

RIVER WALK LEASE AGREEMENT

This 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 _____, 2015, and **AmREIT RIVERWALK, LP**, a Texas limited partnership (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers.

WITNESSETH:

1. DEMISE OF PREMISES

- 1.1. **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** in the San Antonio River Walk area as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Leased Premises) are further described as follows:
- 1.1.1. River Level Commercial Space: an area containing approximately 329 square feet adjacent to Lot 22, Block 12, New **CITY** Block 148, San Antonio, Bexar County, Texas which lot is owned by **LESSEE** and which is identified as Lease Area 1 as shown in Exhibit A.

2. USE OF PREMISES

- 2.1. City hereby agrees to permit **LESSEE** to operate and sublease the Leased Premises to "**LESSEE's** tenants", subject to the provisions of Article XIV (Rules and Regulations) and Article X (Assignment and Subletting); provided however, **LESSEE** agrees that 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. As used herein, the term "**LESSEE's** tenants" shall mean sublessees under this Lease Agreement. All such sublessees shall be bound to observe all of the conditions and terms of this Lease Agreement in the same manner and to the same degree as **LESSEE** is bound hereto.
- 2.2. **LESSEE** shall comply with the **CITY's** laws pertaining to queuing along the River Walk area, and shall not use any public space along the River Walk area for the queuing or waiting of patrons without first obtaining the consent of **CITY**. Failure to comply with this section may, at **CITY's** option, constitute default under this Lease Agreement.

3. TERM, AND TERMINATION

- 3.1. The term of this Lease is for a five (5) year period beginning on March 1, 2015 and ending on February 29, 2020. The right is expressly reserved to the **CITY**, acting through the **CITY** Council, to terminate this Lease Agreement in the event **LESSEE** shall default in the performance of any covenants or agreements contained herein and shall fail, following thirty (30) days written notice of such default, to remedy same, save and except that a ten (10) day notice period shall apply in the case of a default in the payment of rent.

- 3.2. Notwithstanding any term or provision to the contrary herein, **LESSEE** may cancel this Lease Agreement by giving ninety (90) days written notice to the **CITY**, so long as, contemporaneously with such notice, **LESSEE** pays the **CITY** \$3,158.40.
- 3.3. Provided **LESSEE** is not then in default under the terms of this Lease Agreement, **LESSEE** shall have the option to extend the term of this Lease Agreement for three additional five (5) year periods (the 1st, 2nd, and 3rd Renewal Terms). To exercise the option, **LESSEE** shall notify **CITY** in writing no earlier than one year prior to the expiration date of the lease term and at least six (6) months before the expiration date of the lease term.

4. LEASE RATE

- 4.1. The monthly lease rate for the first Lease year shall be **\$2.35** per square foot per month or **\$28.20** per square foot per year and shall increase during the initial term by a rate of three percent (3%) per year, commencing upon March 1 of each year. Payment may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following schedule:
- 4.1.1. For the term 03/01/2015 – 02/29/2016 (**\$2.35** per square foot per month):**\$9,277.80** payable in one lump sum in advance per year or **\$773.15** per month.
- 4.1.2. For the term 03/01/2016 – 02/28/2017 (**\$2.42** per square foot per month):**\$9,554.16** payable in one lump sum in advance per year or **\$796.18** per month.
- 4.1.3. For the term 03/01/2017 – 2/28/2018 (**\$2.49** per square foot per month):**\$9,830.52** payable in one lump sum in advance per year or **\$819.21** per month.
- 4.1.4. For the term 03/01/2018 – 02/28/2019 (**\$2.56** per square foot per month):**\$10,106.88** payable in one lump sum in advance per year or **\$842.24** per month.
- 4.1.5. For the term 03/01/2019 – 02/29/2020(**\$2.64** per square foot per month):**\$10,422.72** payable in one lump sum in advance per year or **\$868.56** per month.
- 4.2. The monthly lease rate for the 1st and 3rd Renewal Terms shall increase by a rate of three percent (3%) per year, commencing upon March 1 of each year.
- 4.2.1. Effective as of the commencement of the eleventh year (11th) Lease year (the first Lease year of the 2nd Renewal Term), the **CITY** shall have the option to continue increasing the monthly lease rate by a rate of three percent (3%) per year or adjust the rate to the "fair market rate". Such an increase shall in no event exceed fifteen percent (15%) of the adjusted base rental in effect during the preceding twelve month term of this Lease Agreement. Furthermore, **CITY** agrees that it will not request such an increase unless it is supported by a then current rental study of other leases of **CITY** property on the San Antonio River Walk which are found to be comparable to the subject lease. Should the **CITY** choose the increase the Lease rate to the "fair market rate" in Year 11; Lease Years 12-15 will increase by a rate of three percent (3%) per year, commencing upon March 1 of each applicable year.

