

ORDINANCE 2018-05-10-0335

AUTHORIZING A LEASE AGREEMENT WITH GO RIO SAN ANTONIO LLC FOR THE USE OF 807 E. RIVERWALK IN ORDER TO ENHANCE SERVICES FOR RIVER BARGE CUSTOMERS.

* * * * *

WHEREAS, Ordinance 2017-05-25-0376 authorized a contract between the City of San Antonio and GO RIO to operate the river barge concession on the San Antonio River from Nueva Street to Grayson Street from October 1, 2017 through September 30, 2027; and

WHEREAS, in order to enhance services available to its customers, GO RIO requested to lease the City-owned property at 807 E. Riverwalk, which is located adjacent to GO RIO's existing ticket booth at 809 E. Riverwalk and near the Shops at Rivercenter; and

WHEREAS, GO RIO plans to utilize the space for merchandise sales, extensive beverage service, and to provide information regarding river barge tours, charters, and shuttles; and

WHEREAS, the lease term is proposed to coincide with the river barge concession agreement and will be valid through September 30, 2027; and

WHEREAS, the proposed monthly rent of \$2,550.00 is based on a market rate study and the rent shall increase October 1 each year throughout the term; and

WHEREAS, subject to City approval, GO RIO may receive rent credit for permanent improvements to the lease space; **NOW THEREFORE:**

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

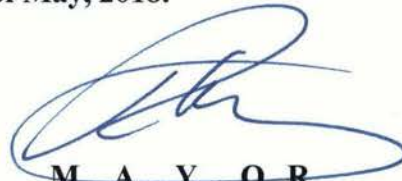
SECTION 1. The City Manager or her designee or the Director of Center City Development and Operations Department or his designee, is authorized to execute a Lease Agreement with the Go Rio San Antonio for the use of 807 E. Riverwalk in order to enhance services for river barge customers. A copy of the lease agreement in substantially final form is attached hereto as **Attachment I.**

SECTION 2. Fund 28243001 and Internal Order 157000000054 are hereby designated for use in the collection of revenues for fiscal year 2018 from GO RIO SAN ANTONIO, LLC. For the term of the contract, the funds will be deposited to the same fund provided, with a new Internal Order being created for subsequent fiscal years.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

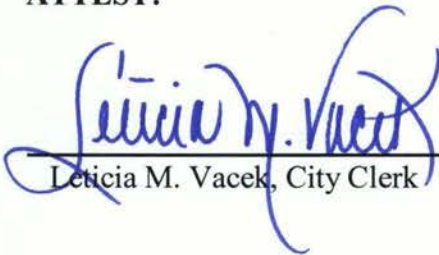
SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th day of May, 2018.




M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	15 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23)						
Date:	05/10/2018						
Time:	09:18:57 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a lease agreement with Go Rio San Antonio LLC for the use of 807 E. Riverwalk to enhance services for river barge customers. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SW/ah
5/10/18
Item No. 15

ATTACHMENT I

ATTACHMENT I

River Walk Lease
GO RIO SAN ANTONIO, LLC

1. Basic Information, Definitions

Authorizing
Ordinance:

Landlord, City, or
Lessor:

City of San Antonio

Landlord's
Address:

P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Center City Development & Operations
Department)

Lessee:

GO RIO SAN ANTONIO, LLC ("GO RIO")

Lessee's Address:

202 E. Nueva, San Antonio, Texas 78204

Premises:

An area containing approximately 340 square feet of San Antonio River Walk level space located under the northeast corner of the East Commerce Street Bridge, Lot 1, NCB 13812, San Antonio, Bexar County, Texas (807 East Riverwalk).

Permitted Use:

Promotion of GO RIO barge services, sales of GO RIO, River Walk, and related merchandise, food items, beer, wine, water, sodas and frozen beverages (alcoholic and nonalcoholic).

Term:

5/10/2018 – 9/30/2027

Initial Lease Rate:

\$7.50/psf/month

Address for
Payment of Rent:

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

Director

The Director of the City of San Antonio's Center City Development & Operations Department or such other successor department as designated by Landlord.

