

**AN ORDINANCE 2017-03-09-0158**

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF A FIVE-YEAR LICENSE WITH FRATELLOS, LLC, FOR USE OF 2,509 SQUARE FEET PLUS BASEMENT STORAGE AREA IN A PORTION OF THE CITY OWNED BUILDING AT 115 PLAZA DE ARMAS, SUITE 107, FOR RETAIL SPACE, WITH THE LICENSE FEE WAIVED DURING THE INITIAL STARTUP PERIOD.**

\* \* \* \* \*

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

**SECTION 1.** The City Manager or her designee is authorized and directed to negotiate, execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000000 and General Ledger 4407720.

**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 shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

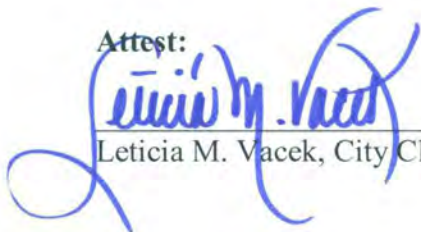
**PASSED AND APPROVED** this 9<sup>th</sup> day of March, 2017.

JH  
3/0/2017  
Item No. 17



**M A Y O R**  
Ivy R. Taylor

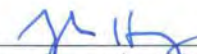
**Attest:**



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Leticia M. Vacek, City Clerk

**Approved As To Form:**



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*For* Andrew Segovia, City Attorney

<b>Agenda Item:</b>	17						
<b>Date:</b>	03/09/2017						
<b>Time:</b>	11:16:09 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the negotiation and execution of a five-year license with Fratello's LLC for use of 2,509 square feet plus basement storage area in a portion of the City-owned building at 115 Plaza de Armas, Suite 107 for retail space with the license fee waived during the initial startup period. [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development & Operations]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**License Agreement**  
**(Plaza de Armas Retail)**

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This License Agreement (“License”) is entered into by and between the City of San Antonio, a Texas municipal corporation, as “Licensor,” acting by and through its City Manager, or the designee, pursuant to the Authorizing Ordinance and the Licensee named below.

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**Table of Contents**

1. Pertinent Information.....	2
2. Grant of License.....	2
3. Parking.....	2
4. Restrictions on Use.....	3
5. Term, Renewal.....	3
6. License Fee.....	4
7. Construction, Maintenance, and Operations.....	4
8. Licensee’s Affirmative Promises.....	5
9. Indemnity.....	6
10. Licensor’s Affirmative Promises.....	8
11. Insurance.....	9
12. Release of Claims/Subrogation.....	12
13. Environmental Matters.....	12
14. Licensor’s Municipal Powers.....	13
15. Prohibited Interests in Contracts.....	14
16. Casualty/Total or Partial Destruction.....	14
17. Condemnation/Substantial or Partial Taking.....	15
18. Termination.....	15
19. Contractual Lien.....	16
20. Assignment/Sublicensing.....	17
21. Security Deposit.....	17
22. Warranty Disclaimer.....	17
23. Default.....	18
24. Remedies: Termination and Other Options.....	19
25. Dispute Resolution.....	19
26. Appropriations.....	20
27. Attorney's Fees and Court Costs.....	20
28. Taxes and Licenses.....	21
29. Signs.....	21
30. Miscellaneous Provisions.....	21
31. Public Information.....	23
Exhibit “A” The Ground-Floor Premises.....	25
Exhibit “B” Depiction of Basement Portion of Premises.....	25

## 1. Pertinent Information.

### Authorizing Ordinance

(No. and Date):

**Licensee:** Fratello's LLC

**Licensee's Address:** \*\*\*\*\* , San Antonio, Texas

**Term:** 5 Years from the Occupancy Commencement Date.

**Fee:** The fee would be \$10.00 plus monthly payments as provided in Section 6.

**Premises:** Approximately 2,509 net rentable square feet for retail use on the first floor; and 296 square feet of storage space in the basement; and use of the public exterior sidewalk for outdoor patio space subject to the policies and procedures for sidewalk cafes in the downtown area all of which is located in the building at 115 Plaza de Armas, which is located on Lots A2-A5, NCB 117, San Antonio, Bexar County, Texas, the ground-floor space being graphically depicted on **Exhibit A** and the basement space being graphically depicted on **Exhibit B**.

