

**La Villita Culinary Concept multi-Restaurant Lease**  
**Grupo La Gloria, LLC.**

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**1. Basic Information, Definitions.**

<b>Authorizing Ordinance:</b>	2017-12-14-1004
<b>Landlord:</b>	City of San Antonio
<b>Landlord’s Address:</b>	P.O. Box 839966, San Antonio, Texas 78283-3966

<b>Tenant:</b>	Grupo La Gloria, LLC, its successors and assigns
<b>Tenant's Address:</b>	411 E. Cevallos San Antonio Texas, 78201
<b>Premises:</b>	As described and defined in Section 2 and generally depicted on <b>Exhibit A</b> attached hereto and incorporated herein by this reference, and including the:  Gissi House (250 King Philip also known as building number 25) with associated outdoor space; and  Faville House (510 Villita Street also known as building number 15) with associated outdoor space; and  Land for the to be newly constructed restaurant building (to be known as Building Number 26) and associated outdoor space all located in Maverick Plaza, San Antonio, Texas.
<b>Permitted Use:</b>	Siting, development, construction, renovation, installation, maintenance, repair, use and operation of three separately themed restaurants as further described in Section 2.
<b>Effective Date:</b>	The day on which this agreement is executed by the last of the parties.
<b>Commencement Date:</b>	The Commencement Date shall be the date on which the Landlord delivers and the Tenant accepts the Premises after the completion of City's Work in accordance with the terms and conditions of this agreement.
<b>Initial Term:</b>	49 years from the Commencement Date
<b>Renewal Options:</b>	Subject to City Council approval, Tenant shall have the right to renew and extend the Initial Term for five (5) additional ten (10) year terms, each a " <b>Renewal Term</b> " for a potential total lease term of ninety-nine (99) years. The Initial Term and any Renewal Term are collectively hereinafter referred to as the " <b>Term</b> ".
<b>Tenant Improvements:</b>	As described in Section 11, and listed in <b>Exhibit B</b> , attached hereto and incorporated herein by this reference including, but not limited to, the following:

	<ol style="list-style-type: none"> <li>1. New construction of a building for use as a Mexican restaurant seating approximately 150 indoors and 56 outdoors located on the southeast corner of Maverick Plaza</li> <li>2. Rehabilitation, renovation, and expansion of the Gissi House at 250 King Philip and an addition for use as a German restaurant seating approximately 132 indoors and 94 outdoors</li> <li>3. Rehabilitation, renovation, and expansion of the Faville House at 510 Villita Street and an addition for use as a Spanish restaurant seating approximately 74 indoors and 202 outdoors</li> </ol>
<p style="text-align: center;"><b>City's Work:</b></p>	<p>As described in Section 11, and listed in <b>Exhibit C</b>, attached hereto and incorporated herein by this reference including, but not limited to, the following:</p> <ol style="list-style-type: none"> <li>1. Demolition of non-historic restroom and concession facilities</li> <li>2. Construction of kiosks and educational kitchen</li> <li>3. Repaving of King Philip, Villita, and Old Alamo Streets*</li> <li>4. Repaving of Maverick Plaza</li> <li>5. Completing Nueva Street improvements *</li> <li>6. Providing utilities for all of Maverick Plaza improvements and operations including the three Restaurants (as hereinafter defined)</li> <li>7. Installing grease traps of sufficient capacity for the three Restaurants</li> <li>8. Providing structurally sound and commercially functional Roofs, Foundations, Exterior Walls, Windows, Doors, and HVAC systems on the existing buildings known as Gissi House (250 King Philip also known as building number 25) and as Faville House (510 Villita Street also known as building number 15).</li> </ol>
<p style="text-align: center;"><b>Security Deposit:</b></p>	<p style="text-align: center;">None</p>

<b>Base Rent:</b>	\$100,000.00 per year (paid in monthly installments of \$8,333.33) during the Initial Term beginning on the Rent Commencement Date (as hereinafter defined) and increasing by two percent (2%) per year thereafter.
<b>Common Area Maintenance (CAM) Fees:</b>	As defined in Section 4.05; \$0.12 per square foot of the interior of each of the three (3) Restaurants per month commencing on the Rent Commencement Date and increasing 2% per year thereafter.
<b>Utilities Fees:</b>	As defined in Section 4.05; for all water, sewer, electric and gas shall be \$0.23 per square foot of the interior of each of the three (3) Restaurants per month commencing on the Rent Commencement Date and increasing 2% per year thereafter.
<b>Address for Payment of Rent:</b>	City of San Antonio, Treasury Division, Central Billing Station, P.O. Box 839975, San Antonio, Texas 78283-3975
<b>Common Areas:</b>	All areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.
<b>Director:</b>	The Director of the City of San Antonio's Center City and Development and Operations Department or such other successor department as designated by Landlord.
<b>Master Development Plan:</b>	Upon execution of this lease, the Tenant and Landlord shall begin work on a Master Development Plan to memorialize their agreement as to the development of the property subject to this Lease to be mutually agreed upon by the parties. If Tenant and Landlord do not come to an agreement on said Master Development Plan within a other reasonable time mutually agreed to by the parties, then either Landlord or Tenant shall have the right to terminate this Lease by written notice to the other upon which neither party shall have any further obligation or liability hereunder and this Lease shall be of no further force or effect.
<b>Operational and</b>	Upon execution of this lease, the Tenant and Landlord shall begin work on a Programming and Maintenance Plan that will

<b>Programming Agreement:</b>	be mutually beneficial to both parties. Construction will not begin until Tenant and Landlord agree on Programming and Maintenance Plan.
<b>Funding Tenant Improvements</b>	The parties acknowledge that Tenant will be obtaining financing to fund Tenant's obligations hereunder. The parties further acknowledge that for Tenant to obtain financing, it is likely that Tenant's lender(s) will require amendments to this Lease. Landlord agrees to amend this Lease to the extent necessary or required for Tenant to obtain financing (including without limitation debt, equity, or tax credit, financing) upon mutually agreed upon terms and conditions. Notwithstanding anything in this Lease to the contrary, Tenant shall not be obligated to expend any funds or commence any activity or work otherwise required in this Lease until Tenant has obtained financing. In the event Tenant is unable to obtain financing within 12 months after the date the City provides written documentation acceptable to Tenant evidencing completion of City's Work which is necessary for the commencement of Tenant Work and actions the City is required to complete by this Lease, Tenant shall have the right to terminate this Lease agreement as of that date by providing written notice to the City, whereupon this Lease shall be of no further force or effect and Tenant shall have no obligation or liability hereunder. In no event shall failure to obtain financing be an event of default by Tenant under this Lease.

To the extent the provisions of this Section 1 are inconsistent or in conflict with the provisions contained in the rest of the body of this Lease, the terms and provisions contained in the rest of the body of this Lease below shall govern.

**2. Grant, Use.**

**2.01.** Subject to the terms and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord a portion of that certain real property located at 323 S Alamo Street, Bexar County, San Antonio, Texas 78205 within the area commonly known as La Villita containing approximately .118 acres ( 5,141 sq.ft.) and more approximately depicted in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**") together with any buildings, structures, fixtures, fences, utility installations, parking facilities, landscaping and irrigation systems currently existing or hereafter located thereon (collectively, "**Existing Improvements**") for the Permitted Use. The Existing Improvements together with the Tenant Improvements are herein referred to collectively, as the "**Improvements**" and the Land and the Improvements are

herein collectively referred to as, the “**Premises**”). The parties hereby acknowledge and agree that the Existing Improvements include a building comprised of approximately .118 acres (5,120 sq. ft.) known as the Gissi House also known as building number 25 currently existing on the Land and located at 250 King Philip, and a building comprised of approximately .113 acres (4,934 sq. ft.) known as Faville House also known as building number 15 currently existing on the Land and located at 510 Villita Street. It is acknowledged and agreed that the exact boundaries of the Land shall be determined by the Survey (as hereinafter defined). The legal description for the Land contained in the Survey shall be added, as an amendment to this Lease, as the description of the Land for the purposes of this Lease. During the Term of this Lease, Landlord shall ensure and provide access to the Restaurants to and from the Riverwalk and to and from the surrounding streets that is reasonably sufficient and adequate to enable successful operation of the Restaurants (as hereinafter defined) and to fulfill the terms, conditions, obligations and requirements of the Master Development Plan and the Operating and Programming Agreement.

**2.01.01. Ownership of Certain Improvements.** Notwithstanding any other provision of this Lease Agreement, during the Term of this Lease all right, title and interest in and to the Tenant Improvements (but not the Land or the Existing Improvements) shall be vested in Tenant. Tenant shall have the right to encumber the Tenant Improvements with a mortgage, deed of trust, or other security interest for the purposes of obtaining financing. Upon the termination of this Lease, all rights and interests of Tenant in the Tenant Improvements (as hereinafter defined), together with all other structures and real property consisting of the Premises, shall be the sole property of Landlord for all purposes as if any ownership of Tenant therein had not occurred. All other structures and improvements existing on the Premises on the Effective Date (and that are not part of the Tenant Improvements) shall remain the sole property of Landlord throughout the Term of this Lease and after expiration or earlier termination thereof. The Tenants use of the Tenant Improvements will be subject to the terms and conditions of this Lease. All personal property and equipment brought to the Premises by the Tenants shall remain Tenant’s property provided the Tenant is not in Default of this Lease.