2 Term and Termination

- 2.1 The term of this Lease Agreement (referred to herein as "Agreement" or "Lease") is May 10, 2018 through September 30, 2027, unless sooner terminated as provided in this Lease or extended by mutual written agreement of the parties.
- 2.2 Beginning May 10, 2018, Lessee has the right to enter the Premises to begin construction. Construction phase begins May 10, 2018 and is anticipated to conclude on or before August 9, 2018. Rent for the Premises will begin no later than August 10, 2018.
- 2.3 In the event the Downtown San Antonio River Barge Concession Contract effective October 1, 2017 ("Barge Contract") is terminated prior to September 30, 2027 in accordance with

terms therein, then this Agreement shall simultaneously terminate on the same termination date as the Barge Contract.

3 Rent*

Year	Price per Sq. Foot per /Month	Monthly Rate
Year 1: The earlier of date Lessee opens for business to the general public or 8/10/2018 to 9/30/2018	\$7.50	340 sq. ft. x \$7.50 = \$2,550.00
Year 2: 10/1/2018 to 9/30/2019	\$7.69	340 sq. ft. x \$7.69 = \$2,614.60
Year 3: 10/1/2019 to 9/30/2020	\$7.88	340 sq. ft. x \$7.88 = \$2,679.20
Year 4: 10/1/2020 to 9/30/2021	\$8.07	340 sq. ft. x \$8.07 = \$2,743.80
Year 5: 10/1/2021 to 9/30/2022	\$8.27	340 sq. ft. x \$8.27 = \$2,811.80
Year 6: 10/1/2022 to 9/30/2023	\$8.48	340 sq. ft. x \$8.48 = \$2,883.20
Year 7: 10/1/2023 to 9/30/2024	\$8.69	340 sq. ft. x \$8.69 = \$2,954.60
Year 8: 10/1/2024 to 9/30/2025	\$8.91	340 sq. ft. x \$8.91 = \$3,029.40
Year 9: 10/1/2025 to 9/30/2026	\$9.13	340 sq. ft. x \$9.13 = \$3,104.20
Year 10: 10/1/2026 to 9/30/2027	\$9.36	340 sq. ft. x \$9.36 = \$3,182.40

* The above specified Rent is subject to the Rent Credit specified in Section 7.8 of this Agreement.

3.1 Lessee may pay in one lump sum in advance or in monthly installments in advance on the first day of each month. If Lessee is delinquent in paying Rent, Lessee must pay to Lessor upon demand a late charge of \$50.00. Lessee shall be charged a fee for any insufficient fund

checks used to pay the rent and shall be subject to other rules and regulations adopted by Lessor's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Lessor's other rights and remedies. Notwithstanding the preceding, Lessee understands and agrees that it is bound by the Barge Contract and that its sales at the Premises are subject to the Barge Contract.

- 3.2 Notwithstanding anything to the contrary set forth in this Agreement, if LESSEE shall fail to make the timely payment of any rent or any additional charges due the CITY from LESSEE or the payment of any other money due the CITY from LESSEE under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.
- 3.3 In the event of a Repeated Event of Default, CITY, without giving LESSEE any notice and without affording LESSEE an opportunity to cure the default, may terminate this Lease forthwith without notice to LESSEE.
- 3.4 FIRE AND OTHER CASUALTY: In the event that the Premises, or any portion thereof, shall be partially damaged by fire, the elements, civil disorder, or other casualty, LESSEE shall give immediate notice thereof to the CITY and the same shall be repaired at the expense of CITY, without unreasonable delay, unless CITY reasonably determines that the damage is so extensive that repair or rebuilding ("restoration") is not feasible since the damage has rendered the Premises untenable. In the event that CITY elects to repair the Premises, LESSEE'S rent shall be abated for the construction period. In the event that the damage should be so extensive as to render the Premises untenable, in the reasonable judgment of CITY, then, at the option of CITY, and upon written notice to LESSEE ("date of determination"), this Lease shall cease and come to an end, as of such date of determination.
- 3.5 Notwithstanding anything in this Agreement to the contrary, in the event that LESSEE is unable to operate its business within the Premises and such cessation of business is not within LESSEE'S control and such interruption has not resulted from a failure of LESSEE to perform any of its obligations under this Agreement, and if such cessation of business continues for a period of two (2) consecutive business days after LESSEE gives CITY written notice of such interruption, then LESSEE shall receive an abatement of Rent payable hereunder during the period beginning on the third (3rd) business day of such cessation and ending on the day when LESSEE is able to operate its business within the Premises.