**Scope of License:** Use and maintain the Premises for Cafe, retail space for food and related products.

**Occupancy Commencement Date:** This License is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

**Rent Commencement Date:** The first of the month of the third full month after the Occupancy Commencement Date to be memorialized at the time on the Rent Commencement Memorandum

**Security Deposit:** \$5,000.00

**Licensor's Address:** P.O. Box 839966 San Antonio, Texas 78283-3966  
(Attention: Leasing Manager, Center City Development and Operations)

Address for Payment of Rent: Finance Department  
P.O. Box 839966 San Antonio, Texas 78283-3966

## 2. Grant of License.

Licensor grants Licensee a license ("License") to use, maintain, and operate the Premises within the Scope of the License. This License is limited to the stated Term.

### **3. Parking.**

**3.01.** At no cost to Licensee, City will provide seven parking spaces in front of the Premises for customers only. No employee parking will be allowed in this allocation of seven spaces. Licensor reserves the right to relocate the allocated seven spaces at any time during the Term and substitute such spaces for validated parking in a nearby parking lot owned by the City of San Antonio. For so long as Calder Alley remains open to the public, Licensor will also provide, at no charge, two tandem spaces in the rear of the building of which the Premises is a part of. Upon the installation of restricted access road controls on Calder Alley, Licensee shall no longer have access to these two tandem parking spaces.

**3.02.** Licensor shall provide Licensee up to eight parking passes for access to parking lots controlled by Licensor in the Central Business District, known as the "Permitted Spaces". Licensor shall charge Licensee for these Permitted Spaces at the then monthly parking rate imposed by the City of San Antonio, in addition to the Base Fee owed for the Premises. Licensee shall fill out any paperwork required by Licensor related to the issuance of access documentation related to the eight employee spaces.

### **4. Restrictions on Use.**

**4.01** This License does not grant Licensee authority to use any public rights-of-way beyond the Premises.

**4.02** This License grants only a privilege to use the Premises and is revocable at will by Licensor. This instrument does not convey any real property interest. Licensor reserves the right to enter upon the Premises at any time for asserting its real property interest or for other purposes.

### **5. Term, Renewal.**

**5.01.** The term of this License is the Initial Term, unless sooner terminated as provided in this License.

**5.02.** Provided Licensee is not in default under this License, Licensee may ask to renew this License for one 5-year term by giving Licensor six-months prior written notice before expiration of the Initial Term. Renewal is affected only after written notice of intent to renew is timely provided to Licensor and is subject to approval by the City Council.. Renewals are on the same terms and conditions as the Initial Term, except for the License Fee. The License Fee for the Renewal period shall be at the rates provided in Section 6.

## 6. License Fee.

The fee is as follows:

Term	Monthly License Fee
Months 1-18	No charge
Months 19-24	\$1,000.00
Months 25-36	\$1,500.00
Months 37-48	\$2,000.00
Months 49-60	\$3,000.00

In the event the renewal term is exercised, then the fee will be as follows:

Term (Months)	Monthly Rent
61-90	\$3,200.00
91-120	\$4,000.00

## 7. Construction, Maintenance, and Operations.

**7.01 Costs.** Licensee is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed in the Premises, (hereafter "Licensee's Responsibilities").

**7.02 No Liability.** Except as provided in Sections 10.03 and 10.04 of this License, Licensor assumes no liability or no expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

**7.03 Alterations.** Physical additions or improvements to the Premises made by Licensee will become the property of Licensor. Licensor may require that Licensee, at the end of the Term and at Licensee's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Occupancy Commencement Date, normal wear excepted.

**7.04 Relocation.** If Licensor's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

**7.05 Maintenance.** Licensee, at its sole cost and expense, must maintain all improvements constructed or installed by Licensee. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all federal, state, or local laws, rules, or regulations.

**7.06 Storage Portion of Premises.** The storage portion of the Premises is located on a basement level. This area has been prone to moisture problems in the past. Licensor provides no warranty that moisture problems have been cured. Accordingly, Licensee bears the risk of water or moisture damage to anything stored in the storage area.

**7.07 No Power to Bind.** Licensee cannot not bind or permit other to bind Licensor for payment of money or for any other obligation.

