RIVER WALK LEASE AGREEMENT

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____, passed and approved by the City Council on the _____day of_____, 2012, and Marriott Hotel Services, Inc., as manager for CCMH Riverwalk LLC, **a Texas Corporation** (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

1. DEMISE OF PREMISES

1.1. **CITY,** for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** in the San Antonio River Walk Area as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Leased Premises) are further described as follows:

1.1.1. The area containing a total of approximately one thousand seven-hundred (1,700) square feet, being more particularly described in Exhibit B attached hereto.

2. USE OF PREMISES

2.1. **LESSEE** agrees that the Leased Premises shall be utilized for the sole purpose of outdoor dining, including the service of food and alcoholic and non-alcoholic beverages, the provision of outdoor entertainment and exhibits, all in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

2.2. **CITY'S** Reservation of Rights – In addition to the **CITY'S** Reservations set out in Article 15 and other sections of the Lease Agreement, **CITY** reserves the right to a public right-of-way along the River Walk 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. **LESSEE** 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 **LESSEE'S** business establishment, in said public right of way. **LESSEE** shall comply with the **CITY'S** laws pertaining to queuing along the River Walk area and in addition to the right of way restrictions described above, shall not use any public space along the River Walk area for the queuing or waiting of patrons without first obtaining the consent of **CITY**. Failure to comply with this section may, at **CITY'S** option, constitute default under this Lease Agreement.

3. TERM, AND TERMINATION

3.1. The Initial Term of this Lease is for a five (5) year period beginning on February 18, 2012 and ending on February 17, 2017.

3.2. **LESSEE** or **CITY** may cancel this Lease Agreement by giving ninety (90) days written notice to the other party

3.3. Provided **LESSEE** is not then in default under the terms of this Lease Agreement, **LESSEE** shall have the option to extend the term of this Lease Agreement for up to three (3), additional five (5) year periods (the "Renewal Term"). To exercise each option period, **LESSEE** shall notify **CITY**, in writing, no later than ninety (90) days prior to the expiration of the Initial term and each Renewal Term.

4. RENTAL

4.1. The monthly rental shall be **$1.58** per square foot per month or **$18.96** per square foot for the first Lease year, and shall increase by a rate of two percent (2%) per square foot per year, commencing upon the anniversary date of each remaining Lease year. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month in accordance with the following payment schedule:

4.1.1. First 12 months (**$1.58** per square foot per month): **$32,232.00** payable in one lump sum in advance per year or **$2,686.00** per month.

4.1.2. Second 12 months (**$1.61** per square foot per month): **$32,844.00** payable in one lump sum in advance per year or **$2,737.00** per month.

4.1.3. Third 12 months (**$1.64** per square foot per month): **$33,456.00** payable in one lump sum in advance per year or **$2,788.00** per month.

4.1.4. Fourth 12 months (**$1.67** per square foot per month): **$34,068.00** payable in one lump sum in advance per year or **$2,839.00** per month.

4.1.5. Fifth 12 months (**$1.70** per square foot per month): **$34,680.00** payable in one lump sum in advance per year or **$2,890.00** per month.

4.2. Payment shall be submitted to:

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

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

4.3. A twenty ($20.00) dollar late charge will be assessed on any payment received on the eleventh (11^{th}) day of the applicable month or any day thereafter. All past due rentals under the terms of this Lease Agreement shall bear interest at the rate of 12% per annum from the date due until paid in full by **LESSEE**, or at the highest rate allowed by law, should 12% be deemed usurious.

4.3.1. The ten (10) day period before the twenty ($20.00) dollar late charge is applied should not be considered a **"GRACE PERIOD;"** nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the **CITY'S** Treasury office by the close of business on the first day of each calendar month.

4.3.2. At any time during the Lease term if more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a

twenty-four (24) month period, **LESSEE** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made

4.3.3. At any such time, should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in subsections 4.3.1 – 4.3.2 above, the Department of Finance's policies shall prevail. **CITY** shall make every effort to formally notify **LESSEE** of any such change(s) in advance.

4.3.4. Notwithstanding anything to the contrary set forth in this Lease Agreement, if **LESSEE** shall fail to make the timely payment of any rent or any additional charges due the **CITY** from **LESSEE** or the payment of any other money due the **CITY** from **LESSEE** under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that any such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a **Repeated Event of Default**.

4.3.5. In the event of a **Repeated Event of Default**, **CITY**, without giving **LESSEE** any notice and without affording **LESSEE** an opportunity to cure the default, may terminate this Lease forthwith without notice to **LESSEE**.