4 Use of Premises

- 4.1 LESSEE agrees that the Premises shall be utilized for the sole purpose of the promotion of GO RIO barge services, sales of GO RIO, River Walk, and related merchandise, food items, beer, wine, water, sodas, and frozen beverages (alcoholic and nonalcoholic), in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and City of San Antonio, Texas. Any deviations from this use must have prior written approval of the DIRECTOR, such approval shall not be unreasonably withheld, delayed or denied.

4.2 Prohibited Uses - LESSEE shall not use, or permit the use of, the Premises for any other, different or additional purpose without first obtaining the approval of the DIRECTOR. Tenant agrees that the Permitted Uses are subject to LESSEE'S compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Premises and that nothing in this Lease shall constitute or be deemed to constitute a waiver by CITY of the performance of its Governmental Functions or of any such Applicable Laws or of the duty of LESSEE to comply with such Applicable Laws. Notwithstanding the permitted use hereunder, Tenant agrees that it shall not violate any of the Rules and Regulations listed below.

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

4.4 LESSEE covenants and agrees it shall not block or in any way materially interfere with the public right-of-way along the River Walk area to follow a path designated by the CITY for safe passage by pedestrians. LESSEE shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into LESSEE'S business establishment, in said public right of way. LESSEE shall comply with the CITY'S laws pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons.

5 Acceptance and Conditions of Premises

5.1 LESSEE has had full opportunity to examine the Premises. LESSEE'S taking possession of the Premises on May 10, 2018 shall be conclusive evidence of LESSEE'S acceptance thereof in "AS IS", "WHERE IS" condition and "WITH ALL FAULTS".

5.2 LESSEE agrees that no representations, respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by CITY or its agents to LESSEE unless the same are contained herein or made a part of hereof by specific reference herein. CITY expressly disclaims any warranty of suitability that may otherwise have arisen by operation of law. CITY does not warrant that there are no latent defects in the facilities that are vital to the LESSEE'S use of the Premises for their intended commercial purpose and that these essential facilities will remain in a suitable condition. In the event that a latent defect is discovered in the facilities after commencement of this Lease which would materially prevent LESSEE'S intended use of the Premises, LESSEE shall have the right to terminate this Lease as of the date of written notice to CITY of the material latent defect. Such early termination will be LESSEE'S sole remedy.

6 Utilities

- 6.1 LESSEE shall furnish and pay for all gas, water, electricity, sewer or other utilities that may be necessary for its operation. LESSEE further agrees to pay all monthly utility and related charges associated with effective maintenance of said operation.**
- 6.2 LESSEE acknowledges that CITY has made no utility connections to the Premises for electricity, sewer, gas, water or other utility usage. LESSEE agrees to make arrangements with utility providers to provide utility lines and connections, which must be separately metered and installed in accordance with the City of San Antonio building code and other regulations applicable thereto.**

7 Improvements

- 7.1 Except as otherwise set forth herein, LESSEE shall not construct any improvements or structures on the Premises nor shall LESSEE make any alterations to said Premises without the prior written approval of the CITY through the Director and any and all other necessary departments, boards or commissions of the City of San Antonio including, but not limited to, the Historic and Design Review Commission (HDRC).**
- 7.2 LESSEE shall provide, at its sole expense, any necessary surveys, designs, plans, and specifications and obtain written approval of all necessary CITY agencies prior to commencing any construction or installation of improvements upon the Premises. Within ninety (90) days after the execution hereof, LESSEE agrees to submit to CITY plans and specifications (hereafter "plans") covering any work LESSEE desires to perform, in such detail as CITY may require; and LESSEE agrees not to commence any of such works until CITY has approved LESSEE'S plans in writing.**
- 7.3 CITY agrees to examine and approve or disapprove the above mentioned plans within a reasonable period of time after receipt and to notify LESSEE in writing when the same have been approved or disapproved and in the event of approval, LESSEE agrees to commence LESSEE'S Work promptly thereafter, proceed with it diligently, and to open the Premises for business with the public as soon as reasonably possible after LESSEE'S Work has been completed.**
- 7.4 Any improvements to the Premises shall become permanent and shall remain as part of Premises following termination of this Agreement.**
- 7.5 LESSEE agrees that it shall obtain any and all necessary permits and clearances relative to any construction from appropriate local, state, and federal regulatory agencies. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction.**
- 7.6 LESSEE covenants that it shall not bind, or attempt to bind, CITY for the payment of any money in connection with the construction authorized hereunder and that LESSEE will fully indemnify and hold harmless the CITY against any and all claims, liens, suits or actions asserted on account of labor, materials, or services furnished to the LESSEE during the**

performance of any said construction and against any claim for injury to persons or property resulting from or in anywise connected with LESSEE'S alterations, additions, or improvements.

