at its sole expense, keep the Licensed Premises in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair of all damages to the Licensed Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards, or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the **Historic and Design Review Commission**. If **LICENSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.
- 9.4 **LICENSEE** will, at the termination of this License Agreement, return the Licensed Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.

- 9.5 **LICENSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LICENSEE** both during the term of this License Agreement and as so left on the Licensed Premises after **LICENSEE** vacates the Licensed Premises. If said signs, goods and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by it after the close of business and the Licensed Premises is vacated, then the **CITY** may remove same without further notice or liability therefore.

10. TAXES AND LICENSES

- 10.1 **LICENSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Licensed Premises, or upon **LICENSEE**, or upon the business conducted on the Licensed Premises, or upon any of **LICENSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LICENSEE**.

11. ASSIGNMENT AND SUBLICENSING

- 11.1 Except as to the parent, subsidiary or similarly affiliated company, **LICENSEE** shall not assign this License Agreement, or allow same to be assigned by operation of law or otherwise, any part thereof without the prior written consent of **CITY**, which may be given only by or pursuant to an Ordinance enacted by the City Council of San Antonio, Texas. Any assignment by **LICENSEE** without such permission shall constitute an Event of Default.
- 11.2 **LICENSEE**, may without consent of City, sublet the Licensed Premises to a third Party for the use and operations consistent with the terms and conditions of this License Agreement. Such subletting shall be at market value and shall not relieve **LICENSEE** from any burdens, covenants, restrictions contained in this License Agreement.
- 11.3 Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License Agreement; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 11.4 The receipt by the **CITY** of rent from an assignee, or occupant of the Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and/or an acceptance of the assignee, or occupant as a **LICENSEE**, or a release of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in this License Agreement. No provision of this License Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

12. DISPLAY AREA

- 12.1 **All display items to be placed on Licensed Premises including, but not limited to, tables, chairs, awnings, umbrellas, signs and railings must be approved by the Office Historic Preservation (OHP). Unless otherwise approved by OHP, logos on display items will not be permitted.**
- 12.2 **LICENSEE'S** Licensed Premises is an area adjacent to building but does not include any area outside of the licensed area as shown in **Exhibit A** attached hereto. **LICENSEE** may only use area adjacent to the building and **LICENSEE** may not obstruct any entrance to the building with any type of display, counters, etc. **CITY** has the right to request the removal of display merchandise and fixtures, if **LICENSEE'S** display is not presentable, as determined by the Director. **LICENSEE** must bring into his building any merchandise, furniture and display fixtures on **Licensed Premises** after closing each day.
- 12.4 **ENCROACHMENT** on the area licensed to Main Plaza Conservancy beyond the authorized Licensed Premises is not permitted.

13. TERMINATIONS, DEFAULTS AND REMEDIES

- 13.1 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event this agreement is deemed to be inconsistent with the public use of the property.
- 13.2 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event the use of the premises shall have been deemed a nuisance by a court of competent jurisdiction.
- 13.3 In the event of termination in relation to 13.1 or 13.2 above, the **CITY** shall give **LICENSEE** notice in writing at least thirty (30) calendar days prior to the termination date.
- 13.4 **DEFAULT WITHOUT AN OPPORTUNITY TO CURE.** The following events shall constitute Events of Default with no opportunity to cure:
- 13.4.1 Any rent not received by the tenth (10th) day of the month and not paid within five (5) business days following receipt of written notice of non-payment from **CITY**.
- 13.4.2 Failure to comply with any and all Taxes and Licenses requirements as outlined **Article 10 TAXES AND LICENSES**;
- 13.4.3 Any assignment as specified in **Article 11 ASSIGNMENT AND SUBLETTING** not approved in writing by the City of San Antonio;
- 13.4.4 Encroachment unto the area beyond the authorized **Licensed Premises**;
- 13.4.5 If **LICENSEE** fails to abide by the requirements of **Article 15 INSURANCE REQUIREMENTS** or allows the Insurance Certification to be cancelled without other approved Insurance replacement coverage. New or revised policy must overlap or

immediately continue term of old policy. Expired policy must be replaced before expiration date of current policy. Use of the Licensed Premises before **Approval** and **Acknowledgement** by the **City** of any new, revised, renewed or reinstated Certification;

13.4.6 Live or recorded music and outdoor entertainment to customers or any prohibited use of premises except as approved in 2.3.1;

13.5 DEFAULTS WITH AN OPPORTUNITY TO CURE:

13.5.1 **LICENSEE** shall fail to comply with any term, provision or covenant of this License Agreement and shall fail cure any such failure within three (3) calendar days of **CITY** providing notice of such failure, provided, however, in the event **LICENSEE** repeats any such particular failure twice more during the term of the contract then any such third failure shall constitute an Event of Default and there shall be no opportunity to cure.