**7.08 Contractors and Subcontractors.** Licensee must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 10 days prior written notice to Licensee. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

## **8. Licensee's Affirmative Promises.**

Licensee promises that it will:

**8.01.** Accept the Premises in its as is condition with no obligation on the part of Licensor to make any improvements whatsoever to the Premises.

**8.02.** Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Licensor.

**8.03.** Obtain and pay for all utility services used by Licensee and not provided by Licensor.

**8.04.** Maintain any grease traps used by Licensee and pay any fees related to any charges established by any public agency with respect to the operation of a grease trap. As part of Licensee's obligation to maintain the grease trap, Licensee shall provide Licensor upon request copies of contracts evidencing that the grease trap is properly maintained, including any manifests provided by Licensee's vendor establishing that the grease has been properly handled.

**8.05.** Maintain all exterior windows, exterior window glass, and exterior doors in the Premises.

**8.06.** Allow Licensor to enter the Premises to perform Licensor's obligations, inspect the Premises, and show the Premises to prospective purchasers or Licensees.



8.07. Repair, replace, and maintain any part of the Premises that Licensor is not obligated to repair, replace, or maintain, normal wear excepted.

8.08. After casualty loss not terminating the License, rebuild the interior partitions, ceilings, wiring, light fixtures, floor covering, and plumbing.

8.09. Submit in writing to Licensor any request for repairs, replacement, and maintenance that are the obligations of Licensor.

8.10. Vacate the Premises and return all keys to the Premises on the last day of the Term.

8.11. On request, execute an estoppel certificate that states the Fee Commencement Date, Occupancy Commencement Date, and Termination Date of the License; identifies any amendments to the License; describes any rights to extend the Term or purchase rights; lists defaults by Licensor; and provides any other information reasonably requested. If Licensor sells the Premises, Licensee must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Licensee's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this License according to its terms, but buyer will not be estopped to act on Licensee's default under this License.

8.12. Complete any required improvements and open for business with a Certificate of Occupancy granted for the Permitted Use within 120 days of the Occupancy Commencement Date.

8.13. Be open for business weekdays from 8 AM to 4 PM, and never be closed for more than 5 consecutive days, except due to fire or other casualty that prohibits the business from opening or except between Christmas and New Year's if Licensor closes its office for that entire period. Any requests for modifications to hours of operation by Licensee must be submitted to City's representative for approval.

8.14. Be responsible for all pest control services within the Premises and to the extent that Licensee's operation is the source of other pest control problems within the building of which the Premises is part, then Licensee shall timely provide such services to the building at the request of Licensor.

## 9. Indemnity.

9.01. These definitions apply to the indemnity provisions of this Contract:

**9.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnatee that give rise to assertions of**

**Indemnitee liability under this Contract, whether or not the person is a party to this License. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

**9.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.**

**9.01.03. "Indemnitor" means Licensee.**

**9.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims. Indemnitor must indemnify Indemnitees from the consequences of their own negligence or from the negligence of any of them for so long as it is not sole negligence.**

**9.03.** If Indemnitor and one or more Indemnitees are finally adjudged to have liability that is outside the scope of this indemnity, Indemnitor need not further indemnify the so-adjudged Indemnitees from such liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

**9.04.** There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

**9.05.** Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

**9.06.** In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

**9.07.** Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

**9.08.** Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

**9.09.** If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

## **10. Licensor's Affirmative Promises.**

Licensor promises that it will:

**10.01.** License to Licensee the Premises for the entire Term beginning on the Occupancy Commencement Date and ending on the Termination Date, subject to the early termination provisions contained herein.

**10.02.** Obey all applicable laws with respect to Licensor's operation of the Building and Common Areas.

**10.03.** Provide water and sewer service to the Premises at no charge to Licensee above the Rent otherwise provided for in this License.

**10.04.** Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, and (d) structural soundness of the exterior walls, doors, corridors.