**2.03.** Tenant agrees that the Premises shall be utilized for the sole purpose of siting, development, construction, renovation, rehabilitation, installation, maintenance, repair, use and operation of three (3) restaurants (collectively, the “**Restaurants**”) and ancillary and related uses supporting the Restaurants and/or the Master Development Agreement or the Operating and Programming Agreement, including serving food and beverages, including alcoholic beverages, and sale of merchandise promoting the operations of the Restaurants (collectively, the “**Permitted Use**”).

**2.04. Programming of Maverick Plaza:** Tenant hereby covenants and agrees to engage in regular public programming of Maverick Plaza including the newly constructed educational kitchens. The terms and conditions of such public programming shall be governed by a separate operational and programming agreement to be entered into by Landlord and Tenant in accordance with the RFI\_16-052 and such terms and conditions mutually acceptable to the parties (the “**Operational and Programming Agreement**”). In the event the parties fail to execute the Operational and Programming Agreement within a time period mutually agreed to by the parties, Tenant may terminate this Lease by providing written notice to the City, whereupon this Lease

shall be of no further force or effect and Tenant shall have no obligation or liability hereunder. This Lease shall be amended to incorporate and add the Operational and Programming Agreement as an exhibit hereto and in the event of a conflict between this Lease and the said Operational and Programming Agreement, the terms and conditions of the Operational and Programming Agreement shall govern.

**2.05.** Landlord hereby agrees that Tenant shall have the right to schedule and close Maverick Plaza for private events for a total of 8 days each calendar year without charge.

**2.06.** Tenant agrees that it will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable

**2.07.** The Tenant covenants and agrees that it will operate and conduct its business except while the Premises are untenable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

**2.08.** The Tenant agrees to maintain the following minimum hours of operation for the Premises: 11:00 a.m. to 10:00 p.m. Monday through Thursday, 11:00 a.m. to 11:00 p.m. Friday and Saturday and Noon – 10:00 p.m. on Sundays. Tenant may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

**2.09.** TENANT understands and agrees that any violation of the above stated operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation during any one year period shall result in a written notice from CITY.
2. TENANT shall pay CITY \$50.00 for each violation thereafter occurring during that one year period.
3. At the Landlord's option, the fifth or any succeeding violation occurring during a one year period may be deemed a material breach and default and cause for lease termination without opportunity to cure.

**2.10.** The Tenant agrees to comply with any and all sign design guidelines, provisions, and limitations in place now or in the future, including those within the City of San Antonio Unified Development Code and any applicable Master Plans approved and adopted by the City. Tenant shall not place any signs on the Premises that are not directly related to the provision of Tenant's commercial operations. Tenant shall not place any political or sectarian signs on the

Premises.

**2.11. Additional Space:** Tenant has requested the right to make use of space in La Villita for administrative activities in support of the construction and programming of the Premises. Landlord, acting administratively through the Director, shall have authority to grant such limited rights via separate written agreement to be executed by the Director and Tenant. The Director shall set the terms and conditions of such use including the exact space, the types of uses and the length of time to be occupied. After completion of Tenant Improvements, Director shall have the right to terminate such use at any time in their sole discretion. For all other purposes such limited designated spaces shall be considered a portion of the Premises.

### **3. Rent.**

**3.01.** Tenant shall pay no Rent and no Rent shall accrue during the period commencing on the Effective Date and ending on the day after the Tenant's Construction Period (as hereinafter defined) expires. "**Rent**" as used in this Lease includes all sums due to Landlord under this lease, whether Base Rent, Common Area Maintenance (CAM) Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated. Commencing the first day of the month after the expiration of the Tenant Construction Period (the "**Rent Commencement Date**") Tenant shall begin paying Rent.

**3.02. Dedicated Fund:** Landlord hereby covenants and agrees it will place the Rent paid by Tenant into a dedicated fund to be used in support of maintenance and program activities for Maverick Plaza (the "**Maintenance and Program Fund**") and will place an additional \$600,000.00 during the first seven (7) years of the Initial Term of this Lease into the Maintenance and Program Fund derived from inner city TIRZ funds. Landlord further covenants and agrees that expenditures from such Maintenance and Program Fund shall be subject to the Operational and Programming Agreement to be entered into by the parties.

**3.03.** Commencing on the Rent Commencement Date, Tenant must pay "**Base Rent**" for each twelve-month period during the Initial Term of this Lease in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) to Landlord. Each year thereafter on the anniversary of the Rent Commencement Date the Base Rent shall increase by 2%. The Base Rent shall be paid in equal monthly installments in advance on the first day of each month, beginning on the Rent Commencement Date. If Tenant begins operations on a day other than the first day of the month Rent shall be prorated by the day for that month and shall be paid on the first day of the succeeding month along with the regular monthly payment. If Tenant is delinquent in paying any Rent, Tenant must pay to Landlord upon demand a late charge of \$50.00. Tenant shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and



regulations adopted by Landlord's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Landlord's other rights and remedies.

**3.04.** Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant may not abate Rent for any reason except as otherwise expressly provided for in this Lease.

#### **4. Common Areas and Utility Fees.**

**4.01.** "Common Areas" mean all areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

**4.02.** Tenant has the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with others and subject to such reasonable rules and regulations as the Landlord may from time to time prescribe. Such use must be requested in writing a minimum of 30 days in advance.

**4.03.** Landlord may change the Common Areas, including, without limitation, their dimensions and location, without prior consultation with, Tenant.

**4.04.** Landlord will, subject to events beyond its reasonable control, manage, operate, and maintain the Common Areas, except for damage caused by Tenant or those whose presence is through Tenant.

**4.05** During the Term of this Lease, Landlord shall provide maintenance for the Common Areas and in exchange therefore, Tenant shall pay Landlord a maintenance fee equal to \$0.12 per square foot of the interior of each of the three (3) Restaurants per month (the "CAM Fee") commencing on the Rent Commencement Date, and the CAM Fee shall increase by 2% each year thereafter on the anniversary of the Rent Commencement Date. During the Term of this Lease, Landlord shall provide all electric, gas, water, and sewer utility services to the Tenant and the Premises and in exchange therefore, Tenant shall pay Landlord a utilities fee equal to \$0.23 per square foot of the interior of each of the three (3) Restaurants per month (the "Utility Fee") commencing on the Rent Commencement Date, and the Utility Fee shall increase by 2% each year thereafter on the anniversary of the Rent Commencement Date.

**4.06. Special right of access to Arneson River Theater and Cos House.** Tenant shall have the right to have private events at the Arneson River Theater and Cos House eight (8) days per year with no rental fee, subject to such use being scheduled and approved through the appropriate City office (currently Center City Development and Operations), which approval shall not be unreasonably delayed, withheld, conditioned or denied.

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

**5.01.** The Initial Term of this Lease shall be for a period of forty-nine (49) years commencing on the Commencement Date and ending on the earlier of the date that is forty-nine (49) years thereafter or the date this Lease is sooner terminated pursuant to and in accordance with the terms and conditions of this Lease (the “**Initial Term**”).

**5.02.** If Tenant is not in default under the Lease, and subject to City Council approval, , Tenant may request to extend the Initial Term of this Lease for five (5) additional ten (10) year terms, each a “**Renewal Term**” by giving Landlord six (6) months prior written notice before expiration of the Initial Term or the then current and applicable Renewal Term. Landlord’s acquiescence in Tenant’s holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance.

**5.03.** Renewal Terms are governed by this Lease just as the Initial Term. The Initial Term and any and all Renewal Terms are collectively referred to herein as, the “**Term**” of this Lease.

## **6. Tenant’s Affirmative Promises.**

Tenant promises that it will:

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

**6.02.** Cooperate with the Landlord in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 that was reconfirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable.

**6.03.** Allow Landlord to enter the Premises to perform Landlord’s obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

**6.04.** Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

**6.05.** Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

**6.06.** Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

**6.07.** On request, execute an estoppel certificate that states the commencement date of the lease, identifies any amendments to the lease, describes any rights to extend the Initial Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises and delivers to Tenant and Tenant's lender(s) buyer's written agreement to honor this Lease according to its terms that is reasonably acceptable to Tenant and Tenant's lender(s), Tenant will deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender.

**6.08.** Maintain a fully functioning lock system on the premises. Any changes to the lock systems shall receive the prior written approval of the Landlord through 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; and ensure that the Landlord through Director or his/her designee will be provided a copy of keys to enter the leased premises.

**6.09. Sales Reports including Separate Reports of Alcohol Sales:** Tenant shall provide Landlord a copy of all written sales tax reports, including alcohol sales tax reports, reported to the Texas State Comptroller ("Comptroller") contemporaneously with such report being delivered to Comptroller. If Comptroller rules do not require Tenant to make a monthly sales tax report, Tenant's quarterly or annual report to the City shall include a monthly breakdown of total sales. Tenant shall report alcohol sales on a monthly basis in a report separate and apart from all other sales in a form and content approved by Landlord.

**6.10.** Tenant agrees to work with and/or participate in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

**6.11.** TENANT shall pay on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are levied upon the Leased Premises after the Commencement Date for which TENANT is liable, or upon TENANT, or upon the business conducted on the Leased Premises, or upon any of TENANT'S property used in connection therewith, and TENANT shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by TENANT.