4.4. Payment shall be made in a manner consistent with Treasury division rules and regulations and shall be subject to various charges and requirements for failure to comply with those rules including, but not limited to, charges and requirements imposed for the submittal of insufficient fund checks.

4.5. At no less than five (5) year intervals, or longer, during the Initial Term of the agreement and the Renewal Term, if any, the **CITY** may utilize an MAI-certified appraiser to conduct a market rental study that shall identify a fair market rate for Leased Premises on the River Walk or may continue escalating the rent at the rate of 2% annually. If the **CITY** elects to have an appraisal conducted **CITY** shall provide copy of study to **LESSEE** within 120 calendar days of the end of the term, who shall have 30 calendar days to notify the **CITY** in writing if **LESSEE** does not agree with appraiser's fair market rate. If **LESSEE** notifies **CITY** in writing within 30 calendar days from date of receipt of study that **LESSEE** does not agree with proposed fair market rate, **LESSEE** shall have 60 calendar days to from the date of **LESSEE**'s notification to **CITY** to provide to **CITY** and **CITY's** appraiser a market rental study conducted by an MAI-certified appraiser (at **LESSEE**'s expense) that shall identify a fair maret rate for **LESSEE**'s space on the River Walk. CITY's appraiser and **LESSEE**'s appraiser shall have 30 calendar days from date of receipt of **LESSEE**'s appraiser's study to reach consensus on a fair market rate for **LESSEE**'s space on the River Walk. If **CITY's** appraiser and **LESSEE**'s appraiser are unable to reach consensus within 30 calendar days, both appraisers shall identify a thrid appraiser to conduct a market rental study and identify a fair market for **LESSEE**'s space on the River Walk. The third appraiser's fair market rate shall be averaged with the closer of the rates from the **CITY**'s or **LESSEE**'s appraisers to establish a new rental rate. The cost of the third appraiser's services shall be paid equally by the **CITY** and **LESSEE**. Upon establishment of new rental rate via the described process, **LESSEE** shall begin paying new rental in Years 6, 11, and 16, respectively. If the described process is not completed prior to Years 6 , 11, and 16, respectively, **LESSEE** shall continue to pay rental as per Section 4.1, and upon establishment of new rate and new rental from beginning of Years 6, 11, and 16 within 30 days of establishment of new rental. **CITY** shall perform and complete the process to adjust rent within a reasonable time.

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1. **LESSEE** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE'S** taking possession of the Leased Premises shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.

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

6. UTILITIES

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

7. IMPROVEMENTS

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

7.2. **LESSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on, or about the Leased Premises. Further, **LESSEE** agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

8. MAINTENANCE OF PROPERTY

8.1. **LESSEE** shall, at all times, maintain the sidewalks adjacent to the Leased Premises free from obstructions of any kind and shall maintain a minimum clearance of six (6) feet on the sidewalk adjacent to the River Walk free and clear of any tables or other property placed by **LESSEE** on such Leased Premises, and **LESSEE** shall not use any of said sidewalk area in the exercise of privileges granted herein, except to pass to and from the Leased Premises; however, **LESSEE'S** use may at no time obstruct public access to the six (6) feet River Walk public right-of-way.

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

8.3. **LESSEE** shall, at its sole expense, keep the Leased Premises in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair of all damages to the Leased Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. If **LESSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

8.4. **LESSEE** will, at the termination of this Lease Agreement, return the Leased Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.

8.5. **LESSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LESSEE** both during the term of this Lease and as so left on the Leased Premises after **LESSEE** vacates the Leased Premises. If said signs, goods and any other property placed by **LESSEE** upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

9. TAXES AND LICENSES

9.1. **LESSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted on the Leased Premises, or upon any of **LESSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LESSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the **CITY**.

10. ASSIGNMENT AND SUBLETTING

10.1. Except as to the parent, subsidiary or similarly affiliated company, **LESSEE** shall not assign this Lease Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.

10.2. Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease Agreement and in the property referred to herein; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

10.3. The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not

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

11. DEFAULT AND REMEDIES

11.1. The following events shall be deemed to be events of default by **LESSEE** under this Lease Agreement:

11.1.1. **LESSEE** shall fail to pay any installment of rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days.

11.1.2. **LESSEE** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to **LESSEE**, unless **LESSEE** has undertaken to effect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.

11.2. Upon the occurrence of an event of default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or **CITY**, its agents or attorney may, at its option, resume possession of the Leased Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LESSEE** without relieving **LESSEE** of any liability hereunder as to rent still due and owing in this Lease Agreement, or any extension thereof, as applicable. **LESSEE** shall make good any deficiency.