**10.05.** Allow Licensee the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Licensor may prescribe.

## 11. Insurance.

**11.01.** Licensee must maintain throughout the term of this License, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best or otherwise acceptable to Licensor, in the following types and amounts:

Type	Amount
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Licensor
2. Employers' Liability	\$500,000/\$500,000/\$500,000, with a waiver of subrogation in favor of Licensor
3. Comprehensive General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises /Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad Form Property Damages to include Fire Legal Liability	Coverage for the replacement cost of Licensee's improvements
(g) Host liquor Liability, if alcoholic beverages are served on the Premises	
(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability,	Combined single limit for bodily

including

injury, death, and property damage of \$1,000,000 per occurrence

(a) Owned/Leased Automobiles

(b) Non-Owned Automobiles

(c) Hired Automobiles

5. Property Insurance for physical damage to the property of Licensee, including improvements and betterments

Coverage for the replacement cost of Licensee's improvements and betterments

**11.02.** Each insurance policy required by this License must contain the following clauses:

This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-day's prior written notice has been given to:

City Clerk, City of San Antonio  
City Hall/2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

and

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

"The insurance provided by Licensee is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this License, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this License with the City of San Antonio. This policy cannot be invalidated as to Licensor because of Licensee's breach of representation, warranty, declaration, or condition of this policy."

**11.03.** If Licensee makes improvements, Licensee must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Licensor's Risk Manager. The policies likewise must be in amounts required by Licensor's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Licensee must maintain the insurance during the construction phase. Licensee or its contractors or subcontractors must further provide payment and performance bonds naming Licensor as indemnitee. If the construction is minor, Licensee may request the requirements of this Section be waived, but a waiver may be granted only by Licensor's Risk Manager. In deciding whether to waive, Licensor's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

**11.04.** Within 30 days after the Occupancy Commencement Date and promptly after Licensor's later request, Licensee must, at its own expense, deliver to Licensor's Risk Manager and to the City Clerk policy declarations pages reflecting all required insurance coverage. Licensee must also deliver copies of policies and endorsements. All endorsements, certificates, and declarations pages must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Licensor, Licensee must deliver to Licensor documentation acceptable to Licensor that confirms that the individual signing the declarations pages, policies, endorsements, and certificates is authorized to do so by the insurance company. Licensor may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Licensor does so and the changes would increase premiums, Licensor will discuss the changes. If Licensor still wants the changes after discussion, Licensee must make the changes and pay the cost thereof. Licensor's review and approval of the above documents does not waive noncompliance with the requirements of this License.

**11.05.** The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

**11.06.** Nothing in this License limits Licensee's liability for damages to persons or property resulting from Licensee's activities or the activities of Licensee's agents, employees, sublicensees, or invitees.

**11.07.** Licensor disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Licensee. Claims resulting from assertions of tort liability or any obligation for which Licensee may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Licensee.

**11.08.** Licensor will self-insure as it deems advisable. As a political subdivision of the State of Texas, Licensor is subject to the Texas Tort Claims Act, and the obligations of Licensor and the rights of persons claiming against Licensor are subject to that Act.

## **12. Release of Claims/Subrogation.**

**The insurance requirements of this License are a bargained-for allocation of risk of loss. Licensor and Licensee release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this License to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this License. Licensor and Licensee, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.**

## **13. Environmental Matters.**

**13.01.** "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

**13.02.** "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

**13.03.** "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

**13.03.** In its use of the Premises, Licensee must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Licensee will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Licensee must present proof to Licensor that it has applied for renewal.

**13.04.** Licensee must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Licensee further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

**13.05.** Licensee must to immediately provide to Licensor copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Licensee must promptly deliver to Licensor any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

**13.06.** Licensor may conduct, at Licensee's expense, periodic inspections of the Premises and Licensee's operations thereon to assure compliance with Licensee's environmental covenants. Licensee need not pay the expense of more than such inspection in any 12-month period.

**13.07.** If Licensee breaches any of its representations, warranties or covenants, Licensee at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Licensee must take all action required by applicable Environmental Laws. If Licensee's actions under this provision involve cleaning up a Release of Hazardous Materials, Licensee must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Licensee will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

**13.08.** Licensee must indemnify Licensor and hold Licensor and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Licensee in enforcing this indemnity) arising from or relating to breach of Licensee's environmental representations, warranties, and covenants.

#### **14. Licensor's Municipal Powers.**

Licensor is a municipality as well as Licensor under this License. As a municipality, it may from time to time exercise municipal powers unrelated to the License that will nevertheless adversely affect Licensee. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Licensor as a municipality is a breach of Licensor's duties as Licensor or entitles Licensee to any relief under this License. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Licensor's duties as Licensor or entitles Licensee to



any relief under this License. Licensee has no more rights under this License than it would if its Licensor were a private entity.

