PATIO DINING LICENSE AGREEMENT

Market Square Plaza

This License Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2007, (hereinafter referred to as "**CITY**"), and **L.J. SHRIMPHOUSE LLC d/b/a LA JAIBA** (hereinafter referred to as "**LICENSEE**"), acting by and through its duly authorized officers, WITNESSETH:

1. LICENSING OF PREMISES

CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LICENSEE**, does hereby License to **LICENSEE**, and **LICENSEE** does hereby accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** at **110 Produce Row**, San Antonio, Bexar County, Texas, 78207 within the area commonly known as Market Square as outlined on the drawing which is attached hereto as **Exhibit A** and incorporated by reference herein for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows: Patio Dining area which is adjacent to the front of the building at **110 Produce Row** in Market Square, San Antonio, Texas 78207 identified in **Exhibit A** and is **342.2** square feet.

2. USE OF PREMISES

2.1 **CITY** hereby agrees to permit **LICENSEE** use of above described **CITY**-owned property located at **110 Produce Row, at Market Square Plaza in San Antonio, Bexar County, Texas 78207.**

2.2 **Permitted Uses**:

2.2.1 **LICENSEE** agrees that the Licensed Premises shall be utilized for the sole purpose of outdoor dining to include the service of alcoholic and non-alcoholic beverages, in accordance with applicable statues, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.

2.3 **Prohibited Uses:**

2.3.1 The use of this area for the placement of a cash register.

2.3.2 The use of the area for the display of any Alcoholic Goods and/or merchandise that has any reference or depicts any type of Illegal Drug or obscenity.

2.3.3 Any use prohibited by law including any Ordinances of the City of San Antonio.

2.4 **CITY'S** Reservation of Rights - In addition to the **CITY'S** Reservations set out in **Article 16** and other sections of the License Agreement, **CITY** reserves the right to a public right-of-way along the common sidewalk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as **Exhibit A**. **LICENSEE** shall keep said right of way free of obstructions in the form of either fixed

or movable objects and shall not allow patrons to queue, or wait for entrance into **LICENSEE'S** business establishment, in said public right of way.

3. TERM AND EXPIRATION DATE

3.1 The term of this License Agreement is for a period beginning upon Commencement Date (as per Section 28 herein) and ending on March 31, 2010.

3.2 **LICENSEE** may cancel this **License Agreement** by giving thirty (30) days written notice to **CITY**.

4. RENTAL

4.1 **LICENSEE** shall pay rental in either one lump sum in advance for Annual Payment or in monthly installments **in advance, on, or before the first day of each month** in accordance with the following payment schedule. **Any payment of rent or other charges and fees received after the first (1st) day of the month will be considered late.**

4.2 Notwithstanding any other provision herein to the contrary, the monthly rental for the period beginning on Commencement Date through March 31, 2008 shall be equal to rental as paid by other Patio Dining Licensees within the Market Square Complex, which is equal to **$1.29** per square foot per month. The rental calculation is **$1.29** per square foot times **342.2** square feet of the Licensed Patio Dining Premises. This equals to monthly installments in the amount of **$441.44** in advance on or before the first (1st) day of each month.

4.3 Thereafter for the succeeding twelve (I2) month periods during the term of this License Agreement, the monthly rental shall be calculated by means of the Consumer Price Index formula (CPI) as follows: **ADJUSTED RENTAL = BASE RENTAL X (CPI–2/CPI–1).**

4.4 In applying the above formula for rental adjustment, the following definitions shall prevail:

(a) "Base rental", means the monthly rental for the first twelve (12) month period following the Commencement Date. Thereafter, the adjusted base rental will become the base rental.

(b) "Bureau" means the U. S. Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue the indexes or data referred to in Section 4.2 above.

(c) "CPI-1" means the CPI for the Calendar Month two (2) months prior to the Commencement date of the current License year.

(d) "CPI-2", means the CPI for the Calendar Month two (2) months prior the new term for which the adjusted rental is to be calculated.

4.5 If at the time of any such computation the U.S. Department of Labor should no longer compile and publish such price indexes, the index for "all items" compiled and published by any other branch or department of the Federal Government shall be used for the purpose of this Section; and if no such index is compiled and published by any branch or department of the Federal Government, the statistics reflected in the cost of living increases as complied by any institutional organization or individual recognized as an authority by financial and insurance institutions shall be used as a basis for such adjustments.