**6.12.** As a result of the public purpose being served by this Lease in promoting the economic development of La Villita and in accordance with that certain letter from the Bexar County Appraisal District dated January 24, 2018 attached hereto and incorporated herein as **Exhibit D**, it is the expectation of the Parties that the Premises will not be subject to property taxation; *provided, however*, that in the event it is determined that this Lease causes the Premises to be subject to property taxation, then, in such event, Tenant shall be subject to, and shall be responsible for the payment of property taxes and other impositions levied on or payable on the Premises. In addition and regardless of the foregoing, Tenant shall pay or cause to be paid, all impositions that accrue during the Term, whenever levied or payable, including with respect to

Tenant's interest in the Premises or against any Improvements or Tenant's personal property located in, on or about the Premises, including the Tenant Improvements.

**7. Indemnity.**

**7.01. EXCEPT AS ARISING DIRECTLY OR INDIRECTLY FROM NEGLIGENT ACTS OR OMISSIONS OF THE CITY, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, LICENSEES, INVITEES, CONTRACTORS OR REPRESENTATIVES, TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT'S activities on the Premises or TENANT's exercising of the rights granted by this Lease including any acts or omissions of TENANT, any agent, officer, director, representative, employee, Tenant or subcontractor of TENANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Lease. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**7.02. 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. TENANT shall advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.**

**7.03 Notwithstanding anything in this Lease to the contrary, Landlord hereby acknowledges and agrees that any indemnification or hold harmless covenant or agreement made in this Lease by Tenant shall not apply to any 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 which arise from activities or events conducted or controlled by a party other than Tenant in Maverick Plaza or La Villita outside the boundaries of the Premises or which otherwise occur in Maverick Plaza or La Villita outside the boundaries**

**of the Premises.**

**8. Tenant's Negative Promises.**

Tenant promises that it will not:

**8.01.** Use the Premises for any purpose other than the Permitted Use.

**8.02.** Create a nuisance.

**8.03.** Interfere with any other tenant's normal business operations or Landlord's management of La Villita.

**8.04.** Permit waste.

**8.05.** Use the Premises in any way that would increase Tenant's insurance premiums or void Tenant's insurance on the Premises.

**8.06.** Alter the Premises without Landlord's written consent, except as otherwise provided for in this Lease.

**8.07.** Allow a lien to be placed on the Premises, which is not promptly removed in accordance with the requirements of this Lease.

**8.08.** Make repair, maintenance or cleaning requests to City personnel other than the City's on-site facility manager.

**8.09.** Attempt to change the name of Maverick Plaza or any other portion of the Premises to any other name.

**9. Landlord's Affirmative Promises.**

Landlord promises that it will:

**9.01.** Lease to Tenant the Premises for the entire Initial Term.

**9.02.** Obey all applicable laws with respect to Landlord's operation of La Villita and its Common Areas.

**9.03.** Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, and windows, and (e) HVAC serving the Premises. Landlord's on-site facility manager shall maintain a form for the reporting of repairs, shall track the progress of the requested repairs and be Tenant's point of contact for all official

information regarding such repairs. Landlord shall within a reasonable period of time make all necessary repairs reported to the on-site facility manager. If Landlord fails to make or complete the necessary repairs within thirty (30) days (or such other reasonable time agreed to in writing by the parties) after Tenant has provided the on-site facility manager a written request for the same, the Tenant, in addition to any other rights granted by this Agreement, has the right but not the obligation to make the repairs and deduct the cost and expenses incurred to make or complete the repairs from Rent owed until said costs and expenses are fully reimbursed, however, no such repairs shall be commenced until they have been presented to the Landlord for approval, which shall not be unreasonably withheld.

Notwithstanding the preceding, Tenant shall be responsible for all maintenance of the newly constructed Mexican themed restaurant building and associated improvements during the Term of this Lease.

**9.04** Seek input from Tenant and take Tenant's concerns into consideration during programming, operation, policy and/or budget decisions concerning Maverick Plaza and La Villita. Landlord shall accept input from Tenant which can be submitted to the on-site facilities manager or the Director in writing at any time during the Lease Term.

## **10. Landlord's Negative Promise.**

**10.01.** Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

**10.02.** Landlord promises that it will not communicate with any person regarding this Lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.

**11. Construction and Alterations.** The period commencing on the Effective Date and ending on the date on which the Tenant Construction Period (as hereinafter defined) expires shall be the "Construction Period".

### **11.01. City Work and Tenant Improvements.**

- a. **City Work.** During the Construction Period, Landlord shall at no cost to Tenant commence, construct and complete all work and actions set forth in **Exhibit C** attached hereto and incorporated herein by this reference (the "City Work"). All City Work shall be conducted with due diligence and completed in a good and workmanlike manner in accordance with applicable federal, state and local laws, regulations, rules, ordinances, rules, and requirements.
  - i. Without limiting the foregoing and notwithstanding anything in this Lease to the contrary, no later than six (6) months prior to the date upon

which Tenant shall commence construction of the Tenant Improvements, Landlord shall deliver to Tenant a written building pad certification satisfactory and acceptable to Tenant (at Tenant's sole reasonable discretion) issued by experienced and appropriate engineers and contractors duly licensed in the state of Texas certifying that the Land is suitable for the Permitted Use and suitable for construction pursuant to and in accordance with the Tenant's Construction Plans (as hereinafter defined) (the "**Site Certification**").

- ii. The Site Certification shall state, among other things, that that the Land has been properly zoned and all governmental and regulatory approvals (except for the building permits) required for the Permitted Use have been obtained; that utilities (water, electric, sewer, gas, and telecommunications) and associated distribution lines and facilities are of adequate size and capacity for the Permitted Use are available on the Land; that an environmental survey, assessment, and investigation (including a phase 1 and phase 2 environmental assessment if necessary) of the Premises was completed by the environmental engineer and that the recommendations contained in the resulting environmental report(s) were followed; that an archeological survey, assessment, and investigation of the Premises was completed and that the recommendations contained in the resulting archaeological reports were followed; that mass grading is complete; and that a soils investigation was completed, that the grading was observed and tests were performed by the soils engineer, and that the recommendations contained in the preliminary soils report were followed. The report must also conclude that, to the best of the soils engineer's knowledge, based on all of the preceding, the Land is suitable to support the buildings pursuant to the Tenant's Construction Plans.
- b. Tenant Improvements. On the date Tenant receives the Site Certification from the Landlord, Tenant shall at no cost to Landlord commence all work and actions set forth in **Exhibit B** attached hereto and incorporated herein by this reference (the "**Tenant Improvements**"). The period commencing on the date Tenant receives the Site Certification from the Landlord and ending on the date that is eighteen (18) months after the date all the City's Work is completed, subject to Force Majeure provisions of this Lease, shall be the "**Tenant Construction Period**". During the Tenant Construction Period, Tenant shall construct and install the Tenant Improvements so that the Premises will provide attractive, well-designed facilities that promote the marketing of merchandise, products and/or services and present a positive image to La Villita patrons. Landlord hereby acknowledges and agrees, notwithstanding anything in this Lease to the contrary, Tenant shall

have no obligation to commence or complete construction of the Tenant Improvements unless and until the City has delivered the Site Certification to Tenant and the City's Work has been completed. Within one-hundred twenty (120) days after substantial completion of all Tenant Improvements, the Tenant shall provide Landlord as built survey showing the location of all Tenant Improvements issued by a surveyor licensed in the State of Texas (the "**As-Built Survey**"). In the event there are any discrepancies between the Survey and the As-Built Survey, the As-Built Survey will govern and this Lease will be amended to reflect the same.

**11.02. Surveys.** No later than forty-five (45) days after the Effective Date, Landlord shall, at its expense, obtain a signed and sealed utility survey prepared and issued by a licensed professional utility surveyor reasonably acceptable to Tenant and certified to Landlord, Tenant, Tenant's lender (if any and as named by Tenant), Kennedy Sutherland, LLP and the Title Company (as hereinafter defined) depicting all utility lines, conduits, boxes and related facilities existing on the Premises (the "**Utility Survey**"). No later than forty-five (45) days after the Effective Date, Tenant shall, at its expense, obtain an ALTA/ASCM survey (the "**Survey**") prepared by a licensed professional land surveyor reasonably acceptable to Landlord issued by an MAI appraiser. The Survey shall be certified to Landlord, Tenant, Tenant's lender (if any and as named by Tenant), Kennedy Sutherland, LLP and the Title Company (as hereinafter defined). The Survey shall depict all structures and encumbrances on the Land including the Existing Improvements and all items shown on the Title Commitment (as hereinafter defined) and shall include a meets and bounds legal description of the Land.

**11.03. Title commitment.** No later than thirty (30) days after the Effective Date, Tenant shall, at its expense, obtain from a title insurance company selected by Tenant and licensed to do business in Texas (the "**Title Company**") a commitment for a leasehold owner policy of title insurance in and for the Premises (the "**Title Commitment**"). Tenant shall provide written object to any matters contained or set forth in the Title Commitment or the Survey no later than ten (10) business days after Tenant receives the Survey (collectively, the "**Title Objections**"). Landlord shall be under no obligation to cure any exceptions or reservations, except as necessary to deliver the Site Certification or to enable construction of the Tenant Improvements. Any matters disclosed by the Title Commitment but not set forth in the Title Objections together with any other title matters created, suffered, permitted or incurred by or at the request of Tenant during the Term shall constitute "**Permitted Encumbrances**" hereunder. If Tenant does not obtain a title commitment, then the Permitted Encumbrances shall be all validly existing covenants, restrictions, liens, conditions, or easements, together with all other matters recorded in the Real Property Records of Bexar County, Texas, if any, affecting all or any portion of the Premises, together with any and all encumbrances and other title matters created, suffered, permitted or incurred by or at the request of Tenant during the Term.