13.6 Upon the occurrence of either an Event of Default without an opportunity to cure or an event of default for which **LICENSEE** has not satisfactorily cured within the allotted time period, as heretofore provided, **CITY** may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or **CITY**, its agents or attorney may, at its option, resume possession of the Licensed Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LICENSEE** without relieving **LICENSEE** of any liability hereunder as to rent or any other charges still due and owing in this License Agreement, or any extension thereof, as applicable. **LICENSEE** shall make good any deficiency.

13.7 Any termination of this License Agreement as herein provided shall not relieve **LICENSEE** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LICENSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LICENSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this License Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this License Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

13.8 Upon any such expiration or termination of this License Agreement, **LICENSEE** shall quit and peacefully surrender the Licensed Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejection or otherwise, and may dispossess **LICENSEE** and remove **LICENSEE** and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Licensed Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Licensed Premises by **LICENSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

14. INDEMNIFICATION

LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subLICENSEE of LICENSEE, and their respective officers, agents employees, directors and representatives (collectively, the "LICENSEE Parties") while in the exercise of performance of the rights or duties under this Agreement. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE WILLFUL MISCONDUCT OR NEGLIGENCE OF THE CITY OR ANY OF THE CITY'S ELECTED OFFICIALS, OFFICERS, EMPLOYEES, DIRECTORS, VOLUNTEERS OR REPRESENTATIVES (COLLECTIVELY, THE "CITY PARTIES"), INCLUDING, WITHOUT LIMITATION, ANY INSTANCES WHERE SUCH WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE CITY PARTIES CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IF THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION ESTABLISHES, UNDER PRINCIPLES OF COMPARATIVE NEGLIGENCE THEN IN EFFECT IN THE STATE OF TEXAS, THAT THE WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE LICENSEE PARTIES OR ANY OF THE CITY PARTIES CAUSED A PERCENTAGE OF DAMAGES, THEN, AS TO SUCH PERCENTAGE ONLY, THE INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL NOT APPLY, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF ANY OF THE PARTIES UNDER TEXAS

LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall (i) advise the CITY in writing within 24 hours after LICENSEE receives actual notice, without any duty of independent inquiry or investigation, of any claim or demand against the CITY or LICENSEE related to or arising out of LICENSEE'S activities under this LICENSE AGREEMENT, and (ii) shall see to the investigation and defense of such claim or demand at LICENSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

15. INSURANCE REQUIREMENTS

- 15.1 Prior to the commencement of any work under this **License Agreement**, **LICENSEE** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the **CITY'S** Downtown Operations Department, which shall be clearly labeled "License Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this **License Agreement** until such certificate and endorsements have been received and approved by the **CITY'S** Downtown Operations Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.
- 15.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this **License Agreement** and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **License Agreement**. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 15.3 **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this **License Agreement**, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Liquor Liability**	\$1,000,000 per occurrence

** If applicable

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

City of San Antonio
Attn: Center City Development and Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

15.5.1 Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the

- CITY**, with the exception of the workers' compensation and professional liability policies;
- 15.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- 15.5.3 Workers' compensation, employers' liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**.
- 15.5.4 Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 15.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this **License Agreement**.
- 15.7 If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **License Agreement** termination proceedings on the first event of default. The **CITY** may upon **LICENSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.
- 15.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this **License Agreement**.
- 15.9 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this **License Agreement**.
- 15.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **License Agreement** and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

16. RULES AND REGULATIONS

- 16.1 **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE'S** business.
- 16.1.1 This includes and is not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in Main Plaza. Unless approved by Director, **LICENSEE** shall not place speakers, amplified music or similar equipment on or near

the Licensed Premises or in any other location outside the adjacent enclosed building on any side of the licensed premises. **LICENSEE** shall comply with **CITY'S** laws pertaining to noise. **LICENSEE** agrees to comply with any requests by the **CITY'S** Park Police, Center City Development and Operations Department, City Police Officers or noise abatement officers. Failure to comply with this section may constitute an Event of default.