- 7.7 At any time during the term of this Lease or any extensions thereof, if applicable, that LESSEE contracts for construction of improvements on the Premises, then LESSEE shall, in accordance with the insurance provisions hereafter, cause its contractor and subcontractors to provide proof of Worker's Compensation Insurance Coverage, and any other liability or other insurance coverage in the amounts and types of coverage approved by CITY'S Risk Manager.
- 7.8 Subject to the terms specified in this Section 8, in consideration for the initial improvements to be made by Lessee to the Premises, City shall apply, and Lessee shall be entitled to, a Rent credit ("Rent Credit") against Lessee's rental payments for the equivalent amount of the cost of the initial improvements; provided, however such Rent Credit shall not exceed \$100,000.00. The Rent Credit shall be applied immediately to Lessee's Rent obligations herein. Examples of approved permanent improvements may include HVAC, flooring, ceiling, doors/windows, insulation, utility connections, and other items permanently affixed to the Premises; however, trade dress, paint, and cleaning are not examples of permanent improvements. In order to be eligible to receive the Rent Credit, LESSEE must submit paid invoices for improvements performed at 807 E. Riverwalk that reasonably indicate the cost of the initial improvements.
- 7.9 GO RIO guarantees that prior to September 30, 2027, GO RIO concession payments for "Other Services" will be at least \$454,527.40. In the event that by September 30, 2027 GO RIO's concession payments from "Other Services" total less than \$454,527.40 then GO RIO agrees to pay an extra concession payment to make up the difference no later than October 31, 2027. "Other Services" is defined in Item 2.3.1 of the Downtown San Antonio River Barge Concession Contract as all merchandise, food and beverage, advertising, and other ancillary services related the Contract other than Barge Services.

8 Maintenance of Property

- 8.1 LESSEE shall at its sole cost and expense (a) keep the storefront entry doors and the interior of the Premises in first-class condition and repair and decorated in a first-class manner; (b) keep in first-class condition and repair all improvements, equipment, facilities, and fixtures (including hardware and heating, cooling and ventilation equipment, electrical, plumbing, sprinklers and sprinkler heads, and other mechanical facilities to the point of connection with CITY'S facilities) located in the Premises; and (c) replace all broken window glass and door glass in the Premises with glass of the same size and quality. Notwithstanding the foregoing, LESSEE shall not be responsible for structural or foundational issues or any repairs or improvements required from any structural or foundational issues in the building.
- 8.2 During the Term of this Lease, LESSEE agrees to employ a suitable contractor to perform LESSEE'S obligations for maintenance of the heating, cooling, and ventilation units on the Premises and for LESSEE'S obligations for maintenance of all fire protection systems within the Premises including the sprinkler system. Such maintenance shall include at least semi-

annual inspections and cleaning of said units and systems, together with such adjustments and servicing as each such inspection discloses to be required and, in addition, all repair, testing and services shall be necessary or reasonable required by CITY or CITY'S insurance underwriter.