11.3. Any termination of this Lease Agreement as herein provided, shall not relieve **LESSEE** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **LESSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LESSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

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

12. INDEMNIFICATION

12.1. **LESSEE covenants and agrees to FULLY INDEMNIFY 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 LESSEE'S activities under this AGREEMENT, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, 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. LESSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LESSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.**

12.2. **It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by LESSEE 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. LESSEE 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.**

13. INSURANCE REQUIREMENTS

13.1. Any and all employees, representatives, agents or volunteers of **LESSEE** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LESSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LESSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and

responsibility of **LESSEE.**

13.2. Prior to the commencement of any work under this Lease Agreement**, LESSEE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the **CITY'S** Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the **CITY'S** Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.

13.3. Upon any renewal of the term of this Lease Agreement, the **CITY** shall have the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.

13.4. **LESSEE'S** financial integrity is of interest to **CITY,** therefore, subject to **LESSEE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of this Lease Agreement**,** and any extension hereof, at **LESSEE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, 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

	TYPE	AMOUNT
4.	Property Insurance: For physical damage to the property of **LESSEE**, including improvements and betterment to the Leased Premises.	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of **LESSEE'S** property
5	Motor truck cargo insurance including loading and unloading coverage; written on an inland marine form and an all risk basis.	$1,000,000
6	Liquor Liability	$1,000,000 per occurrence, aggregate of $3,000,000

**** If Applicable.**

13.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LESSEE** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

13.6. **LESSEE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

13.6.1. Name the **CITY** and its officers, 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;

13.6.2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

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

13.7. **LESSEE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

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

13.8. If **LESSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate agreement termination proceedings on the first event of default. Upon **LESSEE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LESSEE** to stop the use of the Leased Premises hereunder until **LESSEE** demonstrates compliance with the requirements hereof.

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

13.10. All personal property placed in the Leased Premises shall be at the sole risk of **LESSEE**. **CITY** shall not be liable, and **LESSEE** waives all claims for any damage either to the person or property of **LESSEE** or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of **CITY** or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. **LESSEE** shall save and hold harmless **CITY** from any claims arising out of damage to **LESSEE'S** property or damage to **LESSEE'S** business, including subrogation claims by **LESSEE'S** insurers.

14. RULES AND REGULATIONS AND PROHIBITED USES

14.1. **LESSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LESSEE'S** business, including but not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in the River Walk area in the Downtown Central Business District.

14.2. No advertisements, signs, decorations or displays shall be placed in, on, or about the Leased Premises without the prior written approval of the **CITY** through the Director, Downtown Operations Department, or her designee, and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. **LESSEE** agrees to remove all signs from the Leased Premises when **LESSEE** vacates the Leased Premises.

14.3. **LESSEE** shall be allowed to place only those chairs, tables, umbrellas, hostess stations, and/or any other furnishings as approved by **CITY** and all applicable boards and/or commissions of the City of San Antonio, including, but not limited to the Historic and Design Review Commission (HDRC).

14.4. Encroachment on the public sidewalk beyond the authorized Leased Premises or into the Public Right-of-Way is not permitted.

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

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

14.5.2. Partial nudity means exposure of the female breast or the exposure of the male or

female pubic area or buttocks.

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

14.6. The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.

14.7. Discrimination because of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment or in the use of or admission to the Leased Premises is prohibited.

14.8. **LESSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

14.9. **LESSEE** shall not place speakers or amplified music on or near the patio of the Leased Premises or in any other location outside the enclosed building on any side of the premises that can be seen from the San Antonio River. **LESSEE** shall comply with **CITY'S** laws pertaining to noise. **LESSEE** agrees to comply with any requests by the **CITY'S** park police, police officers or noise abatement officers to close the windows and doors of **LESSEE'S** business establishment after the hour of 11:00 p.m., except as necessary for entry to and exit from the establishment. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the City Code of the City of San Antonio immediately prior to making such request. Failure to comply with this section may, at **CITY'S** option, constitute default under this Lease Agreement.

14.10. **LESSEE** shall not engage in, or allow its employees, agents, invitees, guests or any other person to engage in vending on the Leased Premises, other than the ordinary and customary restaurant service with wait staff bringing food and beverages to **LESSEE'S** customers seated at tables within the Leased Premises.

14.11. **LESSEE** shall abide by Vending Requirements and Regulations as set forth in Section 16-236 of the City Code of the City of San Antonio and Section 35-679 of the Unified Development Code.