**11.04. Construction Plans.**



**11.04.01 For City Work.** Landlord hereby acknowledges and understands that financing, construction and completion of the Tenant Improvements is time sensitive and dependent on completion of the City Work. Accordingly, Landlord shall coordinate all construction plans and schedules for the City Work with Tenant. Landlord shall provide Tenant reasonable time, but no less than ten (10) business days, to review and approve the construction plans and schedules for the City Work. Approval by Tenant of any of the construction plans or schedules for the City's Work shall not constitute a representation that the same comply with any applicable requirements, safety standards or industry standards, and Tenant, shall not have any liability as a result of its approval or disapproval of the same.

**11.04.02 For Tenant Improvements.** Prior to any commencement of construction of the Tenant Improvements, Tenant shall cause to be prepared by a qualified architect and/or engineer licensed to do business in the State of Texas, ninety percent (90%) construction plans and specifications for the Tenant Improvements, which shall include, without limitation, plans, schematic drawings and site elevations for the Restaurants including the proposed newly constructed restaurant building, as well as the renovations to the existing buildings any construction safety plans that are necessary to complete the Tenant Improvements (the "**Tenant's Construction Plans**"). The Tenant's Construction Plans shall show in reasonable detail (i) all proposed buildings, structures, fixtures, signage, equipment and other improvements to be constructed as part of the Tenant Improvements and (ii) all uses to be made of each area of the Premises. Prior to commencement of Tenant Improvements, Tenant shall submit the Tenant's Construction Plans to Landlord for approval, and Landlord's failure to provide approval within ten (10) days after its receipt of the Tenant's Construction Plans shall cause the Tenant's Construction Period to be extended by each day until such approval is given. Approval by Landlord, of the Tenant's Construction Plans shall not constitute a representation that the Tenant's Construction Plans comply with any governmental requirements, safety standards or industry standards, and Landlord, shall not have any liability as a result of its approval or disapproval of the Tenant's Construction Plans. In the event that Tenant is unable to obtain Landlord's approval of the Tenant's Construction Plans, Tenant may terminate this Lease by providing written notice to the Landlord, whereupon this Lease shall be of no further force or effect and Tenant shall have no obligation or liability hereunder.

**11.05. Historic and Design Review Commission and Other Advisory Boards.** Tenant shall work diligently and in good faith to obtain all approvals or consents from the Historic and Design Review Commission with respect to the design, development and construction of the Tenant Improvements which are necessary to commence and complete the Tenant Improvements within the terms of this Lease and applicable law. Tenant shall also work diligently and in good faith to obtain the approval and consent of any other Advisory Board or Commission with jurisdiction over the Tenant Improvements. Landlord shall cooperate with and support Tenant's efforts and actions required by this Section 11.04. In the event that Tenant is unable to obtain the permits or approvals required herein, Tenant may terminate this Lease by providing written notice to the City, whereupon this Lease shall be of no further force or effect and Tenant shall have no

obligation or liability hereunder.

**11.06. Adequate Funding, Performance Bond and Contractor's Insurance.** Prior to commencing any construction activity Tenant shall provide evidence to the Director that (1) Tenant has adequate funding to pay for the Tenant Improvements; (2) Tenant's contractor has provided adequate performance bond guaranteeing completion of Tenant Improvements; and (3) Tenant's contractor has provided adequate proof of insurance coverage. Notwithstanding anything in this Lease to the contrary, Tenant's failure to obtain or provide evidence of adequate funding as required by this Section 11.05 due to or arising from (in whole or in part) any action or inaction of the Landlord (including without limitation, amending this Lease or completing all or any portion of the City Work) shall not be deemed an event of default or violation of this Lease by Tenant.

**11.06. Staging Plan.** Tenant shall submit a construction staging plan to the Director delineating egress and ingress into the Premises, as well as, required safety control items and any necessary use of City owned property outside of the Premises.

**11.07.** Subsequent to Landlord's approval of the Tenant's Construction Plans and delivery of the Site Certification, Tenant shall immediately apply for and diligently pursue, at Tenant's expense, any and all permits required to complete the Tenant Improvements. Tenant, at its expense, shall construct, equip and complete the Tenant Improvements at all times with due diligence and in a good and workmanlike manner in accordance with all applicable legal and code requirements, in order to complete the same and open the Restaurants for business to the public on the later of: the date that is one (1) month after the Tenant Construction Period has expired or one (1) month after the City has issued all certificates of occupancy for each of the three Restaurants. In the event that Tenant is unable to obtain the permits or approvals required herein, Tenant may terminate this Lease by providing written notice to the City, whereupon this Lease shall be of no further force or effect and Tenant shall have no obligation or liability hereunder.

**11.08. Tenant's Initial Capital Investment.** Tenant covenants and agrees that during the period commencing on the Commencement Date and ending on the date that is seven (7) years thereafter (the "Tenant's Initial Investment Period"), Tenant shall invest and spend no less than SEVEN MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,600,000.00) (the "Tenant's Initial Capital Investment") in fulfilling its obligations under this Lease, including its obligation to design, develop and construct the Tenant Improvements. Any amount in excess of the Tenant's Initial Capital Investment which is necessary or required to fulfill Tenant's obligations under this Lease shall be paid by the Tenant. The Tenant's Initial Capital Investment shall be made from time to time and in amounts determined by Tenant in its sole and absolute discretion so long as the full amount of Tenant's Initial Capital Investment is made no later than the expiration of Tenant's Initial Investment Period.

**11.09.** All such construction shall be completed free and clear of all liens, encumbrances and security instruments, except as otherwise permitted in this Lease. If any mechanics,

'materialmens' or other lien which is not otherwise permitted by this Lease is filed against the Premises or any interest in this Agreement as a result of any work or act of Tenant, Tenant shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 days after the filing thereof.

**11.10.** Tenant shall deliver to the Director a copy of the Certificate of Occupancy with respect to the Restaurants within 20 days after Tenant's receipt thereof from the City.

**11.11.** Tenant shall not construct, or allow to be constructed, any other improvements or structures on the Premises not shown on the Tenant's Construction Plans nor shall Tenant make, or allow to be made, any alterations except as otherwise provided in this Lease without the prior written approval of the Landlord through Director which shall not be unreasonably withheld, conditioned, delayed or denied 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.

## **12. Insurance.**

**12.01.** Prior to the commencement of any work under this Lease, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Operations Department, which shall be clearly labeled "*La Villita – Restaurant*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by the City's Center City Development and Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

**12.02.** The City reserves the right to review the insurance requirements of this Article during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverage 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 Agreement. In no instance will City allow modification whereby City may incur increased risk.

**12.03.** A Tenant's financial integrity is of interest to the City; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, Commencing on the Rent Commencement Date, Tenant shall obtain and maintain in full force and effect for the duration of this Lease, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to

do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following:  a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Pollution Liability e. Contractual Liability f. Fire Legal Liability	For Bodily Injury and Property Damage of:  \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability:  a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.00 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Liquor Host Liability- if alcoholic beverages are served on the Premises	\$1,000,000 per occurrence
7. Liquor Legal Liability- if alcoholic beverages are sold on the Premises	\$1,000,000 per occurrence
8. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement

	cost during construction phase of any new or existing structure.
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**12.04.** Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of Tenant herein, and provide a certificate of insurance and endorsement that names the Tenant and the CITY as additional insured. Tenant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

**12.05.** As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Tenant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City within 10 business days of the requested change. Tenant shall pay any costs incurred resulting from said changes.

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

**12.07.** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Lease.

**12.08.** In addition to any other remedies the City may have upon Tenant'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 Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

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

**12.10.** It is agreed that Tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Lease.

**12.11.** It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Lease and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

**12.12.** Tenant and any Subcontractors are responsible for all damage to their own equipment and/or property.

**12.13.** During the Tenant Construction Period, Tenant must provide or cause its contractors or subcontractors to provide the types of insurance (including Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance reasonably required by Landlord's Risk Manager to protect Landlord's interest during the Tenant Construction Period. The policies likewise must be in amounts set forth in the Table above to cover all risks of physical loss during the term of any construction contract and in place until work is accepted by the City of San Antonio as evidenced by a certificate of occupancy issued by the City of San Antonio. Tenant must maintain said insurance during the Tenant Construction Period. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

**12.14.** Tenant understands and agrees that violation of the insurance requirements of this section would be a material breach of this Lease and cause for the Landlord to terminate provided the Landlord has given Tenant (or Tenant's lender(s)) fifteen (15) days prior written notice and an opportunity to cure. Because Landlord's damages from such a breach would be difficult to estimate or quantify, Tenant accepts the amount of \$50 per day in violation of this section as a reasonable, negotiated estimate of Landlord's damages, until such time as the breach is cured.