- 8.3 LESSEE shall diligently comply with and execute at its own expense during the term of this Lease, all present and future laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, ordinary and extraordinary, foreseen or unforeseen, concerning the condition or use of the Premises (excluding any structural or foundational issues), or any part thereof, of any federal, state, municipal, or other public department, bureau, office or authority or of the National Board of Fire Underwriters, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, and shall protect, hold harmless and indemnify CITY of and from all fines, penalties, claim or claims for damages of every kind and nature arising out of any failure to comply with any such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations.
- 8.4 CITY shall not be liable for any labor or materials furnished or to be furnished to LESSEE upon credit, and no mechanics' or other lien, for any such labor or materials shall attach to or affect the reversionary or other estate or interest of CITY in and to the Premises. Whenever and as often as any such lien shall have been filed against the Premises, if based upon any action or interest of LESSEE, or of anyone claiming through the LESSEE, LESSEE shall promptly take such action by bonding, deposit or payment as will remove or satisfy the lien and, if LESSEE is in default thereof for sixty (60) days after notice to LESSEE, CITY may, at its option, pay the amount of such mechanics lien, or discharge the same by bond or deposit, and the amounts so paid or deposited (including the premium on any such bond) with interest thereon at the lesser of (I) eighteen percent (18%) per annum or (II) the maximum rate permitted by applicable law from the date of such payment or deposit until repaid to CITY shall be deemed additional rent reserved under this Lease and, at the option of CITY, shall be payable with the next installment of rent or with any subsequent installment of rent thereafter becoming due.
- 8.5 LESSEE will, at the termination of this Lease, peaceably and quietly leave, surrender, and return the Premises to CITY in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of LESSEE. Any removable property of LESSEE which shall remain on the Premises after the expiration of the term of this Lease or sooner termination of thereof and the removal of LESSEE from the Premises may, at the option of CITY, be deemed to have been abandoned, and either may be retained by CITY, as CITY'S property, or may be removed and disposed of in such manner as CITY may see fit, without further notice or liability therefor. If such personal property or any part thereof shall be sold, CITY may receive and retain the proceeds

of such sale and apply the same, at CITY'S option, against the expenses of the sale, the cost of moving and storage, any arrears of rent or additional rent payable hereunder and any damages to which CITY may be entitled under this Lease or pursuant to law, with any excess proceeds remaining to be paid by CITY upon demand to LESSEE.

8.6 CITY shall not be responsible or liable for any damages to any property, including the destruction of signs, goods, and/or other property of LESSEE, or any injury or death to any person or persons at any time on or about the Premises.

9 Assignment and Subletting

9.1 LESSEE shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet the Premises or any part thereof without the prior written consent of CITY which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas; and which consent will not be unreasonable withheld. Such consent will be conditioned only upon 1) review and approval of any proposed sublessee's or assignee's identity, financial condition, and management experience and 2) in the event of an assignment, the execution by such assignee of any agreement in form and substance satisfactory to CITY assuming and agreeing to perform all obligations of the LESSEE under this Lease. Any assignment or subletting by LESSEE without such consent shall constitute grounds for termination of this Lease by the CITY. Notwithstanding the foregoing, LESSEE may assign the Lease to any parent, subsidiary or similarly affiliated entity without the prior written consent of the CITY, with ten (10) days prior written notice to the CITY.

9.2 Without the prior written consent of LESSEE, CITY shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease, and in the building and property referred to herein; and to the extent that such assignee assumes CITY'S obligations hereunder, CITY shall by virtue of such assignment be released from such obligations.

9.3 The receipt by the CITY of rent from assignee, sublessee, or occupant of the Premises shall not be deemed a waiver of the covenant in this Lease against assignment and subletting or an acceptance of the assignee, sublessee, or occupant as a LESSEE or a release of the LESSEE from further observance or

9.4 Performance by the LESSEE of the covenants contained in the Lease. No provision of this Lease shall be deemed to have been waived by the CITY unless such waiver is in writing signed by the CITY.

9.5 The making of any assignment, sublease, mortgage, pledge, or encumbrance, in whole or in part, shall not operate to relieve LESSEE of its obligations under this Lease and, notwithstanding of any such assignment, sublease, mortgage, pledge, or encumbrance, LESSEE shall remain liable for the payment of all rental, taxes, additional rent, and other charges for the due performance of all the covenants, agreement, terms, and provisions of this Lease throughout the term of this Lease, unless released in writing by CITY.

9.6 Each and every assignee, whether as assignee or successor in interest of any assignee of LESSEE, shall immediately be and become and remain liable for the payment of the rent and additional charges payable under this Lease, and for the due performance of all the covenants, agreements, terms, and provisions of this Lease, on LESSEE'S part to be performed, and each and every provision of this Lease applicable to LESSEE prior to such assignment shall also apply to and bind every such assignee with the same force and effect as though such assignee were the original LESSEE named in this Lease. No transfer to such assignee shall be binding upon CITY unless such assignee shall deliver to CITY a recordable instrument which contains a covenant of assumption by said assignee to such effect, but the failure or refusal of such assignee to deliver such instrument shall not release or discharge such assignee from its obligations and liabilities as set forth above.

