

AN ORDINANCE 2014 - 08 - 07 - 0.528

AUTHORIZING AN AMENDMENT TO THE LEASE AGREEMENT WITH RIVERCENTER MALL IN ORDER TO ACCOMMODATE MALL IMPROVEMENTS ON THE WEST SIDE OF THE RIVER WALK LAGOON.

* * * * *

WHEREAS, on August 21, 2008, City Council approved Ordinance 2008-08-21-0722 with Rivercenter Mall for use of public space to accommodate improvements to the mall on the east side of the River Walk lagoon area; and

WHEREAS, per the agreement, Rivercenter Mall is responsible for all landscape maintenance and removal of all trash within the lagoon area, as well as cleaning of the public walkways, staircases, and the pedestrian bridge in the lagoon area; and

WHEREAS, in addition, they are also responsible for maintenance of the lagoon island and bridge and for cleaning the river in the lagoon area; and

WHEREAS, Rivercenter Mall is now proposing to make improvements to the west side of the River Walk lagoon area and seeking to utilize 699 square feet of patio space for outdoor food and beverage service, plus 359 square feet to be occupied by a staircase linking Commerce Street to the River Walk that will be available 24/7 for public use; and

WHEREAS, Rivercenter Mall will pay for the 699 square feet used for commercial purposes, but will not be charged for staircase space, provided the staircase remains open at all times for use by the public; and

WHEREAS, Rivercenter Mall will be responsible for all maintenance and cleaning of both areas; and

WHEREAS, construction work is planned to begin after City Council approval and forecast to be finished no later than June 1, 2015 when rent will commence; and

WHEREAS, the proposed amendment will extend the lease term from May 31, 2029 to May 31, 2035; and

WHEREAS, the Historic & Design Review Commission granted conceptual approval of the proposed improvements to the west side of the lagoon area on December 4, 2013; **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 the Center City Development Office or his designee, is authorized to execute an amendment to the lease agreement with Rivercenter Mall in order to accommodate mall improvements on the west side of the River Walk lagoon. A copy of the amendment is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds generated by this ordinance will be deposited into Fund 28034000, Internal Order 131000001670 and General Ledger 4401150.

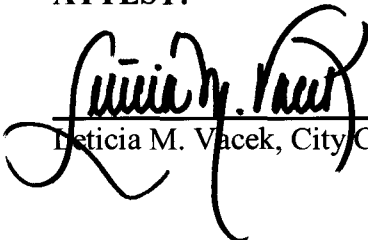
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 7th day of August, 2014.

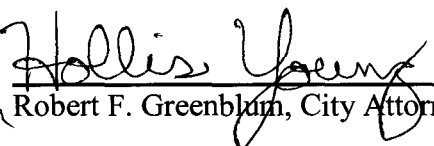

M A Y O R
Ivy R. Taylor

ATTEST:



Deticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Robert F. Greenblum, City Attorney

Agenda Item:	12 (in consent vote: 6, 7, 8, 9, 12, 13, 15, 16, 17A, 17B, 17C, 17D, 18, 19, 21, 22, 23, 24, 25, 26, 27)						
Date:	08/07/2014						
Time:	11:34:24 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an amendment to the lease agreement with Rivercenter Mall in order to accommodate mall improvements on the west side of the River Walk lagoon. [Carlos Contreras, Assistant City Manager; Lori Houston, Director, Center City Development Office]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x				
	District 2	x					
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**FIRST AMENDMENT TO
RIVER WALK LEASE AGREEMENT**

This Amendment No. 1 to River Walk Lease Agreement is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereinafter referred to as "CITY") acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____, passed and approved by the City Council on the ____ day of _____, 2014, and New Rivercenter Mall II, L.P. - A Delaware Limited Partnership, (hereinafter referred to as "LESSEE"), acting by and through its duly authorized officers, WITNESSETH:

Recital: City and Licensee entered into the River Walk Lease Agreement ("Agreement") for 1,151 square feet of patio space on the River Walk pursuant to Ordinance No. 2008-08-21-0722, passed and approved by the City Council on the 21st day of August, 2008. LESSEE now desires to lease further spaces from CITY as part of this existing Agreement and CITY is agreeable.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby agree to amend the Agreement as follows:

1. Article 1of the Agreement, "DEMISE OF PREMISES" is hereby revised by the addition of the following new subsections:

1.1.7. AREA 7. An area containing 699 square feet of City owned River Walk space in the public waterway right of way, located directly west of the San Antonio River and east of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit B; and

1.1.8. AREA 8. An area containing 312 square feet of City owned River Walk patio space in the public waterway right of way located directly west of the San Antonio River and east of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit B; and

1.1.9. AREA 9. An area containing 47 square feet of City owned River Walk patio space in the public waterway right of way located directly west of the San Antonio River and east of the building known as "Rivercenter Mall" located at 849 E. Commerce, San Antonio, Texas 78205, specifically described and identified in the drawing which is attached hereto and incorporated for all purposes as Exhibit B.

