Parklet Agreement ("Agreement")
Burns Building

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Authorizing Ordinance:	2018-04-05-0218
Permitee:	401 East Houston Street, LLC
Address:	401 E. Houston St, San Antonio, TX 78205
Phone:	210-417-4320
Email:	davida@AREAtx.com
Type of Entity:	Domestic Limited Liability Company
Property:	Being approximately 1100 SF on-street right of way along the east side of Jefferson Street between Houston Street and Peacock Alley adjacent to 401 E. Houston St.. The property ("**Property**") is more accurately described in **Exhibit A** in metes and bounds.
Improvements:	Enhanced streetscape and public open space
Term:	10 years
Effective Date:	The later of: (a) the effective date of the Authorizing Ordinance; or (b) the date an authorized representative of the City of San Antonio signs this Agreement ("**Effective Date**").

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1. Design Conditions

1.01 Parklet Improvements are to be limited to the area described in Property.

1.02 Construction of Parklet must be complete within six (6) months of City Council approval date.

1.03 Parklet must be professionally designed by a licensed and bonded architect/engineering firm.

1.04 Parklet must be designed to be easily removable, leaving the street underneath intact and operational.

1.05 Parklet design must incorporate beautification features and pedestrian amenities such as plantings, landscaping, and lighting.

1.06 Parklet must incorporate a continuous protective barrier along the street to ensure pedestrian safety.

1.07 Parklet design must have appropriate direct or indirect lighting ensuring safety for Parklet users.

1.08 Parklet shall display and maintain signage indicating that the Parklet is open to the public.

(a) No advertising. Logos, advertising, and other branding are prohibited without the prior written approval of the City through the CCDO Director and any and all other necessary departments, boards, or commissions.

(b) City has the right to require the removal of any signs, good, and other property if not presentable.

(c) Developer shall not place televisions, speakers, or amplified music on or in Parklet without prior approval of the City through the CCDO Director and any and all other necessary departments, boards, or commissions.

1.09 Parklet must not impede curbside drainage or fire hydrants.

1.10 Parklet must comply with ADA accessibility standards.

1.11 Loose particles, such as sand or loose stone, are not permitted in or around the Parklet.

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2. Other Conditions, Terms, and Reservations

2.01. The Permitee is responsible for paying for the Improvements stated herein.

2.02. The Permitee is responsible for the maintenance and replacement of the Improvements.

2.03. In the event the City of San Antonio ("City") disturbs the Improvements while maintaining the City's right of way, the City shall not be responsible for repair or replacing the Improvements installed by the Permitee.

2.04 Permitee shall indemnify the City and maintain liability insurance naming the City of San Antonio as an additional insured for a minimum of $3 million in general liability.

2.05 This Agreement is subject to all state and federal laws, the provisions of the Charter of the City, as it now exists or as it may hereafter be adopted or amended, and the ordinances of the City now in effect or which may hereafter be passed, adopted, or amended.

2.06 The Permitee must apply for and receive any necessary permits or permission from pertinent City boards or departments.

2.07 Permitee must maintain an active ground floor of the Burns building and not have vacancy that exceeds 20% in any given year.

2.08 Permitee shall coordinate with San Antonio Police Department to resolve any safety issues, as necessary.

2.09 Table service is prohibited at Parklet, as are place settings and the placement of condiment or napkins. Tables must remain clean and well maintained.

2.10 The City will continue to monitor the Parklet for compliance with public access requirements and the maintenance standards.

2.11 They City may request participation in assessment and studies for a potential parklet program.

2.12 At termination of the agreement, Permitee will return Parklet premises to the City in as good condition as at the commencement of the term.

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3. Maintenance.

3.01 The Improvements within the Affected Right of Way may not be altered from what is approved and must be maintained in good condition.

3.02 Permitee is responsible for maintaining sidewalk adjacent to the Parklet free of obstructions of any kind.

3.03 Permitee is responsible for maintaining the Parklet in accordance with normal and customary standards for sanitation, landscaping, and other general maintenance, including but not limited to:

(a) Removing graffiti tagging, either on front or back of Parklet, within 24 hours;
(b) Power washing annually or more as needed;
(c) Rinsing out at least once a week;
(d) Perform pest abatement as needed;
(e) Allow for adequate drainage;
(f) Maintain all plants, equipment, and furnishings
(g) Trash removal; and
(h) Repair conditions at all times and promptly replace any broken improvements or property within a reasonable period of time.

4. Fees and Renewal.

4.01 Permitee will pay an annual permit fee of $800 per year. The fee cannot be paid with TIRZ or any other City funds.

4.02 Permit must be reviewed by and renewed each year by the City Center Development and Operations Department.

5. Termination.

5.01. This Permit is made subordinate to the right of the City to use the Property for a public purpose. It is understood and agreed that should the City deem it in the public interest to use the Affected Public Right of Way, or any portion thereof, for a public purpose that conflicts with the Permit granted, or use by Permitee interferes with the ability of the City or public to use the Affected Public Right of Way, then, and in those events, the City acting through the Director of Center City Development and Operations Department may suspend this Permit on 36 hours

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prior written notice and the Permitee, or anyone claiming any rights under this instrument, shall remove any Improvements from the Affected Public Right of Way at the Permitee's expense. The Permitee shall have a right of cancellation upon giving the City thirty (30) days written notice of the Permitee's intention to cancel. Upon cancellation, this Permit shall become null and void, and the Permitee, or anyone claiming any rights under this instrument, shall remove any Improvements from the Property at the Permitee's expense. All work shall be done at the Permitee's sole cost and to the satisfaction of the City. The determination by the Director of Center City Development and Operations Department or his designee as to the public necessity of the use of the Property shall be final and binding upon the parties.

6. Miscellaneous Provisions.

6.01. *Applicable Law*. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to 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.

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

6.03. *Successors*. This Agreement 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.

6.04. *Integration*. **This Written Agreement 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.**

6.05. *Modification*. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either: (i) the same term or condition as it applies on a subsequent or previous occasion; or (ii) any other term hereof.

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

6.07. *Notices*. Any notice required to be given pursuant to the terms and provisions of this Permit shall be in writing and shall be mailed by certified, return receipt requested, addressed as set forth below, or at such other address as may be specified by written notice

If to: **CITY OF SAN ANTONIO**

P.O. Box 839966
(Attention: Director, City Center Development and Operations Department)
San Antonio, Texas 78283

If to: **PERMITEE**
[Please provide]

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

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

6.10. *Assignment.* Buyer may not assign this Agreement without City's prior written consent, such consent to be given or withheld in City's sole discretion. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

6.11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

[SIGNATURES ON NEXT PAGE]

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Executed as of the dates set forth below to be effective as the Effective Date defined above.

Permitee: **401 East Houston Street, LLC**	**Permiter:** **City of San Antonio,** a Texas municipal corporation
By:_____	By:_____
David Adelman Manager	John Jacks CCDO Director
Date:_____	Date:_____

Approved As To Form:

_____
City Attorney

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Exhibit A: Property Description

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