4.6 Payment shall be submitted by **LICENSEE** to:

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

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 **LICENSEE** has had full opportunity to examine the Licensed 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. **LICENSEE'S** taking possession of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Licensed Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed, LICENSEE accepts the Licensed Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.**

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

6. UTILITIES

6.1 **LICENSEE** shall furnish and pay for all utilities, if any, that may be necessary for its operations as authorized herein on the Patio Dining Licensed Premises. **LICENSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LICENSEE** agrees to pay any expenses.

7. IMPROVEMENTS

7.1 **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Licensed Premises nor shall **LICENSEE** make, or allow to be made, any alterations to the Licensed Premises without the prior written approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission (HDRC).

7.2 **LICENSEE** 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 Licensed Premises. Further, **LICENSEE** 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 Licensed 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 **LICENSEE** shall, at all times, maintain the sidewalks adjacent to the Licensed Premises free from obstructions. **LICENSEE** shall keep the front of the business property neat and orderly, and if any tables or other fixed or movable property is placed in this area by **LICENSEE** it shall be organized so as not to create any tripping hazard or block the exit to the business in case of emergencies. **LICENSEE** shall not use any of said sidewalk area outside of the licensed patio dining area in the exercise of privileges granted herein, except to pass to and from the Licensed Premises. **LICENSEE'S** use may at no time obstruct public access to the public right-of-way.

8.2 **LICENSEE** shall, at all times, keep or cause to be kept the Licensed Patio Dining area free of litter, trash, paper, and other waste and shall place same in standard trash containers in the appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**.

8.3 **LICENSEE** shall be responsible for the condition of the Licensed Patio Dining area. **LICENSEE** shall repair any damage to the Licensed Premises caused by **LICENSEE**, and shall maintain, or cause to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.

8.4 **CITY** shall be responsible for sidewalk repairs other than those necessitated by the actions of **LICENSEE**, as required to conform to safety and aesthetic standards.

8.5 **LICENSEE** will, at the termination of this License Agreement, return the Licensed 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.

8.6 **LICENSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LICENSEE** both during the term of this License Agreement and as so left on the Licensed Premises after **LICENSEE** vacates the Patio Dining Licensed Premises. If said signs, goods and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by it after the close of business and the Licensed Patio Dining area is vacated, then the **CITY** may remove same without further notice or liability therefore.

9. TAXES AND LICENSES

9.1 **LICENSEE** 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 Licensed Premises, or upon **LICENSEE**, or upon the business conducted on the Licensed Premises, or upon any of **LICENSEE'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 **LICENSEE.**

10. ASSIGNMENT AND SUBLETTING

10.1 Except as to the parent, subsidiary or similarly affiliated company, **LICENSEE** shall not assign this Patio Dining License area, or allow same to be assigned by operation of law or otherwise, 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. Any assignment

by **LICENSEE** without such permission shall constitute an Event of Default. Subletting of any part of the Patio Dining area is not authorized as part of this Patio Dining License Agreement.

10.2 Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Patio Dining License Agreement; 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 Patio Dining Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and/or an acceptance of the assignee, or occupant as a **LICENSEE**, or a release of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in this Patio Dining License Agreement. No provision of this License Agreement shall be deemed to have been waived by the **CITY** unless such waiver be in writing and signed by the **CITY**.

11. DINING AREA

11.1 **LICENSEE'S** Patio Dining Licensed Premises is an area adjacent to business but does not include any area outside of the licensed area as shown in **Exhibit A** attached hereto. **LICENSEE** may only use area adjacent to the Restaurant for dining and the service of non-alcoholic and alcoholic beverages. **LICENSEE** may not obstruct any entrance to the Restaurant with any type of furnishing used for dining. **CITY** has the right to request the removal of fixtures, if **LICENSEE'S** dining area is not presentable, as determined by the Market Square Facilities Coordinator.

11.2 The Dining area **will not** be used for **SALES**. All sales will be processed inside of **LICENSEE'S** Restaurant.

11.3 Encroachment on the Common Area beyond the authorized Licensed Dining Area is not permitted.

12. TERMINATIONS, DEFAULTS AND REMEDIES

12.1 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event this agreement is deemed to be inconsistent with the public use of the property.