4.2.2. Payment shall be submitted to:

City of San Antonio
Revenue Division
P. O. Box 839975
San Antonio, Texas 78283-3975

ALL MONTHLY PAYMENTS OF RENT ARE DUE ON OR BEFORE THE FIRST DAY OF EACH AND EVERY MONTH DURING THE TERM OF THIS LEASE AGREEMENT.

- 4.3. A one-hundred (\$100.00) dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable month or any day thereafter. All past due rentals under the terms of this Lease Agreement shall bear interest at the rate of 8% per annum from the date due until paid in full by **LESSEE**.
- 4.3.1. The ten (10) day period before the one-hundred (\$100.00) dollar late charge is applied should not be considered a "**GRACE PERIOD**;" nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the **CITY**'s Treasury office by the close of business on the first day of each calendar month.
- 4.3.2. At any time during the Lease term if more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a twenty-four (24) month period, **LESSEE** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made
- 4.3.3. At any such time, should the **CITY**'s Department of Finance establish and issue uniform policies related to Insufficient Funds Checks, which may be contrary to the terms stated above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LESSEE** of any such change(s) in advance.
- 4.3.4. Notwithstanding anything to the contrary set forth in this Lease 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**.
- 4.3.5. In the event of a **Repeated Event of Default**, **CITY**, without affording **LESSEE** an opportunity to cure the default, may terminate this Lease forthwith upon delivery of written notice to **LESSEE**.

5. ACCEPTANCE AND CONDITION OF PREMISES

- 5.1. **LESSEE** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE**'s taking possession of the Leased Premises shall be conclusive evidence of **LESSEE**'s acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the

purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE's** intended commercial purposes.

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

6. UTILITIES

- 6.1. **LESSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, which may be necessary for its operations as authorized herein on the Leased Premises. **LESSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LESSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY**.

7. IMPROVEMENTS

- 7.1. **LESSEE** shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall **LESSEE** make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the **CITY** through the Director of the Center **CITY** Development & Downtown Operations Department (hereinafter referred to as "**DIRECTOR**") and any and all other necessary departments, boards or commissions of the **CITY OF SAN ANTONIO**, including, but not limited to, the Historic and Design Review Commission.
- 7.2. **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on, or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

8. MAINTENANCE OF PROPERTY

- 8.1. **LESSEE** shall, at all times, keep, or cause to be kept, the sidewalks adjacent to the Leased Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the River Walk free and clear of any tables or other property placed by **LESSEE** or **LESSEE's** tenants on such Leased Premises, and **LESSEE** and **LESSEE's** tenants shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Leased Premises; however, **LESSEE's** use may at no time obstruct public access to the six (6) feet River Walk public right-of-way.
- 8.2. **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**.
- 8.3. Other than as provided herein, **LESSEE** shall be responsible for the condition of the Leased Premises. **LESSEE** shall repair any damage to the Leased Premises caused by **LESSEE**, **LESSEE's** tenants, agent or invitees, and shall maintain, or cause to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition. 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. CITY shall be responsible for sidewalk repairs other than those necessitated by the negligence or willful misconduct of LESSEE, LESSEE's tenants, agent or invitees as required to conform with safety and aesthetic standards and applicable law.