2. Article 2 of the Agreement is hereby amended to read as follows:

“LESSEE agrees that Areas 1, 2 and 7 of the Leased Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, 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. LESSEE agrees that the staircase area of Area 3 and all of Areas 4, 8 and 9 shall be utilized for the sole purpose of pedestrian access and that public access to these staircases shall not be restricted at any time without the prior written consent of City by the Director of the Center City Development Office, or her designee. LESSEE agrees that Area 5 and Area 6 shall be utilized for the sole purpose of pedestrian access and that public access to these walkways shall not be restricted at any time without the prior written consent of City by the Director of the Center City Development Office, or her designee.”

3. Section 3.1 of the Agreement is hereby amended to read as follows:

The Term of this lease consists of a Construction Phase and an Operations Phase defined as follows: for Areas 1-6, Construction Phase commenced September 1, 2008 and ended June 1, 2009 which was the commencement of the Operations Phase. For Areas 7-9, Construction Phase shall commence following City Council approval of this amendment and shall terminate no later than May 31, 2015; Operations Phase for Areas 7-9 shall commence on the date normal operations begin, but no later than June 1, 2015. Operations Phase for Areas 1-9 shall terminate May 31, 2035.

4. Section 4.1 of the Agreement is hereby amended by the addition of the following sentences to the end of the Section:

“LESSEE shall commence paying rent on Area 7 as of the day on which LESSEE commences normal operations on Area 7, but no later than May 15, 2015. The rental rate schedule for Area 1 set out in the table in this section 4.1 shall also apply for Area 7. NOTE: Each year in the table begins June 1 and ends May 31. Year 6 begins June 1, 2014 and ends May 31, 2015.”

5. Section 4.3 of the Agreement is hereby amended to read as follows:

“There shall be no rental fee charged for Areas 3, 4, 5, 6, 8 and 9 identified above.”

6. Sections 4.5 and 4.5.1 are hereby amended to change late fee from \$20.00 to \$200.00.

7. Section 8.8 of the Agreement is hereby amended by the addition of the following sentences to the end of the Section:

“LESSEE shall return the Leased Premises to its pre-existing condition upon the termination of the Agreement.”

8. All other terms and conditions of the Agreement shall remain in full force and effect.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2014.