9.7 Any consent by CITY herein contained or hereafter given to any act or acts for which CITY'S consent by the terms hereof are required, shall be held to apply only to the specific transaction hereby or thereby approved.

10 Default and Remedies

10.1 The following events shall be deemed to be events of default by LESSEE under this Lease:

10.2 LESSEE shall fail to pay any installment of rent as provided for in this Lease and such failure shall continue for a period of ten (10) days following the date on which it is due and owing.

10.3 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 written notice thereof to LESSEE.

10.4 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this Lease, and all rights and interest created by it, terminated. Upon CITY electing to terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; and all rights of LESSEE under this Agreement shall expire and terminate or CITY, its agents, or attorney may, at its option, resume possession of the Premises and relet the same for the remainder of the original term for commercially reasonable rent CITY, its agent or attorney may obtain from 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.

10.5 LESSEE understands and agrees that termination of this Lease as herein provided, except under Article 2, shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LESSEE hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from LESSEE for any default thereunder. LESSEE further agrees that in the event of the

expiration or termination of this Lease, under any of the provisions of this Article or pursuant to law, by reason of LESSEE'S default hereunder, LESSEE, in order to make good any deficiency, shall pay CITY sums, damages, equal to the rent which would have been payable by LESSEE had this Lease not been terminated, payable upon the respective rent days specified herein following such termination and until the date herein above set forth for the expiration of the term of the Lease or, as applicable, any extension of said term; provided, however, that CITY shall make reasonable efforts to relet the Premises during said period, and if CITY shall so relet, CITY shall credit LESSEE with the net rents if any received by CITY from such reletting, the reasonable expenses of reletting, including to the extent necessary, altering and preparing the Premises for new tenant, broker's commissions, and all other reasonable expenses properly chargeable against the Premises and the rental therefrom, with any excess of such net rents over the sums payable by LESSEE to CITY hereunder to be paid over to LESSEE.

10.6 Upon any such expiration or termination of this Lease, LESSEE shall quit and peacefully surrender the 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 Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess LESSEE and remove LESSEE and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status fixtures, from the Premises, without notice or liability therefor.

10.7 All rights, options, and remedies of CITY contained in this Lease shall be cumulative of the other, can CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease. 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.

11 Indemnity

LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the LESSOR and the elected officials, employees, officers, directors, volunteers and representatives of the LESSOR, 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 LESSOR to the extent caused by acts or omissions of LESSEE, any agent, officer, director, representative, employee, Lessee or subcontractor of LESSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of LESSOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LESSEE AND LESSOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED**

COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

12 Insurance

- 12.1 Prior to the commencement this Agreement, Lessee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Downtown Operations Department, which shall be clearly labeled "River Walk Lease 807 East River Walk" 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 12.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages 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 Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 12.3 A Lessee's financial integrity is of interest to the City; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by the City, Lessee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Lessee'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 below:

TYPE	AMOUNTS
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1. Workers' Compensation, or 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> • Premises/Operations • Products/Completed Operations • Personal/Advertising Injury • Contractual Liability • Fire Legal Liability 	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. *Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
6. *Builder's Risk	Not applicable
7. *Property Insurance:	Not applicable
8. Liquor Legal Liability	\$5,000,000 per occurrence; \$5,000,000 General Aggregate or its equivalent in Umbrella or Excess Liability Coverage May be included under the CGL policy or as a stand-alone
*if applicable	

12.4 Lessee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Lessee herein, and provide a certificate of insurance and endorsement that names the Lessee and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Lessee. Lessee shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

12.5 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 required endorsements. Lessee shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Lessee shall pay

any costs incurred resulting from provision of said documents.

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

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

- 12.6 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds 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;
- 12.7 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;
- 12.8 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- 12.9 Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 12.10 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend this Agreement 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 Agreement.
- 12.11 In addition to any other remedies the City may have upon Lessee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Lessee to stop work hereunder, and/or withhold any payment(s) which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.
- 12.12 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 or its subcontractors' performance of the work covered under this Agreement.
- 12.13 It is agreed that Lessee'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 Agreement.
- 12.14 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf

of the City shall be limited to insurance coverage provided.