- 8.4. **LESSEE** will, at the termination of this Lease Agreement, return the Leased Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.
- 8.5. **LESSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LESSEE** or **LESSEE's** tenants both during the term of this Lease and as so left on the Leased Premises after **LESSEE** or **LESSEE's** tenants vacate the Leased Premises. If said signs, goods and any other property placed by **LESSEE** or **LESSEE's** tenants upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

9. TAXES AND LICENSES

- 9.1. **LESSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted on the Leased Premises, or upon any of **LESSEE'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 **LESSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the **CITY**.
- 9.2. If **LESSEE** assigns or subleases the Leased Premises pursuant to the terms of this Lease Agreement, such assignment or sublease must require **LESSEE's** tenant to pay all applicable Federal, State and local taxes and fees and to maintain current all local licenses and permits applicable to **LESSEE's** tenants business on the Leased Premises. Failure of **LESSEE** to enforce these requirements will constitute an event of default by **LESSEE** and shall be cause for termination of this Lease Agreement. **LESSEE** will not, however, otherwise be liable to the **CITY** or others for payment of any taxes or fees applicable to **LESSEE's** tenant's business, or for any failure of **LESSEE's** tenants to maintain the necessary licenses and permits.

10. ASSIGNMENT AND SUBLETTING

- 10.1. Except as to the parent, subsidiary or similarly affiliated company, **LESSEE** shall not assign this Lease Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the **CITY** Council of San Antonio, Texas. Except as to the parent, subsidiary or similarly affiliated company, any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.
- 10.2. Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease Agreement and in the property referred to herein; and, to the extent that such assignee assumes **CITY's** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 10.3. The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not

be deemed a waiver of the covenant in this Lease Agreement against assignment and or an acceptance of the assignee, or occupant as a **LESSEE**, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

- 10.4. **LESSEE**, its assigns and sublessee may collaterally assign and grant security interests in personal property and fixtures installed in the Leased Premises and **CITY** agrees to subordinate its landlord's liens, both contractual and statutory, to such security interests so long as (i) **CITY** is to receive prior written notice of any action to take possession of the personal property or fixtures, (ii) **CITY** is afforded the opportunity to be present if any such property or fixtures are to be removed, (iii) the secured party repairs any damage occasioned by its removal of such property and fixtures, and (iv) **CITY's** fee simple interest in the Leased Premises is not subordinated to such security interest. **LESSEE** (and its assigns) may also collaterally assign its leasehold interest hereunder to a lender so long as the collateral assignment requires the lender to give **CITY** written notice in advance of any foreclosure and provided that **CITY's** fee simple interest in the Leased Premises will not be subordinated in any way whatsoever by virtue of such collateral or actual assignment to the interest assigned or otherwise transferred to said lender.

11. DEFAULT AND REMEDIES

- 11.1. The following events shall be deemed to be events of default by **LESSEE** under this Lease Agreement:
- 11.1.1. **LESSEE** shall fail to pay any installment of rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days following receipt of written notice of failure to pay an installment of rent when due and owing.
- 11.1.2. **LESSEE** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **LESSEE**, unless **LESSEE** has undertaken to effect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.
- 11.2. Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease 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 Leased 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 **LESSEE** without relieving **LESSEE** of any liability hereunder as to rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency.
- 11.3. Any termination of this Lease Agreement as herein provided shall not relieve **LESSEE** or **LESSEE's** tenants 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** or any of **LESSEE's** tenants hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LESSEE** or **LESSEE's** tenants, as applicable, for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease 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 Lease Agreement. No waiver by **CITY**

of a breach of any of the covenants, conditions or restrictions of this Lease 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.