CITY OF SAN ANTONIO

New Rivercenter Mall II, L.P., A Delaware Limited Partnership

By: _____

Sheryl Sculley

City Manager

By: _____

Name: *Joe Bess*

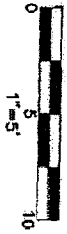
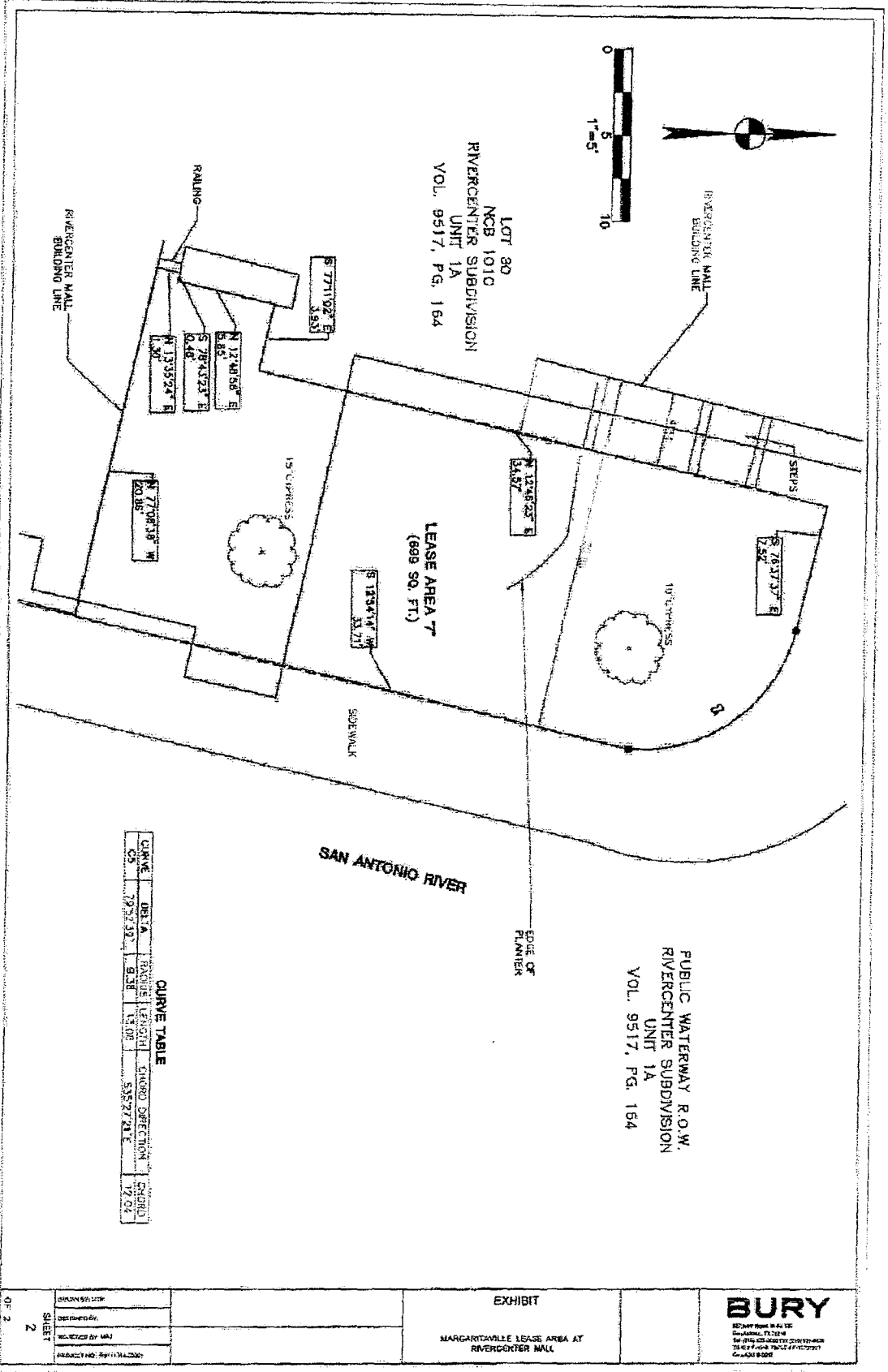
Title: *Authorized signer*

ATTEST: _____

CITY CLERK

APPROVED AS TO FORM:

City Attorney



LOT 30
 NCB 1010
 RIVERCENTER SUBDIVISION
 UNIT 1A
 VOL. 9517, PG. 164

PUBLIC WATERWAY R.O.W.
 RIVERCENTER SUBDIVISION
 UNIT 1A
 VOL. 9517, PG. 164

CURVE TABLE

CURVE	DELTA	BEARING	LENGTH	CURVEDIRECTION	CENTER
C1	17°52'37"	S 88°	13.00'	S55°27'21" E	17.02'