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

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

**14. Archeological and Environmental Matters.** Before Tenant can start any work on the Premises, and no later than thirty (30) days after the Effective Date of this Lease, Landlord (at its sole cost and expense) shall provide Tenant: (a) true and correct copies of all surveys, reports, investigations, and documents in Landlord's possession related to the archeological condition of the Premises as of the Effective Date; and (b) archeological investigations, surveys, studies and reports evidencing the current condition of the Premises. Notwithstanding anything in this Section 14 (inclusive of subsections), Tenant shall not be liable for any archeological condition that existing on the Premises prior to the Effective Date of this Lease or which were caused or otherwise effected by actions or inactions of Landlord or its employees, agents, contractors, representatives or any other third parties. In the event that any of the archeological investigations, studies, surveys, or reports provided hereunder are objectionable to Tenant or otherwise detrimental to the project (i.e., increase cost or time), Tenant shall have the right to terminate this Lease by written notice to City upon which Tenant shall have no further obligation or liability hereunder and this Lease shall be of no further force or effect.

Before Tenant can start any work on the Premises, and no later than thirty (30) days after the Effective Date of this Lease, Landlord (at its sole cost and expense) shall provide Tenant: (a) true and correct copies of all surveys, reports, investigations, and documents in Landlord's possession related to the environmental condition of the Premises as of the Effective Date; (b) an environmental baseline survey evidencing the condition of the Premises as of the date of said environmental baseline survey; and (c) a phase one environmental assessment of the Premises, and a phase two environmental assessment if it is so desired or required. Notwithstanding anything in this Section 14 (inclusive of subsections), Tenant shall not be liable for any Release, Hazardous Materials, violations of Environmental Laws, or any environmental condition that existing on the Premises prior to the Effective Date of this Lease or which were caused or otherwise effected by actions or inactions of Landlord or its employees, agents, contractors, representatives or any other third parties. In the event that any of the environmental investigations, assessments, studies, surveys, or reports provided hereunder are objectionable to Tenant or otherwise detrimental to the project (i.e., increase cost or time), Tenant shall have the right to terminate this Lease by written notice to City upon which Tenant shall have no further obligation or liability hereunder and this Lease shall be of no further force or effect.

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

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

**14.03.** “Release” means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

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

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

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

**14.07.** Landlord may conduct, at Tenant’s expense, periodic inspections of the Premises and Tenant’s operations thereon to assure compliance with Tenant’s environmental covenants. Tenant need not pay the expense of more than one such inspection in any 36-month period.

**14.08.** If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant’s actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or



engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

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

**14.10 Grease Trap.** Landlord shall (at its sole cost and expense) install grease traps of adequate quality and capacity sufficient for the Permitted Use. Tenant shall be responsible for the regular disposal of any grease generated on the Premises and the regular cleaning and maintenance of any grease traps to include at a minimum cleaning once per calendar quarter. Tenant shall provide Landlord copies of receipts from the service provider of all such cleanings and maintenance actions. Cleaning conducted by the Landlord, as a result of on-going neglect, will be reimbursed by the Tenant to the Landlord within thirty (30) days of notification.

**15. Landlord's Municipal Powers.** Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

**16. Prohibited Interests in Contracts.**

**16.01.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

**16.02. Tenant warrants and certifies as follows:**

(i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

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

**17. Casualty/Total or Partial Destruction.**

**17.01. Obligations of Tenant.** In the event the Improvements are damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord, and Tenant, at its own expense, shall promptly repair, replace and rebuild the same, at substantially the same value and character as the Improvements existing immediately prior to such time. Damage to the Improvements shall cause an abatement of Tenant's obligation to pay Rent to Landlord or to make any other payments required to be made by Tenant under this Lease in direct proportion to the damaged area of the Improvements. Based on the total interior square footage of the Restaurants the percentage of the damaged or untenable area shall be the percentage by which Rent and other payments required to be made by Tenant under this Lease shall be reduced.

**17.02 Insurance Proceeds.** Upon receipt by Tenant of the proceeds of any property or builder's risk insurance policy or policies required in this Lease to be maintained by Tenant, Tenant shall deposit same in an interest-bearing escrow account to pay for the cost of such repair, replacement and rebuilding. Tenant shall receive and hold such proceeds (and any interest earned thereon) in trust for such work, and Tenant shall distribute such proceeds (and any interest earned thereon during construction) solely to pay the cost of such work. If the amount of such insurance proceeds (together with the interest earned thereon) is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Tenant in its sole discretion may choose to either: (a) terminate this Lease, or (b) pay any additional sums required. If the amount of such insurance proceeds (together with the interest earned thereon) is in excess of the costs thereof, the amount of such excess shall be retained by Tenant. Notwithstanding anything in this Section 17 (inclusive of subsections) to the contrary, Tenant shall solely be entitled to receive and retain any insurance proceeds for Tenant's personal property.

**17.03** If, during any renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property; in the event funding for such restoration and repair is not available, Tenant shall have the right (but not the obligation) to make such repairs and all costs and expensed incurred by Tenant therefor shall be deducted from any current and future amounts owed to Landlord If Landlord fails to complete the portion of the restoration for which Landlord is responsible within in a reasonable period of time from the date of written notification by Tenant to Landlord of the casualty, Tenant, at Tenant's option, may 1) make the repairs and deduct the cost of the repairs from any current and future amounts owed Landlord by Tenant until the repairs are fully reimbursed; 2) terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations, or 3) continuing operating in accordance with Section 17.03 above, provided however, no such repairs or expenses shall be entered into until Tenant has presented repair plans to Landlord for written approval, which shall not be unreasonably delayed, withheld, conditioned, or denied.

**17.04** If the Premises cannot be restored within ninety (90) days from the date of written notification by Tenant to Landlord, Tenant has an option to restore the Premises. If Landlord chooses not to or is unable to restore, Tenant, at Tenant's option, may 1) make the repairs and deduct the cost of the repairs from any current and future amounts owed Landlord by Tenant until the repairs are fully reimbursed; 2) terminate this Lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations, or 3) continuing operating in accordance with Section 17.03 above, provided however, no such repairs or expenses shall be entered into until Tenant has presented repair plans to Landlord for written approval, which approval shall not be unreasonably delayed, withheld, conditioned or denied. If Landlord chooses to restore in a reasonable period of time (as mutually agreed to in writing by Tenant and Landlord), Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this Lease by notifying Landlord within ten (10) days. If Tenant does not terminate this Lease, the lease will continue, and Landlord will restore the Premises as provided above.

**18. Condemnation/Substantial or Partial Taking.** Upon receipt of any notice in connection with any proceedings or negotiations with respect to an actual or potential condemnation proceeding (a "Taking"), Landlord shall promptly give Tenant notice of the receipt, contents and date of the notice received. Landlord and Tenant shall each have the right to represent its respective interests in each proceeding or negotiation with respect to a Taking. Landlord and Tenant each agrees to execute and deliver to the other any instrument that may be required or which would facilitate the provisions of this Lease relating to the Taking. Landlord and Tenant shall each have the right to represent its respective interests in each proceeding or negotiation with respect to a Taking. Landlord and Tenant each agrees to execute and deliver to the other any instrument that may be required or which would facilitate the provisions of this Lease relating to the

condemnation.

**18.01.** Upon a Taking of the entire Premises so as it cannot be used for the purposes contemplated by this Lease this Lease will terminate on the first to occur of the date on which Tenant is denied use of the Premises as such use is contemplated hereunder or the date on which such Taking is completed by deed, contract or final order of condemnation; unless otherwise specified by court order. If the Taking is of substantially all of the Premises, or substantially all of the access to the Premises, or of those portions of the Premises that are necessary for Lessee's use of the Premises as contemplated herein, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the Taking, elect to treat the taking in accordance with the preceding sentence. If Tenant does not so notify Landlord, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Base Rent payable hereunder by Lessee shall be equitably adjusted (a "Partial Taking").

**18.02.** It is understood and agreed that all condemnation proceeds for any Partial Taking of the Premises shall be paid to Tenant to be held by it in trust and used for the repair and reconstruction of the Premises and replacement of the Tenant's equipment. Upon the completion of such repair or reconstruction work and the discharge of the Premises and Improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus of condemnation proceeds obtained by Tenant over the cost of repair or reconstruction and shall be liable for any deficiency between the cost of repair or reconstruction and any condemnation proceeds obtained by Tenant.

**18.03** Upon any Temporary Taking (as hereinafter defined) of the use of all or any part of the Premises or Improvements, or both, neither the Term nor the Base Rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. All condemnation proceeds for any Temporary Taking shall be paid to Tenant to be held by it in trust and used for the repair and reconstruction of the Premises and Improvements, with the excess to be retained by Tenant as provided below. If a result of the Temporary Taking is to necessitate expenditures for reconstruction of the Improvements to make them reasonably suitable for Tenant's continued use in connection with its operations under this Lease, after the termination of such Temporary Taking, Tenant shall perform such work in accordance with the provisions of the Lease. Upon the completion of the work and the discharge of the Premises and Improvements from all liens or claims arising therefrom, Tenant shall be entitled to any surplus of condemnation proceeds obtained by Tenant over the cost of repair or reconstruction and shall be liable for any deficiency between the cost of repair or reconstruction and any condemnation proceeds obtained by Tenant. A "Temporary Taking" as used herein shall mean a taking of the use of all or any part of the Premises or Improvements, or both, for a period with a duration of less than twelve (12) months.