- 11.4. Upon any such expiration or termination of this Lease Agreement, **LESSEE** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **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 as fixtures, from the Leased Premises, and such action by **CITY** shall not constitute **CITY**'s acceptance of abandonment and surrender of the Leased Premises by **LESSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

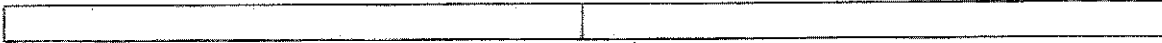
12. INDEMNIFICATION

- 12.1 **LESSEE** 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 **LESSEE**'s activities under this Lease Agreement, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or sub**LESSEE** 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 Lease Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LESSEE AND CITY 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE**'s activities under this Lease Agreement and shall see to the investigation and defense of such claim or demand at **LESSEE**'s cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

13. INSURANCE REQUIREMENTS

- 13.1 Prior to the commencement of any work under this Lease 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 "**AmREIT Riverwalk, LP** " 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 have the agent's signature and 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 Lease Agreement until such certificate and endorsements have been received and approved by the **CITY's** Center **CITY** Development & Downtown Operations Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.
- 13.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Lease 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 Lease Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 13.3 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 Lease 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
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/ \$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent LESSEEs c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	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 \$100,000
4. Liquor Liability	<u>\$1,000,000 per occurrence, \$2,000,000 aggregate</u>



- 13.4 **LESSEE** agrees to require, by written contract, that all sub**LESSEES** providing goods or services hereunder obtain the same insurance coverages required of **LESSEE** herein, and provide a certificate of insurance and endorsement that names the **LESSEE** and the **CITY** as additional insureds. **LESSEE** shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the sub**LESSEE**. 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 Lease 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.
- 13.5 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 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). **LESSEE** 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. **LESSEE** shall pay any costs incurred resulting from said changes.

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

- 13.6 **LESSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- 13.6.1 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;
- 13.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;
- 13.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.
- 13.6.4 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.
- 13.7 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 **LESSEE**'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 Lease Agreement.
- 13.8 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.

- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which LESSEE may be held responsible for payments of damages to persons or property resulting from LESSEE's or its subLESSEES' performance of the work covered under this Lease Agreement.
- 13.10 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 Lease Agreement.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Lease Agreement and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
- 13.12 LESSEE and any subLessees are responsible for all damage to their own equipment and/or property.

14. RULES AND REGULATIONS AND PROHIBITED USES

- 14.1. LESSEE and LESSEE's tenants shall observe and comply with all laws and ordinances of the CITY affecting LESSEE's or LESSEE's tenants 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.
- 14.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Leased Premises without the prior written approval of the CITY through the DIRECTOR or her designee, 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. LESSEE agrees to remove all signs from the Leased Premises when LESSEE vacates the Leased Premises.
- 14.3. LESSEE shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings (collectively the "FF&E") as approved by CITY and all applicable boards and/or commissions of the CITY of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC). Notwithstanding the foregoing, CITY hereby approves the FF&E that exists as of the date of this Lease Agreement, and the replacement of same with like kind and quality FF&E.
- 14.4. No activity or method of operation shall be allowed in, on or about the Leased Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
 - 14.4.1. Nudity means total absence of clothing or covering for the human body.
 - 14.4.2. Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
 - 14.4.3. Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.

- 14.5. The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.
- 14.6. **Non-Discrimination.** As a party to this contract, 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 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.
- 14.7. 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.
- 14.8. LESSEE shall not place speakers or amplified music on or near the patio of the Leased Premises that can be seen from the San Antonio River. LESSEE shall comply with CITY's laws pertaining to noise. Failure to comply with this section may, at CITY's option, constitute default under this Lease Agreement.
- 14.9. LESSEE shall not engage in, or knowingly allow its employees, agents, invitees or guests to engage in vending on the Leased Premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to LESSEE's customers seated at tables within the Leased Premises.
- 14.9.1. LESSEE shall be allowed to provide entertainment to its customers on the Leased Premises in the form of traditional Mariachis so long as such Mariachis are employees of LESSEE and the Mariachis are not allowed to engage in solicitation of business to LESSEE's customers or any other persons on the Leased Premises.