12.2 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event the use of the premises shall have been deemed a nuisance by a court of competent jurisdiction.

12.3 In the event of termination in relation to 12.1 or 12.2 above, the **CITY** shall give **LICENSEE** notice in writing at least thirty (30) days prior to the termination date.

12.4 **RENT** - Any Payment of rent received after the first (1st) day of the month will be considered late and will be considered an Event of Default by the following criteria:

12.4.1 Any payment not received after the eleventh (11th) day of the month on the first occurrence will be an Event of Default.

12.4.2 For the term of the agreement, **LICENSEE** may pay no more than two (2) payments of any type after the first (1st) day but no later than the tenth (10th) day of the month, with the addition of the late fee. The third (3rd) occurrence of any late payment will constitute an Event of Default.

12.4.3 Any payment after the first (1st) day is late; therefore, any payment received will be charged a late fee in the amount of $50.00 per occurrence.

12.5 **DEFAULT WITHOUT AN OPPORTUNITY TO CURE.** The following events shall constitute Events of Default:

12.5.1 The third (3rd) occurrence of any late payment;

12.5.2 Failure to comply with any and all Taxes and Licenses requirements as outlined **Article 9 TAXES AND LICENSES;**

12.5.3 Any assignment as specified in **Article 10 ASSIGNMENT AND SUBLETTING** not approved in writing by Ordinance by the City of San Antonio;

12.5.4 The subletting of any part of the Patio Dining License area;

12.5.5 Encroachment unto the Common area beyond the authorized Licensed Patio Dining area;

12.5.6 If **LICENSEE** fails to abide by the requirements of **Article 14 INSURANCE REQUIREMENTS** or allows the Insurance Certification to be cancelled without other approved Insurance replacement coverage. New or revised policy must overlap or immediately continue term of old policy. Expired policy must be replaced before expiration date of current policy. Use of the Licensed Premises before **Approval** and **Acknowledgement** by the **City** of any new, revised, renewed or reinstated Certification;

12.5.7 The service of any food or beverages, in the Patio Dining License area;

12.5.8 The third (3rd) occurrence of any merchandise or display fixtures left in front **LICENSEE'S** store after closing;

12.5.9 The third (3rd) occurrence of the use of premises for any display of Alcoholic Beverages, any goods and/or merchandise related to Alcoholic Beverages and any goods or merchandise with any reference or which depict any type of Illegal Drug or Obscenity;

12.5.10 The third (3rd) occurrence of the use of the premises for any type of **SALES**;

12.5.11 The third (3rd) occurrence of any particular failure as outlined in section 12.6.1 below.

12.6 **DEFAULTS WITH AN OPPORTUNITY TO CURE:**

12.6.1 **LICENSEE** shall fail to comply with any term, provision or covenant of this License Agreement and shall fail cure any such failure within ten (10) days of **CITY** providing notice of such failure, provided, however, in the event **LICENSEE** repeats any such particular failure twice more during the term of the contract then any such third failure shall constitute an Event of Default and there shall be no opportunity to cure.

12.7 Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this License 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 Licensed 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 **LICENSEE** without relieving **LICENSEE** of any liability hereunder as to rent or any other charges still due and owing in this License Agreement, or any extension thereof, as applicable. **LICENSEE** shall make good any deficiency.

12.8 Any termination of this License Agreement as herein provided shall not relieve **LICENSEE** 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 **LICENSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LICENSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this License 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 License Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this License 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.

12.9 Upon any such expiration or termination of this License Agreement, **LICENSEE** shall quit and peacefully surrender the Licensed 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 Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LICENSEE** and remove **LICENSEE** 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 Licensed Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Licensed Premises by **LICENSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

13. INDEMNIFICATION

13.1 LICENSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or 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 LICENSEE'S activities under this AGREEMENT, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective

officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by LICENSEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. LICENSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this **License Agreement**, **LICENSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY'S** Downtown Operations Department, which shall be clearly labeled "*La Jaiba Patio Dining License Agreement*"" in the Description of Operations block of the Certificate. The original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title 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 **License Agreement** until such certificate and endorsements have been received and approved by the **CITY'S** Downtown Operations Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

14.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this **License 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 **License Agreement**. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

14.3 **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this **License Agreement**, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability **	Statutory $1,000,000/$1,000,000/$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury g. Explosion, collapse, underground	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence and $2,000,000.00 Aggregate, or its equivalent.
3.	Comprehensive Automobile Liability ** a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of **LICENSEE**, including improvements and betterment to the LICENSED PREMISES.	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of **LICENSEE'S** property
6	Liquor Liability	$1,000,000 per occurrence, aggregate of $3,000,000

** If Applicable.

14.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the **CITY**, 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). **LICENSEE** 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. **LICENSEE** shall pay any costs incurred resulting from said changes.