- 16.1.2 No advertisements, signs, decorations and/or displays shall be placed in, on, or about the Licensed Premises without the prior written approval of the **CITY** through the **DIRECTOR** or his authorized representative and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Licensed Premises when **LICENSEE** vacates the Licensed Premises.
- 16.2 **LICENSEE** will be allowed to place only tables, racks and fixtures as approved by City on the demised premises. All merchandise will be removed from the Licensed Premises during non-business hours.
- 16.3 No activity or method of operation shall be allowed in, on, or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
- 16.3.1 Nudity means total absence of clothing or covering for the human body.
- 16.3.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 16.4 Any **LICENSEE** sponsored or sanctioned nudity as specified above will constitute a violation of this Article and result in an Event of Default.
- 16.5 The operation of a massage business, tanning salon, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.
- 16.6 Discrimination on account of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment, or in the use of or admission to the Licensed Premises is prohibited.
- 16.7 **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.
- 16.8 No provision of this License Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments, amusements, or parades for the benefit of the public.
- 16.9 **CITY** park police, police officers and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by City officials. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not

act as an insurer of **LICENSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

16.10 Other specific uses of Licensed Premises are outlined in **Article 2**.

17. RESERVATIONS: CITY

17.1 **CITY** reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** 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 **LICENSEE** from the Licensed Premises. Should construction or other activity by **CITY** prevent **LICENSEE'S** use of the Licensed Premises for the purposes outlined herein for longer than ten (10) days, then this License Agreement shall be automatically extended for the same number of days **LICENSEE'S** use of Licensed Premises was denied or an abatement for the period **LICENSEE** was not able to use the premises may be considered but not both. The City will determine which resolution will be executed.

18. HOLDING OVER

18.1 Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to **One Hundred Twenty-Five percent (125%)** the amount of the rent paid for the last month of the term of this License Agreement. Director may waive this increase in rent. The inclusion of this section shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

19. CONFLICT OF INTEREST

19.1 **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having financial interest in any contract with the City or any City Agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee, or his parent, child, or spouse; a business entity in which the officer or employee, or his parent, child, or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

19.2 **LICENSEE** warrants and certifies, and this license is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as city owned utilities

20. SEPARABILITY

- 20.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

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

City of San Antonio
Center City Development and Operations
Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

114 Main Plaza, LLC
Elizabeth Wong
114 Main Plaza
San Antonio, Texas 78204

or to such other address on file with the City Clerk as **LICENSEE** may provide in writing to **CITY**.

22. PARTIES BOUND

- 22.1 If there shall be more than one party designated as **LICENSEE** in this License Agreement, they shall each be bound jointly and severally hereunder.
- 22.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY**.

23. TEXAS LAW TO APPLY

- 23.1 THIS LICENSE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

24. RELATIONSHIP OF PARTIES

- 24.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of **LICENSOR** and **LICENSEE**.

25. GENDER

- 25.1 Words of any gender used in this License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

26. CAPTIONS

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

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.
- 27.2 No amendment, modification, or alteration of the terms of this License Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. ACKNOWLEDGEMENT OF READING

- 28.1 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

29. AUTHORITY

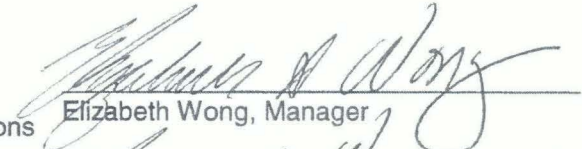
29.1 If the signer of this License Agreement is an entity or other than an individual who is the **LICENSEE**, then the signer hereof for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of **LICENSEE**.

WITNESS, the signature of the parties hereto in multiple originals, this, the _____ day of _____, 2020 (Commencement Date).

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

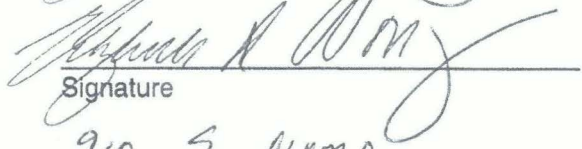
**LICENSEE:
114 Main Plaza, LLC**

By: _____
Director, Center City Development and Operations
Department



Elizabeth Wong, Manager

ATTEST:



Signature

City Clerk

910 S. ALAMO

Business Address

APPROVED AS TO FORM:

SAN ANTONIO TX 78205

City, State, and Zip Code

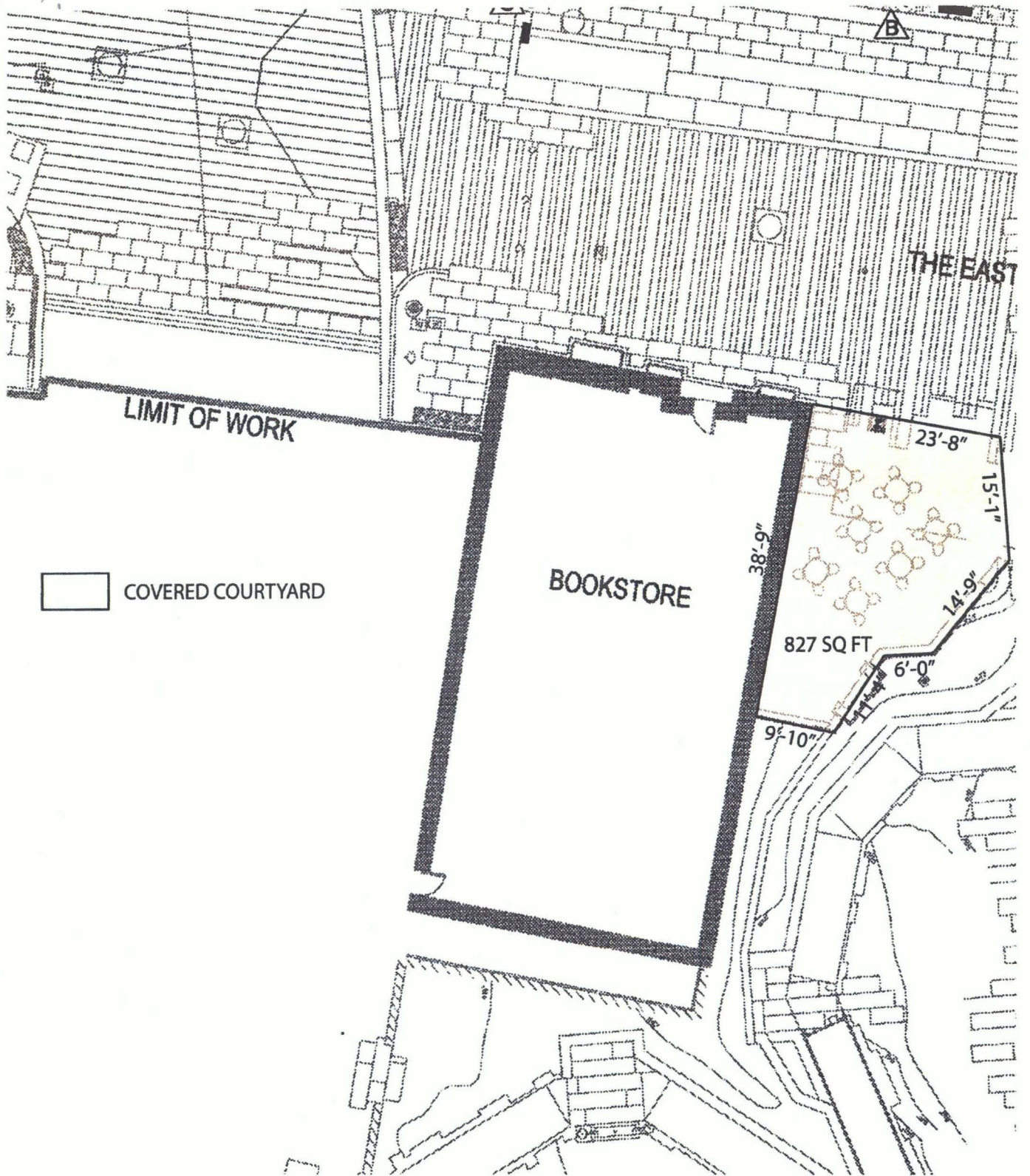
City Attorney

(210)

Area Code/Telephone Number of Business

Exhibit A – Proposed Cover Patio

Exhibit A – Proposed Cover Patio




 COVERED COURTYARD

<p>FORD POWELL & CARSON Architects & Planners, Inc.</p>	<p>FPC Project No. 96300</p>	<p>114 E Main Plaza San Antonio, TX 78205</p>	<p>OUTSIDE PROPERTY AREA</p>	<p>SHEET: SK-1 1 OF 1 Date: 12/20/2019</p>
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