**18.04.** Upon any taking or condemnation of all or any portion of the Premises or Improvements, by Landlord, Landlord and Tenant will either agree in good faith to the amount to

be paid by Landlord for such taking, or in the absence of such agreement, the matter will be determined in accordance with the laws of the State of Texas.

**18.05** To the extent permitted by applicable law, Tenant shall be entitled to bring a separate action against a third party condemning authority for the collection of, among other things: (i) the value of the Tenant Improvements or fixtures, furniture and equipment; (ii) relocation costs; (iii) reasonable loss of profits; and (iv) goodwill. Notwithstanding the foregoing, any such action, recovery or collection by Tenant or its sublessees shall not include the value of Tenant's or sublessee's leasehold interest under this Lease.

**19. Holdover.** If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended.

**20. Contractual Lien.**

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

**20.02.** In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant and Tenant's lender(s) at least 30-days prior written notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (B) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering

information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

**20.03.** The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

## **21. Default, Remedies for Default.**

**21.01. *Events of Default.*** If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

**21.01.01.** Tenant fails to pay any installment of Rent when due after receipt of ten (10) days prior written notice to Tenant and Tenant's Lender.

**21.01.02.** Tenant fails to comply with fulfill or perform any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord, which the Lease requires Tenant to comply with, fulfill or perform and does not cure such failure within 30 days after written notice thereof is provided to Tenant and to Lender (the "**Cure Period**"). In the event such failure is not of the type or nature that can be cured within thirty (30) days and provided Tenant has taken action to cure within the Cure Period, the Cure Period shall be extended for a period within which the failure can reasonably be cured to be mutually agreed upon in writing by the parties.

**21.01.03.** This Lease for the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

**21.01.04.** Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act

of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

**21.01.05.** Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant is instituted against Tenant, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

**21.01.06.** Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

**21.01.07.** This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

**21.02. Remedies for Default.** Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

**21.02.01.** In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages. No action taken by Landlord shall be deemed to terminate this Lease unless thirty (30) days' prior written notice of termination is given by Landlord to Tenant and Tenant's lender(s).

**21.02.02.** Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

**21.02.03.** Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses

Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

**21.02.04.** Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant establishes a security deposit by an amount determined by Landlord,

(iii) If Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

**21.03. *Repossession and Alteration of Locks.*** Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

**21.04. *Effect of Termination.*** If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.



**21.05. *Effect if No Termination.*** If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

**21.06. *Liability for Costs Incurred.*** If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

**21.07. *Obligation to Reimburse.*** If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

**21.08. *Default by Landlord.*** Landlord's failure to comply with, fulfill or perform any term or condition of this Lease that Landlord is required to comply with, fulfill or perform in this Lease shall be deemed a "Landlord Default". However, no action or inaction that would otherwise

constitute a Landlord Default under this Lease shall be deemed to be a default until written notice thereof has been given to the Landlord (the "Notice of Landlord Default") and the Landlord has failed to cure the default within thirty (30) days of such notice, or such other time period as is specifically provided in said Notice of Default (the "Landlord's Cure Period"). In the event of a Landlord's Default, Tenant may in its sole discretion pursue any of the following remedies, and such other remedies as may be available to the Tenant at law or in equity: terminate this Lease, withhold further performance under this Lease until Landlord cures the Landlord's Default, seek a court order from the jurisdictional court in the county where the Premises is located requiring the Landlord to fulfill its obligations under this Lease; and/or file a suit for damages.

Regardless of the exercise of any of the above-referenced options, Tenant shall have the right to recover all of Tenant's costs, charges and expenses, including reasonable Attorneys' Fees, incurred in connection with or due to the breach by Landlord of any covenant or agreement of Lessee contained in this Lease. Tenant will have the right at any time following a Landlord's Default which is not cured within the applicable cure period to elect to terminate the Lease. No action taken by Tenant shall be deemed to terminate this Lease unless written notice of termination is given by Tenant to Landlord.

The rights and remedies given to Tenant by this Lease shall not be exclusive, and in addition thereto, Tenant shall have such other rights and may pursue such other remedies as are provided by law or in equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by Tenant shall not impair its standing to exercise any other right or remedy, provided, however, that Lessee shall in no event be liable for special, consequential or punitive damages.

**21.09. *Payments After Termination.*** Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

**21.10. *Rights Respecting Personal Property.*** If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or

relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable. The provisions in this Paragraph are subject to the rights of Tenant's lender(s) in and to the Premises and the personal property located therein.

**21.11. Cumulative Remedies.** Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

## **22. Landlord's Mitigation of Damages.**

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

**22.01.** Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

**22.02.** Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

**22.03.** Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

**22.04.** Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of La Villita;
- (ii) adversely affect the reputation of La Villita; or
- (iii) be incompatible with other users of La Villita.

**22.05.** Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion based on documented data and information, sufficient financial resources to operate the Premises in a first class manner; and

**22.06.** Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

- (i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or
- (ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

### **23. Tenant's Bankruptcy.**

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

**23.01.** "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

- (i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;
- (ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

**23.02.** “Adequate assurance of future performance” by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

**23.03.** Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

**23.04.** Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as “rent”, constitute “rent” for the purposes of Section 502(b)(6) of the Bankruptcy Code.

**23.05.** If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord’s property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant’s bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

**23.06.** If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee’s future performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant’s receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant’s proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord’s receipt of the notice.

**23.07.** To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant, except as otherwise agreed to herein.

**24. Warranty Disclaimer.**

**24.01.** The Parties acknowledge and agree that Tenant at the time of execution has not performed any due diligence investigations regarding the Premises. Landlord and Tenant shall cooperate in causing customary due diligence to be performed by qualified professionals as is detailed in this Lease Agreement. During the Due Diligence Period (as hereinafter defined), Landlord shall provide Tenant true and correct copies of all due diligence, assessments, analysis, investigations, reports and other documents pertaining to the Premises which are possessed by, obtained by or prepared for Landlord. Tenant may terminate this Lease at any time during the Due Diligence Period, by providing written notice of the same to Landlord. Subject to that understanding, commencing with Tenant's Construction Period, Tenant acknowledges and agrees that There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, Landlord is providing no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes. As used in this paragraph, the term "Due Diligence Period" means the period commencing on the date this Lease is executed and ending on the date the Tenant Construction Period commences.

**25. Abandoned Property.**

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

**25. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

**26. Sublease and Assignment, Ownership Structure.**

**26.01. Sublease.** Landlords understands and hereby agrees that Tenant has the right to sublease the Premises to other restaurant operators to fulfill the requirements of the Master Development Plan and this Lease provided said restaurant operators: (i) demonstrate financial capability and creditworthiness to perform its obligations under said sublease; (ii) in the reasonable judgment of Landlord possess business character meeting or exceeding the standards required generally by the Landlord for other restaurant tenants in La Villita; (iii) execute an assignment and assumption agreement or sublease agreement (as may be applicable), pursuant to which, among other things, the proposed transferee, assignee or sublessee expressly assumes the obligations of

Lessee hereunder, and in the case of a sublease agreement, the Lessee acknowledges its continuing obligations hereunder.

**26.02 Assignment.** Tenant may assign this Lease in whole or in part to any affiliate of Tenant or as otherwise may be required to obtain financing without approval of Landlord or City Council. Except as otherwise expressly set forth in this Lease, Tenant shall not assign this Lease without the prior written consent of Landlord which can only be given by the passage of appropriate ordinance by the City Council of the City of San Antonio, which shall not be unreasonably withheld, conditioned, delayed, or denied. As used in this Lease the terms "affiliate" means any entity in which Tenant has control or a majority (51%) ownership.

**26.03 Key Man.** Tenant designates Mr. Johnny P. Hernandez, President of Grupo La Gloria LLC. as a designated principal, agent and representative (the "President") of Grupo La Gloria LLC. in San Antonio. It is understood by the Parties that the President is the "Key Man" to this Lease and that his meaningful, personal involvement, guidance and availability is material to this Lease; provided, however, the Parties acknowledge and agree that the President has other significant business interests and obligations.

## **27. Dispute Resolution.**

**27.01.** Before bringing any action arising out of this Lease, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

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

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

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

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

27.06. Mediator fees must be borne equally.

27.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

**28. Miscellaneous.**

**28.01. Applicable Law.** This Lease is entered into in San Antonio, Bexar County, State of Texas. **It's Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

**28.02. Severability.** If any part of this Lease is found invalid or unenforceable, the finding does not affect the remainder.

**28.03. 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 in this Lease.

**28.04. 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.**

**28.05. Modification.** This Lease may be changed, modified, or amended only by a written agreement, signed by the parties hereto

**28.06. Third Party Beneficiaries.** This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

**28.07. Notices.** Any notice permitted or required to be given under the terms of this Lease shall be in writing, addressed to the party to whom it is directed, and sent either by (1) hand delivery, (2) United States certified or registered mail, postage prepaid, return receipt requested or (3) overnight delivery by a nationally recognized company, to the address shown below or to such other address as either party may from time to time designate by written notice in accordance with this Section. Any such notice shall be deemed effective upon receipt.