15. RESERVATIONS: CITY

- 15.1. CITY reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. LESSEE shall not be entitled to an abatement or reduction of rent because of such entry, nor shall said entry be deemed an actual or constructive eviction of LESSEE from the Leased Premises. Should construction or other activity by CITY prevent LESSEE's use of the Leased Premises for the purposes outlined herein for longer than ten (10) days, then LESSEE shall be entitled to an abatement of rent under this Lease Agreement for such period of time and, at LESSEE's option, this Lease Agreement may be terminated or extended for the same number of days LESSEE's use of Leased Premises was denied.
- 15.2. No provision of this Lease Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments or amusements, or river walk parades for the benefit of the public.
- 15.3. CITY park police and other safety personnel shall have the right of entry on and into the Leased Premises as needed to investigate any circumstances, conditions, or person(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.

16. HOLDING OVER

- 16.1. Should **LESSEE** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to one-hundred twenty-five (125%) of the amount of the rent paid for the last month of the term of this Lease Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LESSEE** to hold over.

17. QUIET ENJOYMENT

- 17.1. **CITY** covenants and agrees, subject to the provisions of this Lease Agreement, that **LESSEE**, on paying the rent and all other charges in this Lease Agreement provided for and observing and performing the covenants, agreements and conditions of this Lease Agreement on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term without hindrance or molestation of any kind whatsoever.

18. CONFLICT OF INTEREST

- 18.1. Landlord 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.
- 18.2. Landlord warrants and certifies, and this Lease Agreement 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.

19. SEPARABILITY

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

20. NOTICES

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

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

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

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

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

AmREIT Riverwalk, LP
8 Greenway Plaza Suite 1000
Houston, Texas 78046
Attn: Legal Department

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

21. PARTIES BOUND

- 21.1. If there shall be more than one party designated as **LESSEE** in this Lease, they shall each be bound jointly and severally hereunder.
- 21.2. The covenants and agreements herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and assigns.

22. TEXAS LAW TO APPLY

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

23. LIEN FOR RENT

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

24. RELATIONSHIPS 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 landlord and **LESSEE**.

25. GENDER

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

26. CAPTIONS

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

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1. This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties with respect to the matters addressed herein, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.
- 27.2. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 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.