12.15 Lessee and any subcontractors are responsible for all damage to their own equipment and/or property.

13 Rules and Regulations

13.1 LESSEE shall observe and comply with all laws and ordinances of the CITY affecting LESSEE'S business, including but not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.

13.2 No advertisements, signs, decorations or displays shall be placed in, on or about the Premises without the prior written approval of the CITY through the Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission; provided, however, CITY shall not unreasonably withhold, condition, or delay any consent or approval regarding advertisements, signs, decorations, or displays consistent with GO RIO's current Barge Contract operations. LESSEE agrees to remove all signs from the Premises when LESSEE vacates the Premises.

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

13.3.1 Nudity means total absence of clothing or covering for the human body.

Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

Any nudity as specified above will constitute a violation of this Article and result in an Event of Default

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

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

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

14 Reservations. CITY

14.1 CITY reserves the right to enter the Premises or any part thereof, for the purpose of ascertaining the condition of the Premises or determining whether LESSEE is observing and performing the obligations undertaken by it under this Lease, all without hindrance or molestation from LESSEE. CITY shall also have the right to enter upon the Premises for the purpose of examining, inspection, or making repairs as herein provided or for performing any work thereof that may be necessary by reason of LESSEE'S failure to make any such repairs or perform any obligations hereunder. 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 Premises. Except for such work that CITY performs by reason of LESSEE'S failure to make repairs or perform work hereunder, should construction or other activity by CITY prevent LESSEE'S use of the Premises for the purposes outlined herein for longer than ten (10) days, then this Agreement shall be automatically extended for the same number of the days LESSEE'S use of Premises was denied. Notwithstanding anything to the contrary, CITY shall not unreasonably interfere with LESSEE's business operations.

14.2 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.

14.3 CITY park police and other safety personnel shall have the right of entry on and into the Premises as needed to investigate any circumstances, conditions, or person(s) 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.

15 Holding Over

15.1 Should LESSEE hold over the Premises, or any part thereof, after the expiration or termination of the term of this Lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to double the amount of the rent paid for the last month of the term of this Lease. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the LESSEE to hold over.

16 Quiet Enjoyment

16.1 CITY covenants and agrees, subject to the provisions of this Lease, and the restrictions, easements, reservations, and other matters now of record in Bexar County, Texas, affecting the land, 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 Premises during the term hereof for any and all lawful purposes, subject to the other terms hereof, without hindrance or molestation of any kind whatsoever.

17 Conflict of Interest

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

17.2 LESSEE warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

18 Entire Agreement

18.1 This Agreement, together with the authorizing ordinance and any attached exhibits, constitutes the entire agreement between the parties hereto respecting the subject matter herein, and any other written or parole agreement with CITY regarding the subject matter herein is hereby expressly waived and terminated by LESSEE. It is understood that the Charter of the City of San Antonio requires that all contracts with the CITY be in writing and adopted by ordinance. Further, no amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and approved by Director.

19 Separability

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.

20 Notices

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

City of San Antonio
Center City Development & Operations
Department
Contracts Division

City of San Antonio
City Clerk's Office
P.O. Box 839966

P.O. Box 839966
San Antonio, Texas 78283-3966

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.

20.2 Notices to LESSEE shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to LESSEE at:

GO RIO SANANTONIO, LLC
202 E. Nueva
San Antonio, Texas 78204

with a copy to:

Frank Burney
Martin & Drought, P.C.
300 Convent #250
San Antonio, Texas 78205

and

Landry's
1510 West Loop South
Houston, Texas 77027
Attn: General Counsel

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

21 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.

22 Texas Law to Apply

22.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

23 Terminology

23.1 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.