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

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

14.5.1 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 polices;

14.5.2 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;

14.5.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**.

14.5.4 Provide thirty (30) calendar days 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.

14.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'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 **License Agreement.**

14.7 If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **License Agreement** termination proceedings on the first event of default. The **CITY** may upon **LICENSEE'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 **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

14.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this **License Agreement**.

14.9 It is agreed that **LICENSEE'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 **License Agreement**.

14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **License Agreement**.

15. RULES AND REGULATIONS

15.1 **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE'S** business.

15.1.1 This includes and is not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in the Market Square Plaza of the City of San Antonio. **LICENSEE** shall not place speakers or amplified music on or near the Patio Dining Licensed Premises or in any other location outside the adjacent enclosed building on any side of the licensed premises. **LICENSEE** shall comply with **CITY'S** laws pertaining to noise. **LICENSEE** agrees to comply with any requests by the **CITY'S** Park Police, Downtown Operations Department Staff, City Police Officers or noise abatement officers. Failure to comply with this section may constitute an Event of default.

15.1.2 No advertisements, signs, decorations and/or displays shall be placed in, on, or about the Licensed Patio Dining Premises without the prior written approval of the **CITY** through the Director of Downtown Operations Department or her authorized representative 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. **LICENSEE** agrees to remove all signs from the Licensed Dining Premises when **LICENSEE** vacates the Licensed Premises.

15.2 **LICENSEE** will be allowed to place only tables, chairs, and fixtures as approved by City and any and all other necessary departments, boards or commissions or the City of San Antonio, including, but not limited to HDRC on the demised premises.

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

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

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

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

15.5 The operation of a massage business, tanning salon, or gambling of any nature shall not be allowed in, on, or about the Patio Dining Licensed Premises.

15.6 Discrimination on account of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment, or in the use of or admission to the Licensed Patio Dining Premises is prohibited.

15.7 **LICENSEE** 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.

15.8 No provision of this License Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments, amusements, or parades for the benefit of the public.

15.9 **CITY** park police, police officers and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons at Market Square in San Antonio. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

15.10 Other specific uses of Licensed Patio Dining area are outlined in **Article 2.**

16. RESERVATIONS: CITY

16.1 **CITY** reserves the right to enter the Patio Dining Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of rent by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Licensed Premises. Should construction or other activity by **CITY** prevent **LICENSEE'S** use of the Patio Dining Licensed Premises for the purposes outlined herein for longer than ten (10) days, then this License Agreement shall be automatically extended for the same number of days **LICENSEE'S** use of Licensed Premises was denied or an abatement for the period **LICENSEE** was not able to use the premises may be considered but not both. The City will determine which resolution will be executed.

17. HOLDING OVER

17.1 Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License 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 percent (125%)** the amount of the rent paid for the last month of the term of this Patio Dining License Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

18. CONFLICT OF INTEREST

18.1 **LICENSEE** 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 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, or 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 **LICENSEE** warrants and certifies, and this license 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 License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License 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 License Agreement shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, and addressed to:

City of San Antonio
Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
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 **LICENSEE** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

Mr. Luis C. Gutierrez, President
L.J. Shrimphouse, LLC
d/b/a La Jaiba
110 Produce Row
San Antonio, Texas 78207

or to such other address on file with the City Clerk as **LICENSEE** may provide in writing to **CITY**.

21. PARTIES BOUND

21.1 If there shall be more than one party designated as **LICENSEE** in this License Agreement, they shall each be bound jointly and severally hereunder.

21.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY**.

22. TEXAS LAW TO APPLY

22.1 **THIS LICENSE 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. RELATIONSHIP OF PARTIES

23.1 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 venturers, or any other similar such relationships between the parties hereto other than that of **LICENSOR** and **LICENSEE**.