## **15. Prohibited Interests in Contracts.**

**15.01.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

**15.02.** Licensee warrants and certifies as follows:

- (i) Licensee and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

**15.03.** Licensee acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **16. Casualty/Total or Partial Destruction.**

**16.01.** If the Premises are damaged by casualty and can be restored within ninety days, Licensor will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any improvements within the Premises the maintenance of which is not assigned to Licensee under this License. Restoration must be to substantially the same condition existing before the casualty. If Licensor fails to complete the portion of the restoration for which Licensor is responsible within ninety days from the date of written notification by Licensee to Licensor of the casualty, Licensee may terminate

this License by written notice delivered to Licensor before Licensor completes Licensor's restoration obligations.

**16.02.** If the Premises cannot be restored within ninety days, Licensor has an option to restore the Premises. If Licensor chooses not to restore, this License will terminate. If Licensor chooses to restore, Licensor will notify Licensee of the estimated time to restore and give Licensee an option to terminate this License by notifying Licensor within ten days. If Licensee does not terminate this License, the License will continue, and Licensor will restore the Premises as provided above.

**16.03.** To the extent the Premises are unLicenseeable after the casualty, the Fee will be adjusted as may be fair and reasonable.

**16.04.** If Licensor is obligated to rebuild or chooses to do so, Licensee must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this License. Restoration must be to substantially the same condition existing before the casualty.

**16.05.** As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

## **17. Condemnation/Substantial or Partial Taking.**

**17.01.** If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Licensor, the License automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

**17.02.** If entire Premises are not taken, the Fees payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

**17.03.** Licensee has no claim to the condemnation award or proceeds in lieu of condemnation.

## **18. Termination**

**18.01.** At any time during the term of this License, Licensor may revoke this License, and within five days of receiving written notice from Licensor of the revocation of the License, Licensee shall vacate the Premises.

**18.02.** Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor, at its option, may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of the improvements and appurtenances and restore the Premises, at Licensee's sole cost, to original condition. Improvements or appurtenances not removed within 90 days

after termination of the License, whether by expiration or otherwise, become the property of Licensor. Licensor, may without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

## **19. Contractual Lien.**

**19.01.** To secure the payment of Fees and the full performance of this License by Licensee, Licensee hereby grants to Licensor an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Licensee by reason of destruction of or damage to any such property ("Collateral"). Licensee must not remove the Collateral from the Premises without Licensor's written consent until Fee arrearages then due to Licensor are paid in full. Licensee waives all exemption laws in favor of this lien and security interest. Licensor does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

**19.02.** In case of an event of default, Licensor may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Licensee situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale, provided, Licensor gives Licensee at least 10-days' notice of the time and place of sale. Licensor has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (b) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Licensee must inform Licensor as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Licensee is aware who have any interest in purchasing any of the Collateral. Licensee must further inform Licensor of any marketing or selling activity that Licensee believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Licensee fail to cooperate in offering information to assist in the disposition of the Collateral, Licensee should not be heard to complain about the Licensor's disposition made according to this License.

**19.03.** The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Licensee or as otherwise required by law, and the Licensee must pay any deficiencies forthwith. Contemporaneously with the execution of this License (and if requested hereafter by Licensor), Licensee shall

execute and deliver to Licensor Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Licensor requests, Licensee must also execute and deliver to Licensor Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this License is sufficient as a financing statement. In addition to all of its rights, Licensor also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Licensor may execute any financing statement as agent for Licensee so that the document is in proper form to be filed.

## **20. Assignment/Sublicensing**

This License cannot be assigned or sublicensed by Licensee, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days prior written notice before assigning or sublicensing to a parent or subsidiary. Licensee cannot lease or sublease the Premises.

## **21. Security Deposit.**

**21.01.** Upon receipt of the Security Deposit, Licensor may hold it without interest as security for Licensee's performance of its covenants and obligations under this License. The Security Deposit is not an advance payment of Fees or a measure of Licensor's damages in case of Licensee's default. Licensor may co-mingle the Security Deposit with other funds of Licensor. If, at any time during the License, Fees becomes overdue and unpaid, Licensor may, at its option, apply the Security Deposit to the delinquency. If Licensee defaults in any other respect, Licensor may apply the Security Deposit, or so much thereof as shall be necessary, to compensate the Licensor for loss or damage sustained or suffered by Licensor due to Licensee's breach. If Licensor applies some or all the Security Deposit to cure a Licensee breach, Licensee must, on written demand of Licensor, restore the Security Deposit to the original sum deposited, and Licensee's failure to do so within five days after receipt of demand is a default.