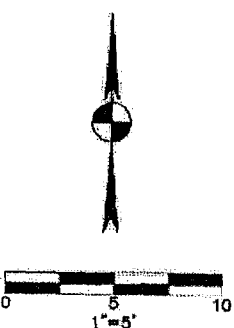
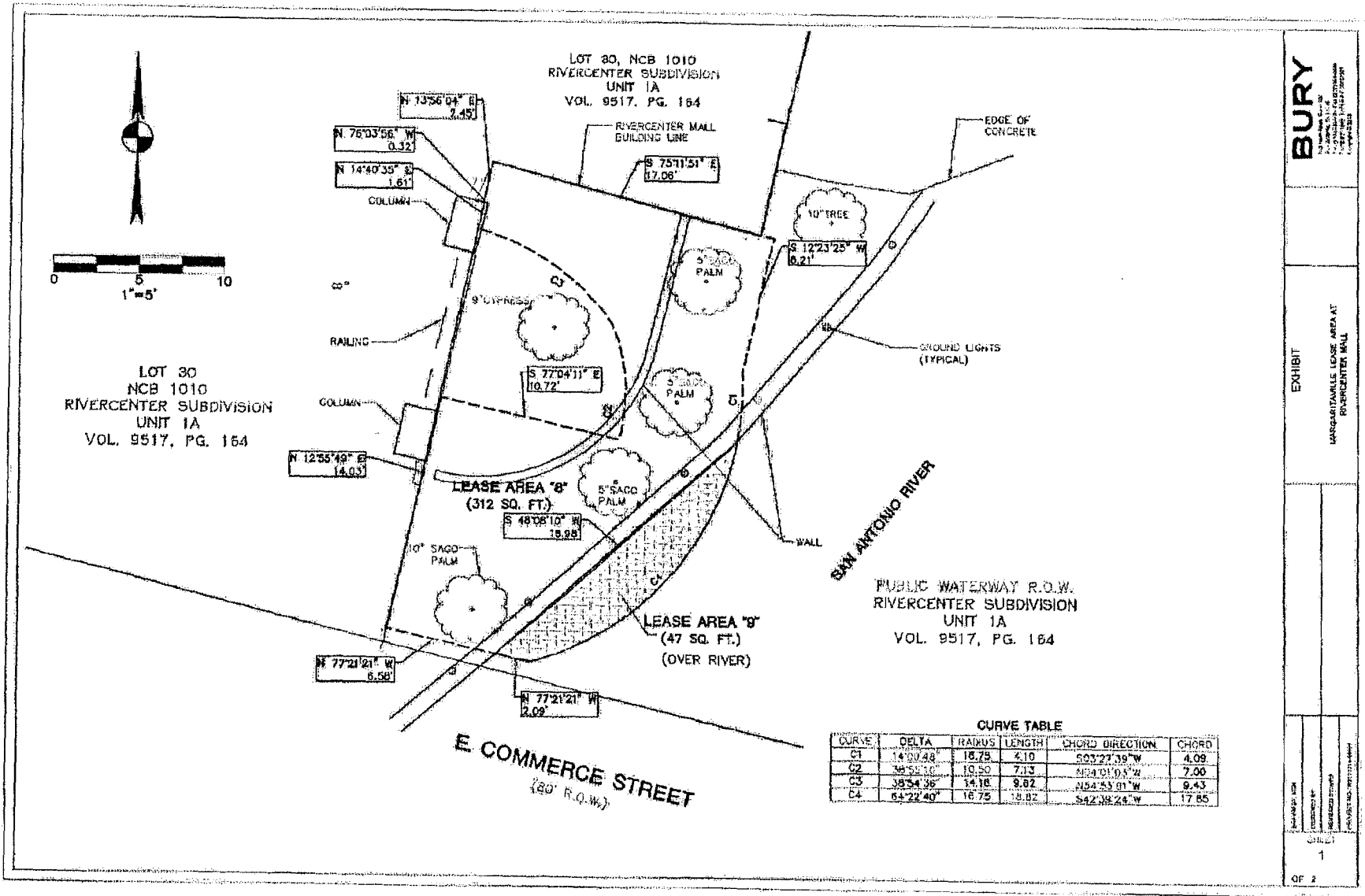
DATE	12/11/2008
BY	MAJ
PROJECT NO.	541114200
SHEET	2
OF 2	

EXHIBIT

MARGARITAVILLE LEASE AREA AT
 RIVERCENTER MALL

BURY

10200 West 16th St
 Suite 100, Fort Worth, TX 76154
 Tel: 817.336.8800 Fax: 817.336.8801
 2816 Fossil Road, Fort Worth, TX 76116
 817.336.8800



LOT 30
NCB 1010
RIVERCENTER SUBDIVISION
UNIT 1A
VOL. 9517, PG. 164

LOT 30, NCB 1010
RIVERCENTER SUBDIVISION
UNIT 1A
VOL. 9517, PG. 164

PUBLIC WATERWAY R.O.W.
RIVERCENTER SUBDIVISION
UNIT 1A
VOL. 9517, PG. 164

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD DIRECTION	CHORD
C1	14°07'38"	16.75	4.10	S07°27'39" W	4.09
C2	38°52'38"	10.50	7.13	N04°01'04" W	7.00
C3	38°54'36"	14.16	9.82	N04°53'01" W	9.43
C4	64°22'40"	16.75	13.82	S42°38'24" W	17.85

BURY

SURVEYING & ENGINEERING
1000 W. 11th Street, Suite 100
Fort Worth, TX 76102
Phone: (817) 335-1111
Fax: (817) 335-1112

EXHIBIT

MARGARITAVILLE LEASE AREA AT
RIVERCENTER MALL

1

OF 2