24. GENDER

24.1 Words of any gender used in this License 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.

25. CAPTIONS

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

26. ENTIRE AGREEMENT/AMENDMENT

26.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

26.2 No amendment, modification, or alteration of the terms of this License Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

26.3 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.

27. ACKNOWLEDGEMENT OF READING

27.1 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

28. AUTHORITY

28.1 If the signer of this License Agreement is an entity or other than an individual who is the **LICENSEE**, then the signer hereof for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of **LICENSEE**.

WITNESS, the signature of the parties hereto in multiple originals, this, the _____ day of _____, 2007 (Commencement Date).

CITY OF SAN ANTONIO,

A Texas Municipal Corporation

By: _____
Sheryl L. Sculley, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LICENSEE:

L.J. Shrimphouse, LLC d/b/a La Jaiba

LUIS C. GUTIERREZ PRESIDENT
Printed Name, Title

Signature

2305 WILDFLOWER
Residence Address

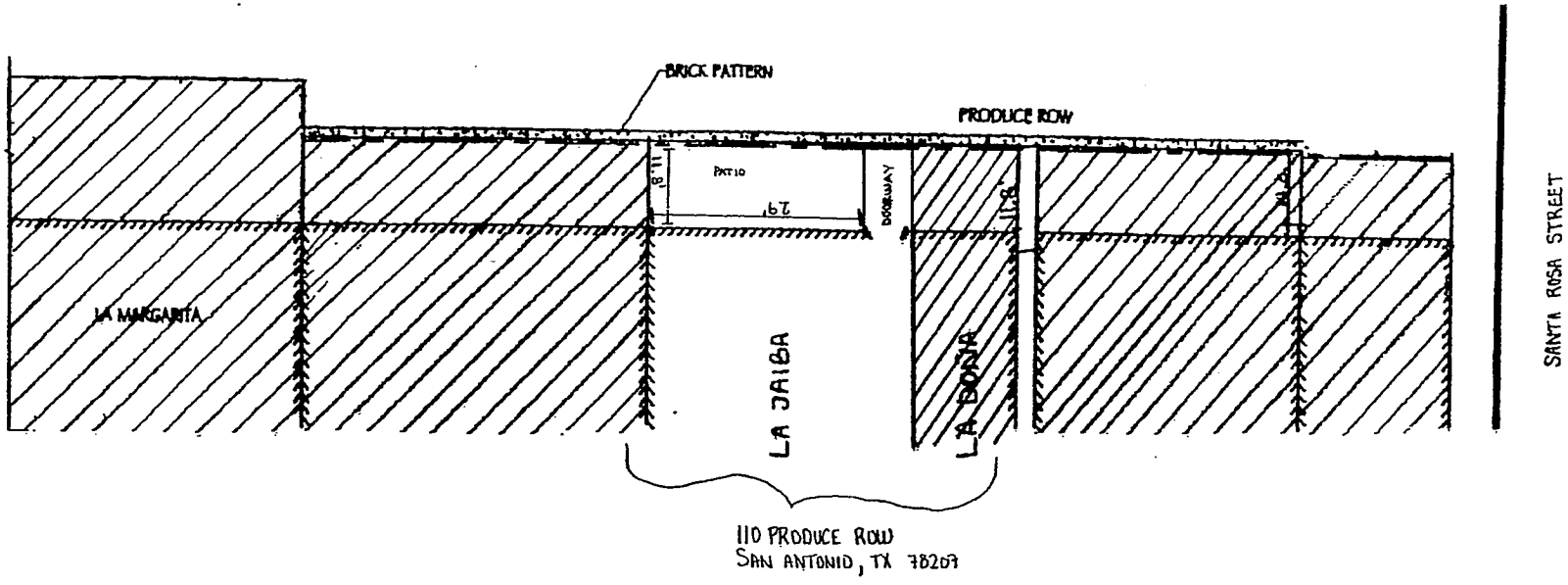
EDINBURG TX. 78539
City, State, and Zip Code

956-227-5587
Area Code/Telephone Number Residence

~~956~~ 210 - 227-2422
Area Code/Telephone Number Business

AUGUST 17, 2007

NOT TO SCALE



110 PRODUCE ROW
SAN ANTONIO, TX 78207

LA JAIBA PATIO
11.8' WIDTH
29' LENGTH
TOTAL SQUARE FOOTAGE = 342.2