**21.02.** If Licensee pays all Fees timely and otherwise complies with this License, Licensor will return the Security Deposit to Licensee at the end of the License. Licensor may deliver the Security Deposit to any purchaser of Licensor's interest in the Premises, and thereupon Licensor is discharged from other liability for the Security Deposit. If Licensor's claims exceed the Security Deposit, Licensee remains liable for the balance of the claims.

## **22. Warranty Disclaimer.**

**22.01.** Licensee takes the Premises "AS-IS," with any and all latent and patent defects. Licensor does not warranty that the Premises are fit for a particular purpose.

**22.02.** Licensee acknowledges that it is not relying on the accuracy or completeness of any representation, brochure, rendering, promise, statement, or other assertion or information about the Premises made or furnished by or on behalf of, or otherwise attributed to, Licensor or any of its agents, employees, or representatives. Licensee expressly and unequivocally disclaims all such reliance. Instead, Licensee relies solely and exclusively on its own experience and its independent judgment, evaluation, and examination of the Premises.

**22.03.** Licensee further unequivocally disclaims (i) the existence of any duty to disclose by Licensor or any of its agents, employees, or representatives and (ii) any reliance by Licensee on the silence or any alleged nondisclosure of Licensor or any of its agents, employees or representatives. Licensee takes the Premises with the express understanding that there are no express or implied warranties (except for limited warranties of title set forth in the closing documents). Licensee expressly warrants and represents that no promise or agreement not herein expressed has been made to it and hereby disclaims any reliance upon any such alleged promise or agreement. This contract constitutes the entire agreement between the parties.

**22.04.** This provision was freely negotiated and played an important part in the bargaining process for this contract. Licensee disclaims reliance on Licensor and accepts the Premises "as-is" with full awareness that the Premises' prior uses or other matters could affect its condition, value, suitability, or fitness. Licensee confirms that it hereby assumes all risk associated therewith. Licensee understands that the disclaimers of reliance and other provisions contained herein could limit any legal recourse or remedy Licensee otherwise might have. Licensee acknowledges that it has sought and has relied upon the advice of its own legal counsel concerning this provision. Provisions of this paragraph survive closing and do not merge into the deed.

## **23. Default.**

**23.01.** Each of the following, independently of any other of the following, is an event of default:

A. Licensee's failure to pay any sums due under this License ("monetary default") and the failure is not cured within 10 days after notice thereof.

B. Licensee's failure to perform or observe any of other term, provision, condition, or covenant of this License and the failure is not cured within 30 days after notice thereof, except if more than 30 days is reasonably required to cure a non-monetary default, it is an event of default of Licensee fails to begin cure within 30 days of notice or if Licensee fails to diligently pursue cure once begun. No cure may take more than 60 days from notice.

- C. The Licensehold estate being taken by execution or by other process of law.
- D. Licensee becoming subject to an order for relief under the United States Bankruptcy Code, becoming subject to a receivership, or entering into a composition of creditors.
- E. Entry by any court of an order modifying the rights of Licensee's creditors.
- F. Licensee's becoming defunct or merging or joining with another entity without the prior written approval of the Licensor.
- G. Licensee's failure to take possession of the Premises, or having taken possession, failure to conduct business within 10 days following the date of issuance of a Certificate of Occupancy by City, or after beginning the conduct of business, failure to open for business for a period of more than five consecutive days.
- H. Any other event denominated as an event of default elsewhere in this License.

**23.02.** In accordance with the § 137 of the City Charter, Licensor may further terminate this License for any of the following:

- A. This License is deemed by the City Council to be inconsistent with the public use of the property.
- B. Licensee's use of the Premises is finally adjudicated to be a nuisance by a court of competent jurisdiction.