If to Landlord:

City of San Antonio

Attention: Contract Manager

Address: P.O. Box 835966



San Antonio, TX 78283-3966

With a Copy to:

Attention: Office of the City Attorney  
Address: P.O. Box 839966  
San Antonio, TX 78283

If to Tenant:

Grupo La Gloria  
Attention: Mr. Raul Rodriguez, Vice President of Real Estate and Development  
411 E. Cevallos  
San Antonio Texas, 78204

With a Copy to:

Kennedy Sutherland, LLP  
Attention: Corina Castillo-Johnson, Esq.  
112 E. Pecan Ave., Suite 2810  
San Antonio, Tx 78205

**28.08. Pronouns.** Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

**28.09. Captions.** Paragraph captions are for ease of reference only and do not affect the interpretation.

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

**28.11. Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

**28.12. Administrative Actions and Agreements.** The Director of Center City Development & Operations Department or his designee may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

**28.14. Incorporation of Exhibits.** All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

**28.15** Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

**29. Night in Old San Antonio (NIOA) and Other Events.** Landlord has provided, and Tenant hereby acknowledges receipt of that certain License Agreement by and between the Landlord, as Licensor, and the San Antonio Conservation Society, as Licensee, dated April 19, 2012 (the "NIOA License").

**29.01.** Tenant hereby acknowledges and understands the San Antonio Conservation Society its successors, assigns, or subcontractors have a right, but only in accordance with and pursuant to the terms and conditions of the NIOA License, to: (i) use all or any portion of La Villita other than the Premises, (ii) sell beverages, food, and other items on all or any portion of La Villita other than the Premises as part of the event known as NIOA within La Villita; and (iii) restrict or limit access to La Villita. Landlord shall pre-coordinate with and Tenant's prior written consent, which consent shall not be unreasonably denied or conditioned, to any modification or amend of the NIOA License which would affect Tenant's use or operation of the Leased Premises during the Term of this Lease.

**29.02.** Tenant understands, acknowledges and agrees that the Landlord will also from time to time accommodate various functions or events in La Villita in addition to NIOA (collectively, the "La Villita Events"). Such accommodation of La Villita Events may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises but Tenant hereby acknowledges that there may be imposed an entrance fee to La Villita (including the Leased Premises) after 6:00 P.M. during La Villita Events. Landlord shall provide Tenant with sixty (60) days' prior written notice of any La Villita Events which will require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises and Tenant hereby agrees to cooperate fully with the Landlord on receipt of such notification. The Tenant further waives any and all claims for damages against Landlord, including but not limited to, loss of business, which the Tenant may suffer as a result of any such accommodation by the Landlord of La Villita Events as limited by and subject to the provisions of this paragraph.

**30. Public Information.** Tenant acknowledges that this instrument is public information

within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public, except that Landlord shall not disclose any information contained in this Lease or otherwise that Tenant has clearly indicated or that Landlord knows or should reasonably know is proprietary, trade secret, or would otherwise adversely affect Tenant and Tenant's business or that is otherwise exempted or excepted from disclosure by applicable law or regulation. Nothing in this agreement waives an otherwise applicable exception to disclosure.

**31. Quiet Use and Enjoyment.** Landlord agrees that, so long as no default on the part of the Tenant has occurred and is continuing, Tenant shall peaceably and quietly have, hold and enjoy the Premises and other rights granted hereunder in accordance with the terms and conditions of this Lease.

**32. Force Majeure.** Notwithstanding anything in this Lease to the contrary, if either party hereto shall fail to timely perform any of its obligations under this Lease as a result of strikes, lockouts or labor disputes, inability to obtain labor or materials, government restrictions, fire or other casualty, adverse weather conditions not reasonably foreseeable at the location and time of year in question, by reason of war or other national emergency, acts of God or other causes beyond the reasonable control of the party obligated to perform (each, a "Force Majeure Event"), then such failure shall be excused and not constitute a default under this Lease by the party in question, but only to the extent and for the time occasioned by such Force Majeure Event; the time for performance shall be tolled for each day the Force Majeure Event exists, or for such longer period as reasonably necessary and agreed to by the parties in writing.

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**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to set their hands thereto on the dates set forth below.

**“Landlord”**

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

By: 

Name: Lon Houston

Title: Assistant City Manager

On this 4<sup>th</sup> day of June, 2018

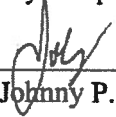
**Approved as to Form:**

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

*[Tenant Signature Page]*

**"Tenant"**

**Grupo La Gloria, LLC, a Texas limited liability company**

By:   
Johnny P. Hernandez, its President

On this 31 day of May, 2018

**EXHIBIT A**  
The Land  
[Attached]



Figure 21. Concept master plan for Maverick Plaza

**EXHIBIT B**  
Tenant Improvements

Consistent with the terms and conditions of this Lease and as set forth in that certain Master Plan for a Culinary Concept in Mayor Maury Maverick Plaza Prepared for the City of San Antonio and Grupo La Gloria LLC by Fisher Heck Architects Dated July 2017 [Attached].

1. Design and Construct one new Mexican hacienda style restaurant building that will be one-story adjacent to Maverick Plaza and two-stories along Nueva Street, containing approximately 5,934 square feet with approximately 1,711 square feet of outdoor dining area to operate a Mexican food restaurant.
2. Design, rehabilitate and remodel the Grissi House building and design and construct a new beer hall and new outdoor dining area containing approximately 1,258 square feet to operate a German food restaurant.
3. Design, rehabilitate and remodel the Faville House building and design and construct new additional indoor dining space and a new outdoor dining area containing approximately 2,173 square feet to operate a Spanish food restaurant.
4. Conduct all design work for each of the restaurants
5. Install and construct restaurant grade kitchens in each restaurant
6. Install all trade fixtures and appliances
7. Install all furniture, fixtures and equipment



## PRIVATE IMPROVEMENTS PROVIDED BY GRUPO LA GLORIA

The Grupo La Gloria will build and manage the proposed restaurants on sites leased from the City of San Antonio. Three new restaurants will enhance La Villita as a culinary destination and reveal the cultural history of three nations that contributed to the development of San Antonio. The architects have considered the existing conditions, in accordance with the Department of the Interior's Standards for Preservation, in the creation of the conceptual plans.

The architects have taken the existing conditions into consideration with regards to The Department of Interior's Guidelines for Historic Preservation.

### Programming for New Uses

BUILDING	SPACE	AREA ACHIEVED	OCCUPANCY ACHIEVED
<b>MEXICAN</b>	INDOOR SEATING	2967	150
	KITCHEN	989	
	CIRCULATION	1978	
	OUTDOOR SEATING	1711	56
	INDOOR TOTAL	5934	
	<b>GRAND TOTAL</b>	<b>7645</b>	<b>206</b>
<b>GERMAN</b>	INDOOR SEATING	1612	132
	KITCHEN	653	
	CIRCULATION	1597	
	OUTDOOR SEATING	1258	94
	INDOOR TOTAL	3862	
	<b>GRAND TOTAL</b>	<b>5120</b>	<b>226</b>
<b>SPANISH</b>	INDOOR SEATING	1430	74
	KITCHEN	685	
	CIRCULATION	646	
	OUTDOOR SEATING	2173	202
	INDOOR TOTAL	2761	
	<b>GRAND TOTAL</b>	<b>4934</b>	<b>276</b>

### The Mexican Restaurant

The Mexican Restaurant will be designed to fit within the historic context of La Villita. The building will be one-story adjacent to Maverick Plaza and two-stories along Nueva Street. Some of the building will be roofed with a low standing seam metal roof, while other parts will have a flat roof hidden by a parapet. It will be built near the location of the old, two-story, Vienna Hotel, which was also used as a bakery. The new structure will be of painted plaster but will use D'Hanis Red bricks to accentuate the window arches and window sills. The parapet walls will be capped with a red brick cornice.

The main entrance on South Alamo Street will have a red brick surround with a classically inspired cornice and pilasters. Wrapping the corner of Alamo and Nueva Streets, a two-level porch will provide shelter to those entering the restaurant and a spectacular view of the Tower of the Americas from the upper level of the porch. The porch will reflect the character of the Fairmount Hotel's porch. Together, the hotel and the restaurant will frame the views on Nueva street.

The interior of the restaurant will reflect the elegance of a Mexican hacienda with beamed ceilings and tiled floors. The horseshoe plan will enclose a refreshing patio facing Maverick Plaza, and dining rooms on the three sides of the courtyard will face into the lush and colorful patio. The second-floor dining room for fiestas and other special events will look down into the patio and south towards the Fairmount Hotel.



Figure 26. Conceptual perspective of Mexican Restaurant from Maverick Plaza.