14.11.1. Notwithstanding the preceding, **LESSEE** shall be allowed to provide entertainment to its customers in the form of traditional Mariachis so long as such Mariachis are employees of **LESSEE** and the Mariachis are not allowed to engage in solicitation of business to **LESSEE'S** customers or any other persons on the Premises.

15. RESERVATIONS: CITY

15.1. **CITY** reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LESSEE** shall not be entitled to an abatement or reduction of rent because of such entry, nor shall said entry be deemed an actual or constructive eviction of **LESSEE** from the Leased Premises. Should construction or other activity by **CITY** prevent **LESSEE'S** use of the Leased Premises for the purposes outlined herein for longer than ten (10) days, then **LESSEE** shall be entitled to an abatement of rent under this Lease Agreement for such period of time and, at **LESSEE'S** option, this Lease Agreement may be terminated or extended for the same number of days **LESSEE'S** use of Leased Premises was denied.

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

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

16. HOLDING OVER

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

17. QUIET ENJOYMENT

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

18. CONFLICT OF INTEREST

18.1. Landlord acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s)l or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2. Landlord warrants and certifies, and this Lease Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

19. SEPARABILITY

19.1. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be

affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part of this Lease Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

20. NOTICES

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

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

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

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

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

Host Hotels and Resorts dba San
Antonio Marriott Riverwalk
889 E. Market Street
San Antonio, Texas 78205

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

21. PARTIES BOUND

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

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

22. TEXAS LAW TO APPLY

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

23. LIEN FOR RENT

23.1. In consideration of the mutual benefits arising under this Lease Agreement, **LESSEE** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto **CITY**, upon all property of **LESSEE** now or hereafter placed in or upon the Leased Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby

subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest in favor of **CITY** for payment of all rents and other sums agreed to be paid by **LESSEE** herein. At **CITY'S** request, **LESSEE** shall execute and deliver to **CITY** a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

24. RELATIONSHIPS OF PARTIES

24.1. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and **LESSEE**.

25. GENDER

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

26. CAPTIONS

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

27. ENTIRE AGREEMENT/AMENDMENT

27.1. This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.

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

27.3. It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

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

LESSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LESSEE:

Marriott Hotel Services, Inc., as manager for CCMH Riverwalk LLC

By: _____

Its: _____

Acknowledged and Accepted:

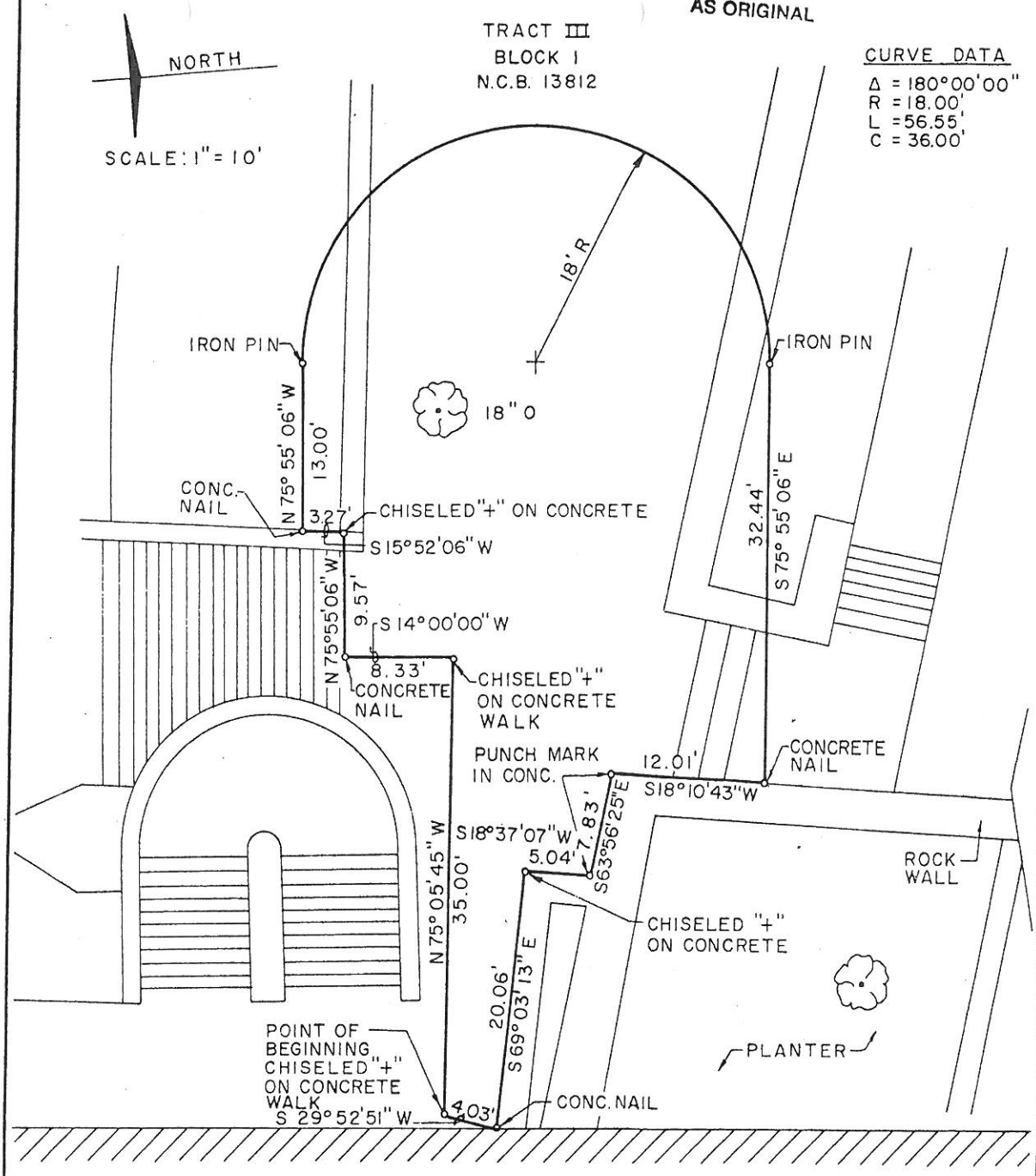
CCMH Riverwalk LLC

By: _____

Its: _____

EXHIBIT A

AS ORIGINAL



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REAL ESTATE DIVISION

MARRIOTT HOTEL

TRACT I
BLOCK 1
N.C.B. 13812

PARCEL NO. 103900
PLAT OF 1700.130 S.F. (0.039 ACRE) OUT OF BLOCK 1, N. C. B. 13812, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

Reference: VOLUME 1119, PAGE 439, DEED RECORDS, BEXAR COUNTY, TEXAS.

STATE OF TEXAS
KUNG MOON NG
2432
REGISTERED PUBLIC SURVEYOR

STATE OF TEXAS }
COUNTY OF BEXAR }

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

This 12 TH day of NOVEMBER, 19 85 A. D.

Kung Moon Ng

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Exhibit B

FIELD NOTES

TIENDAS DEL RIO PROJECT

PARCEL NO. 10390C

BEING 1,700.130 square feet (0.039 acre) of land out of Block 1, N.C.B. 13812, also known as Tract III, as recorded in Volume 1119, Page 439, Deed Records, Bexar County, Texas, and situated within the corporate limits of the City of San Antonio, Bexar County, Texas, and being more particularly described as follows:

BEGINNING at a chiseled cross "+" on concrete walk for a corner of this tract, said point being in the westerly boundary line of Tract I, Block 1, N.C.B. 13812, for the POINT OF BEGINNING;

THENCE N 75° 05' 45" W, a distance of 35.00 feet to a chiseled cross "+" on concrete walk, for a corner of this tract;

THENCE S 14° 00' 00" W, a distance of 8.33 feet to a concrete nail, for a corner of this tract;

THENCE N 75° 55' 06" W, a distance of 9.57 feet to a chiseled cross "+" on concrete, for a corner of this tract;

THENCE S 15° 52' 06" W, a distance of 3.27 feet to a concrete nail, for a corner of this tract;

THENCE N 75° 55' 06" W, a distance of 13.00 feet to an iron pin, for a point of curvature;

THENCE along a curve to right having a central angle of 180° 00' 00", a radius of 18.00 feet and a length of 56.55 feet to an iron pin, for a point of tangency;

THENCE S 75° 55' 06" E, a distance of 32.44 feet to a concrete nail, for a corner of this tract;

THENCE S 18° 10' 43" W, a distance of 12.01 feet to a punch mark in concrete, for a corner of this tract;

THENCE S 63° 56' 25" E, a distance of 7.83 feet to a punch mark in concrete, for a corner of this tract;

THENCE S 18° 37' 07" W, a distance of 5.04 feet to a chiseled cross "+" on concrete, for a corner of this tract;

THENCE S 69° 03' 13" E, a distance of 20.06 feet to a concrete nail, for a corner of this tract;

THENCE S 29° 52' 51" W, a distance of 4.03 feet to the POINT OF BEGINNING.

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Kung H. Li
Registered Public Surveyor No. 2432

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