## **24. Remedies.**

**24.01.** If Licensee defaults, after the above notice and cure periods, Licensor may terminate this License.

**24.02.** Upon any expiration or termination of this License, Licensee must quit and peacefully surrender the Premises to Licensor. Upon termination or at any time thereafter, Licensor may, without further notice, enter the Premises and possess them, by force, summary proceedings, ejection or otherwise, and may dispossess Licensee and remove Licensee and all other persons and property therefrom.

## **25. Dispute Resolution.**

**25.01.** As a condition precedent to bringing any action arising out of or relating to this License or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

**25.02.** Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

**25.03.** Mediation must be conducted in San Antonio, Bexar County, Texas.

**25.04** The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

**25.05.** If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

**25.06.** Mediator fees must be borne equally.

**25.07.** The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Licensor to seek forcible entry and detainer relief against Licensee.

## **26. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this License, the City need not perform the obligation. Licensee's sole remedy for City's failure to perform is to terminate this License not later than 90 days after the due date for Licensor's omitted performance.

## **27. Attorney's Fees and Court Costs.**

In any action in which Licensee is found to have materially defaulted hereunder, Licensor can recover from Licensee its reasonable attorney's fees.

## **28. Taxes and Licenses.**

Licensee must pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes, license fees, permit fees, debts, and obligations, now or hereafter levied on the Premises or on Licensee or its property.

## **29. Signs.**

Licensee may erect not more than one sign. It must be a double-sided hanging sign of not larger than allowed by applicable law and hung over the front entry door. The sign is subject to approval by the appropriate City agencies having jurisdiction over such matters including the City's Office of Historic Preservation. Licensee must not place any illuminated signs in the window or door area.

## **30. Miscellaneous Provisions.**

**30.01. Relationship Limited.** This instrument creates only the relationship of Licensor and Licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.

**30.02. Nondiscrimination.** Licensee must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

**30.03. Release From Liability/Notice of Sale.** If Licensor transfers ownership of the Premises, Licensor will have no liability or obligation relating to the period after transfer. Licensor's transferee will succeed to all Licensor's rights hereunder.

**30.04. Foreclosure.** Licensee must attorn to the purchaser at any foreclosure sale and recognize such sale and such purchaser as Licensor, if the purchaser recognizes Licensee's rights under this License and agrees not to disturb Licensee's possession of the Premises so long as Licensee is not in default hereunder.

**30.05. Licensee Financing.** Licensee may encumber Licensee's personal property located within the Premises, and any lien of Licensor against Licensee's personal property (whether by statute or under the terms of this License) is subject and subordinate to such security interest. Licensor will execute such documents as Licensee's lenders may reasonably request in connection with any such financing, if the documents do not modify the rights and obligations of this License. The City Manager of the City of San Antonio or a designee, including the Director, Department of Asset Management, is authorized hereunder to execute such documents, without the necessity of a specific City of San Antonio ordinance. But if the documents modify the rights and obligations of the License, then the documents can be approved only by specific ordinance.



**30.06. Authority To Execute.** The party or parties executing this License on behalf of Licensee personally warrant that each of them has full authority to do so.

**30.07. Acknowledgment Of Reading.** The parties acknowledge that they have thoroughly read this License, including any exhibits or attachments, and have sought and received whatever advice and counsel was necessary to form a full and complete understanding of their rights and obligations and, having so done, execute this License freely and voluntarily.

**30.08. Applicable Law.** This License is entered into in San Antonio, Bexar County, Texas. **The Construction Of This License And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

**30.09. Severability.** If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

**30.10. Successors.** This License inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

**30.11. Integration. This Written License Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

**30.12. Modification.** This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

**30.13. Third Party Beneficiaries.** This License is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries.

**30.14. Notices.** Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not

defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

**30.15. Pronouns.** In construing this License, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License, not to any particular provision of it.

**30.16. Captions.** Paragraph captions in this License are for ease of reference only and do not affect the interpretation hereof.

**30.17. Counterparts.** This License may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this License, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

**30.18. Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this License

**30.19. Ambiguities Not to Be Construed against Drafter.** Any ambiguities found in this License must be resolved without resort to construction against the drafter.

### **31. Public Information.**

Licensee 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 License waives an otherwise applicable exception to disclosure.

Executed to be effective on the Occupancy Commencement Date.