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AUTHORITY

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

CITY OF SAN ANTONIO

AmREIT RIVEREWALK, LP,

a Texas limited partnership

By: AmREIT Riverwalk GP, LLC

Its: General Partner

By: _____

By:  _____

Name: Carlos J. Contreras, III

Name: Brett Treadwell

Title: Assistant City Manager

Title: Vice President

Date: _____

Date: 1-30-2015



ATTEST: _____

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

Exhibit A

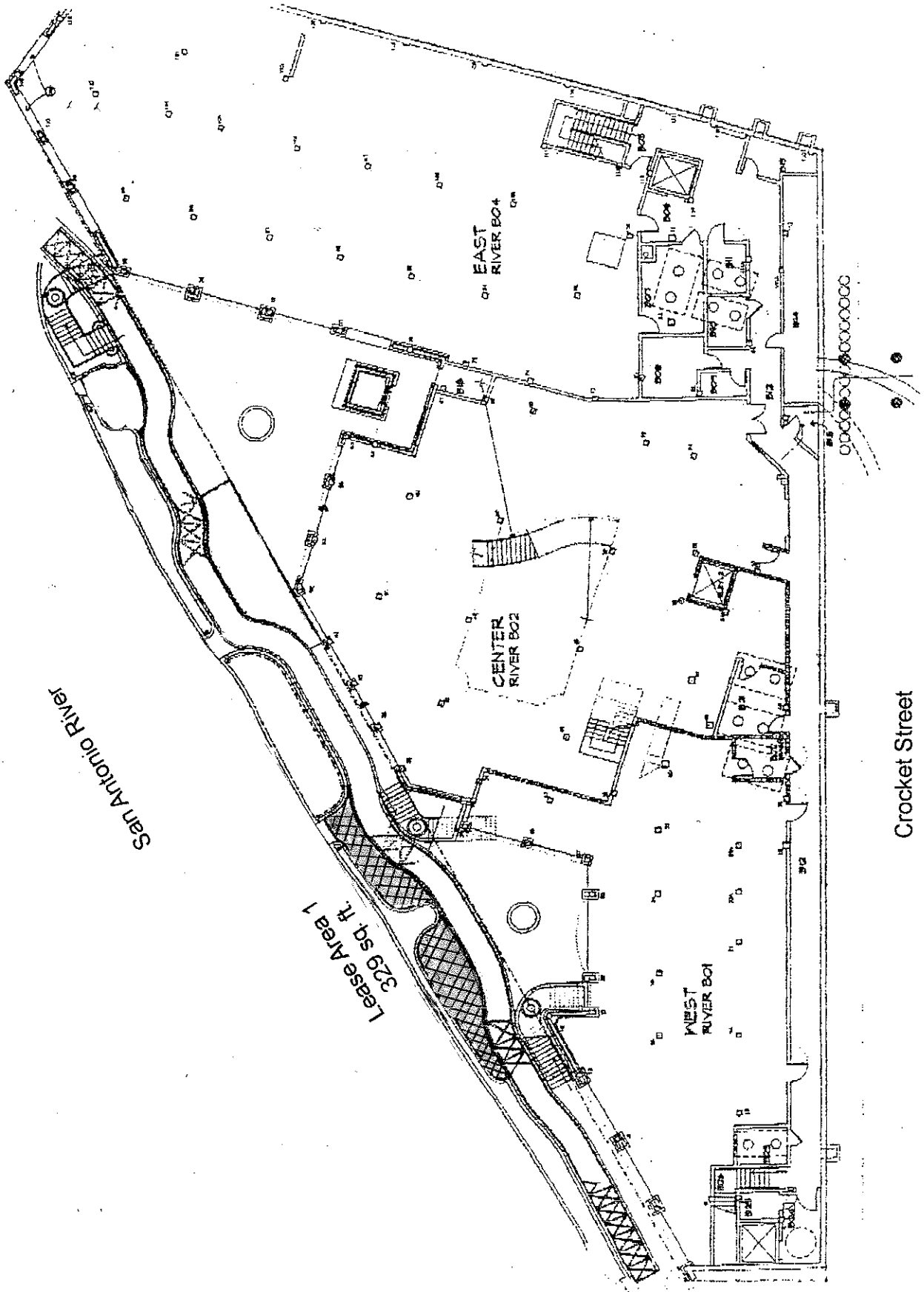


Exhibit B

Exhibit B

CONSENT TO SUBLEASE

Pursuant to City of San Antonio Ordinance No. _____, passed and approved on _____, 2015, the City of San Antonio, acting by and through its City Manager, or, in his/her stead, the Assistant City Manager or an Assistant to the City Manager ("City"), hereby consents to the sublease from AmREIT Riverwalk, LP, a Texas limited partnership ("AmREIT") as Sublessor, to _____, a _____, as Subtenant/Sublessee, of the following described real property owned by the City in the River Walk Area:

AmREIT, as the original Lessee under that certain Lease Agreement with the City, as Lessor, also approved by the City Ordinance referenced above, and covering the same Leased Premises described herein, agrees to continue to be liable to the City in observing all of the obligations of LESSEE under said Lease Agreement, regardless of the consent of City to such Sublease.

A form of the Sublease is attached hereto as Exhibit "C". AmREIT will provide City with a fully executed copy of the Sublease promptly upon its receipt of same.

CITY OF SAN ANTONIO

AmREIT RIVEREWALK, LP,

a Texas limited partnership

By: AmREIT Riverwalk GP, LLC

Its: General Partner

By: _____

By: _____

Name: Carlos J. Contreras, III

Name: _____

Title: Assistant City Manager

Title: _____

Date: _____

Date: _____

JA

ATTEST: _____

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