24 Condemnation

- 24.1** If during the term of this Lease, or any renewal or extension hereof, all or substantially all of the Premises shall be taken or appropriated by condemnation or eminent domain proceedings, this Lease shall thereupon terminate and expires on the date of such taking; and in such event, the obligation to pay rent and additional rent shall be apportioned and paid to the date of such taking. For purposes of this Section 24.1 "substantially all of the Premises" shall be deemed to have been taken if the untaken portion cannot be practically, economically, and profitably used or converted for use by LESSEE for the purposes for which the Premises are being used immediately prior to such taking. In the event of a dispute between CITY and LESSEE as to whether or not the untaken portion of the Premises can be so used or convert, if the parties cannot agree within thirty (30) days after the date of such taking, such disputes shall be resolved by arbitration.
- 24.2** Except for the provisions of Section 24.4 as to a partial taking, the parties agree that any condemnation award or damages shall go to CITY, however, LESSEE, shall have the right to pursue any claim to which it may be entitled, if any, by virtue of its leasehold interest in the Premises. Further, LESSEE and CITY shall each have the right, at its own expense, to appear in any condemnation proceedings and to participate in any and all hearings, trails, and appeals therein.
- 24.3** In the event of any such taking of less than all or substantially all of the Premises or the Improvements, either party hereto shall have the option to terminate this Lease as of the date of such taking by the giving of written notice to the other party of such election within fifteen (15) days after the date of such taking, and upon the exercise of such option by either party, neither CITY or LESSEE shall have any further obligations or liabilities to the other hereunder from and after the date of such taking. If, however, this Lease is not so terminated, CITY shall, within a reasonable period of time after such taking, make such repairs and alterations as may be necessary to restore the portion of the improvements not taken by such condemnation or eminent domain proceedings (subject to a reasonable period of time to collect any condemnation award of damages payable to CITY). In such event, LESSEE'S right of possession as to the portion of the Premises so taken shall terminate on the date of such taking, and the rental payable hereunder shall be redetermined and shall equal that portion of the rental prevailing on the date of such taking which the fair market rental value of the untaken portion of the Premises bears to the fair market rental value of the Premises immediately prior to such taking, but in no event shall such redetermined rental exceed that which was payable prior to such taking. If the parties cannot agree on said fair market rental values, the same shall be determined by appraisal in a process mutually agreed upon by the parties. Until such adjusted rental is determined, LESSEE shall continue to pay rental as provided in Article 3 above, and if upon such determination LESSEE shall have made any overpayments, such overpayments shall be credited against future installments of rental. If less than all or substantial all of the Premises are taken such that the Premises are completely untenable or unsuitable for the purposes for which they were hereby leased, and neither party exercises its option to terminate this Lease as is herein provided, all rental payments shall be abated until the date of completion by CITY of such repairs and alterations to the Improvements as are necessary to make the Premises tenantable or suitable for the purposes

for which they are hereby leased.

24.4 If all or any part of the Premises or of LESSEE'S interest in this Lease shall be taken in condemnation proceedings or by any right eminent domain for a temporary use or occupancy, the term of this Lease shall not be reduced or affected in any way and LESSEE shall continue to pay in full the rent and additional charges herein reserved, without reduction or abatement, in the manner and at the times herein specified and, except only to the extent that LESSEE is prevented from doing pursuant to the terms of the order of the condemning authority, LESSEE shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. In the event of any such temporary taking, LESSEE shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise, unless such periods of temporary use or occupancy shall extend beyond the expiration date of the term of this Lease, in which case such award, after payment to CITY therefrom of the estimated costs of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned by CITY and LESSEE as of such date of expiration in the same ratio that the part of the entire period for which such compensation is made falling before the day of expiration and that falling after, bear to such entire period.

25 Captions

25.1 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.

26 Authority

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

27 Non-Appropriation

27.1 Notwithstanding any other provisions of the Lease, and in order to satisfy the requirements of the Constitution of the State of Texas, all covenants and commitments of CITY contained herein which would require the expenditure of funds by CITY are subject to and contingent upon the annual appropriation process. In the event CITY fails to appropriate sufficient funds dedicated to funding any such obligation of CITY, such a failure shall not be considered a default or breach hereunder and LESSEE'S sole remedy for such failure shall be to terminate this Agreement.

27.2 Lessee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

28 Public Information

28.1 Lessee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

Nothing in this Agreement waives an otherwise applicable exception to disclosure.

This Section Left Intentionally Blank

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands.

Landlord:

**City of San Antonio, a Texas
municipal corporation**

Lessee:

GO RIO SAN ANTONIO, LLC

Signature

Elizabeth A Wong

Signature

Name

Elizabeth A Wong

Name

Title

E.V.P

Title

Date

5-8-2018

Date

Attest:

City Clerk

Approved as to Form:

City Attorney