**Licensor:**

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

**Licensee:**

**Fratellos LLC**, a Texas limited liability corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

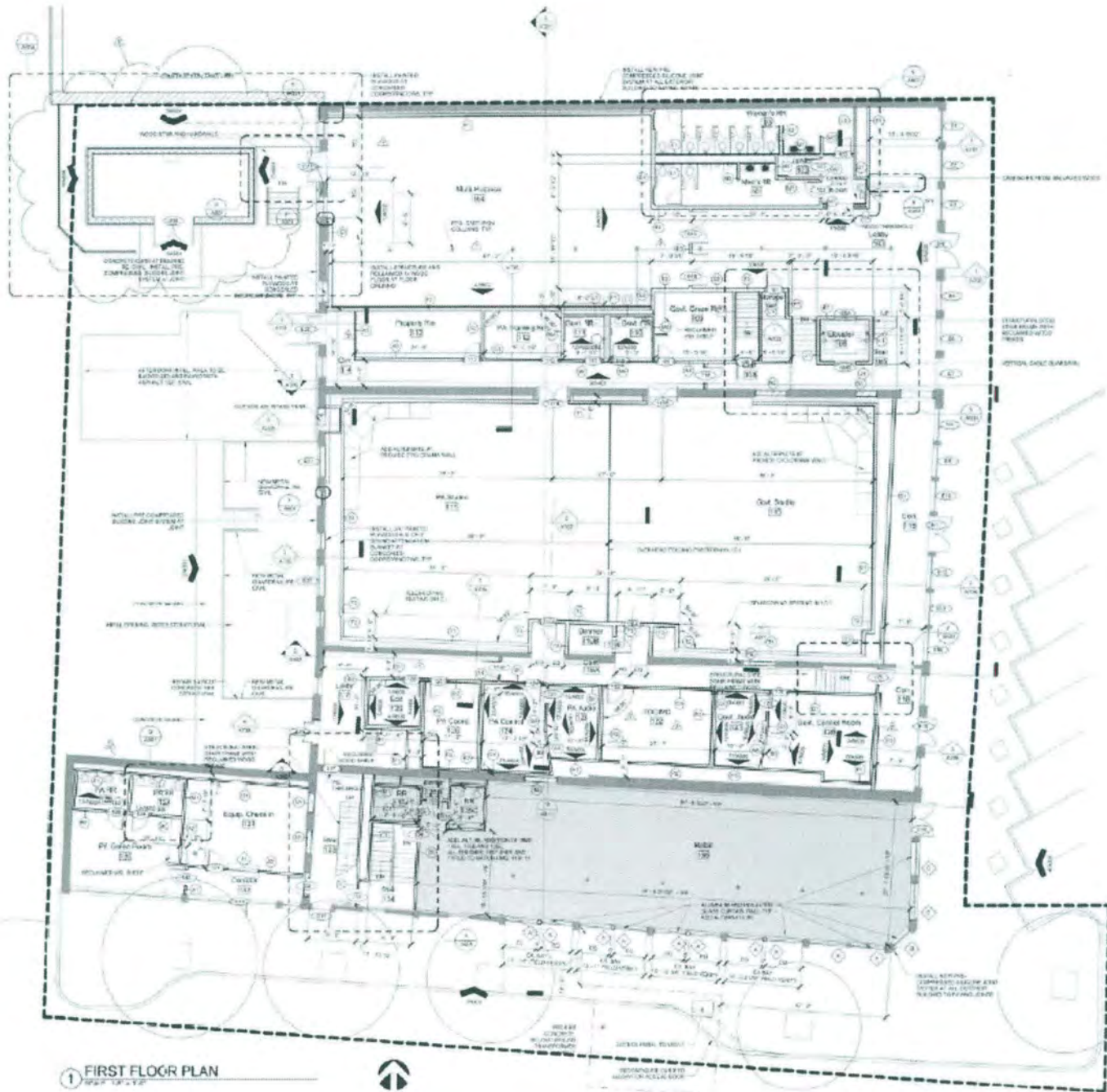
\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

# Exhibit "A" The Ground-Floor Premises

The ground-floor premises are the shaded area in the lower right.



1 FIRST FLOOR PLAN

# Exhibit "B" Depiction of Basement Portion of Premises

The basement portions of the premises are the two small shaded rooms at the bottom. The large shaded area in the middle is not part of the premises.