Mexican Restaurant Concept Plan

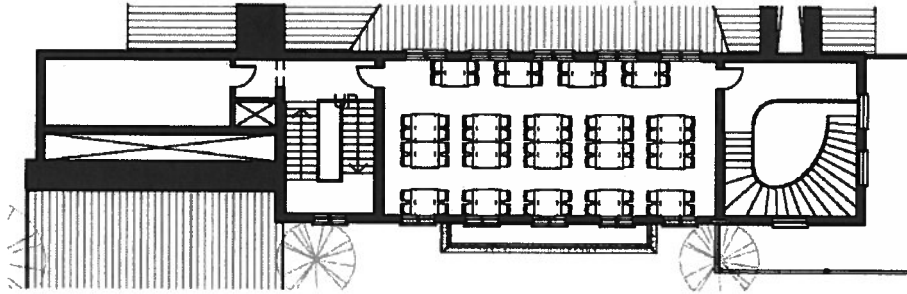


Figure 27. Second Floor Plan

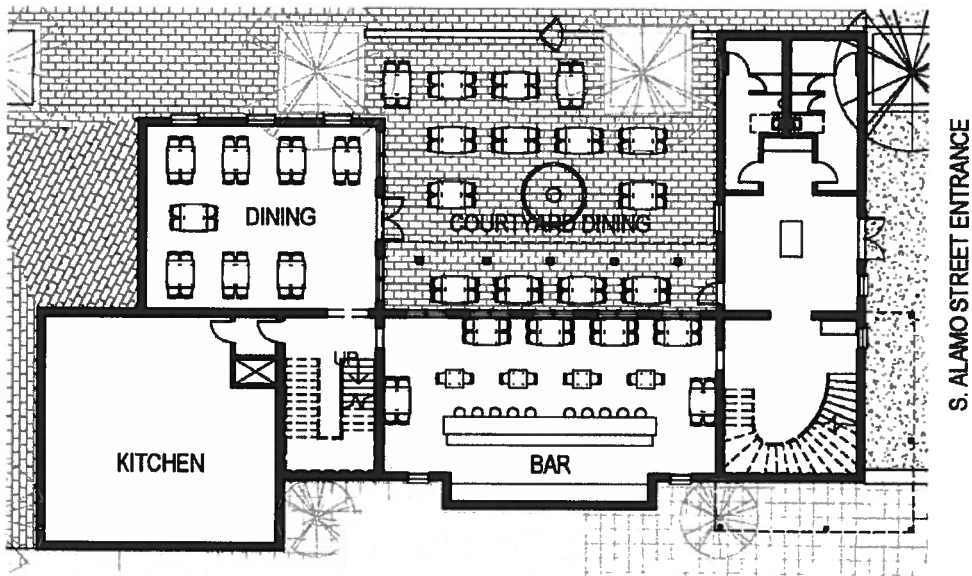


Figure 28. First Floor Plan. Total Seating: 206.

Mexican Restaurant Concept Theming Imagery





### The German Restaurant

The German restaurant will utilize the Gissi House and the area where the concession building is now located. The Gissi House, originally built in the mid-nineteenth century, was dismantled and reconstructed in 1969 at its current location in La Villita. Valued for its palisado construction technique - caliche between cedar posts and a plaster finish composing the walls- the Gissi House features a low-pitched, hipped roof and wooden casement windows indicative of its Texas pioneer era. The existing interior walls of the Gissi House will be employed to create private dining spaces.

The kitchen and other service areas will be located along Nueva Street which will provide service access. A new structure, inspired by the old dance halls of Texas, will be built to house a microbrewery and dining hall. The dining hall is entered via a covered porch facing the Maverick Plaza. Its central space will open to the roof rafters and be tall enough to contain the vats and tanks of a micro-brewery, which will be publicly displayed. Outdoor dining emulating the shaded beer gardens of old San Antonio will be located between the house and the beer hall.



Figure 29. View of new German Restaurant and the Historic Gissi House

German Restaurant Concept Plan

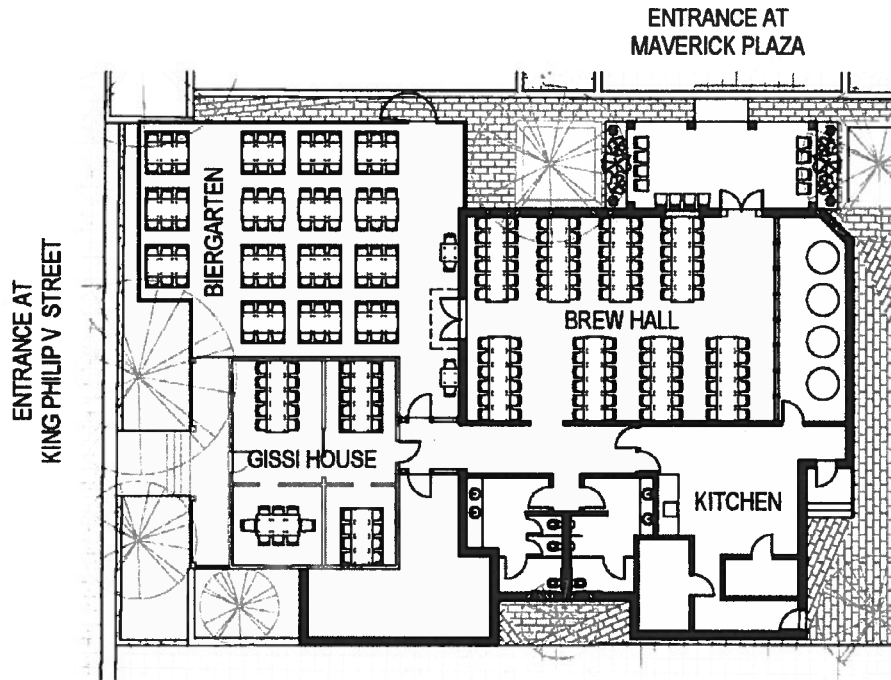


Figure 30. Floor Plan. Total Seating: 226.

German Restaurant Concept Theming Imagery

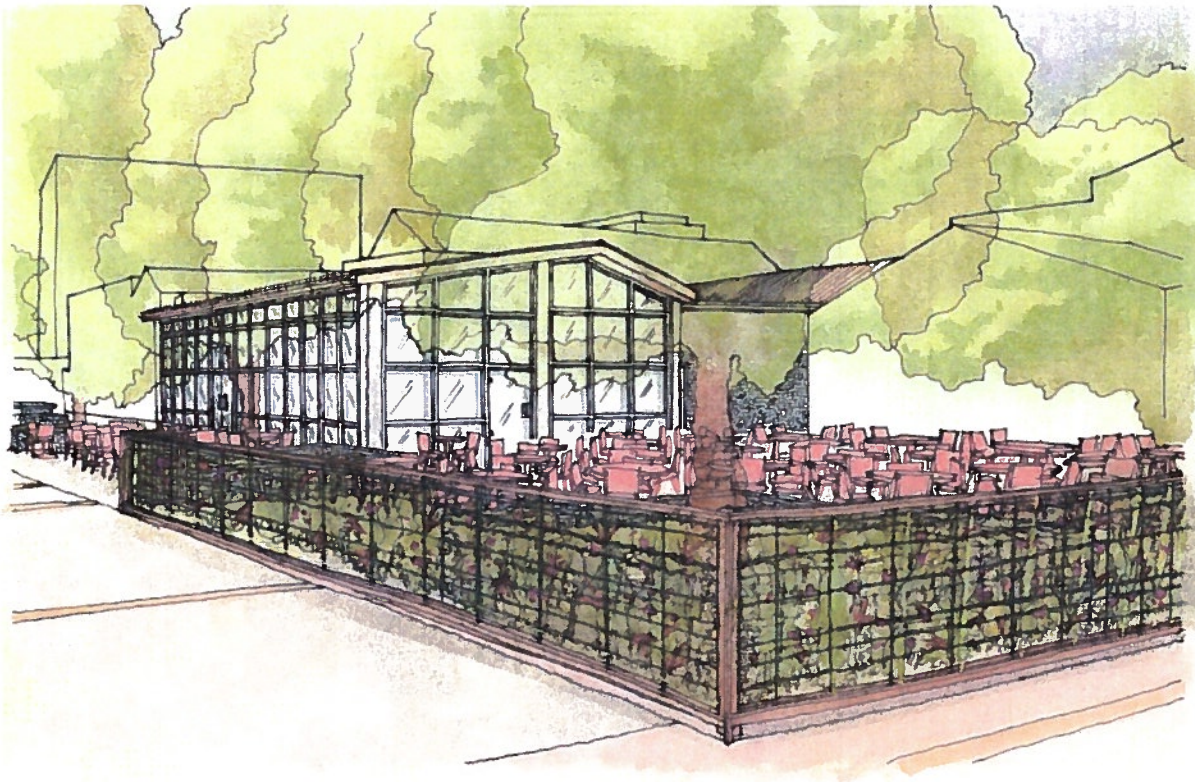




### The Spanish Restaurant

The Spanish Restaurant will be located within the Faville House at 510 Villita Street. The Faville House was constructed c. 1855 by Franklin D. Faville. The house is typical of the Pre-Civil War era with its simple, but classic porch. It was used as a residence until it was sold to the City of San Antonio in 1949 to become a part of La Villita.

An addition will extend the back of the structure to Maverick Plaza. A kitchen and sun-filled room, reminiscent of an enclosed porch or garden room, will serve as an additional dining space. The Faville House will be decorated in the style of an Iberian cottage and will serve Spanish cuisine within its cozy stone rooms. Additional dining area will be in the courtyard facing Villita Street and at the rear. Customers can dine in a tree-shaded courtyard that faces both Maverick Plaza and South Alamo Street. Water elements will be used in the outdoor dining areas as is typical of Spanish courtyards.



*Figure 31. Conceptual perspective of the plaza side of the Spanish Restaurant from S. Alamo St.*

Spanish Restaurant Concept Plan

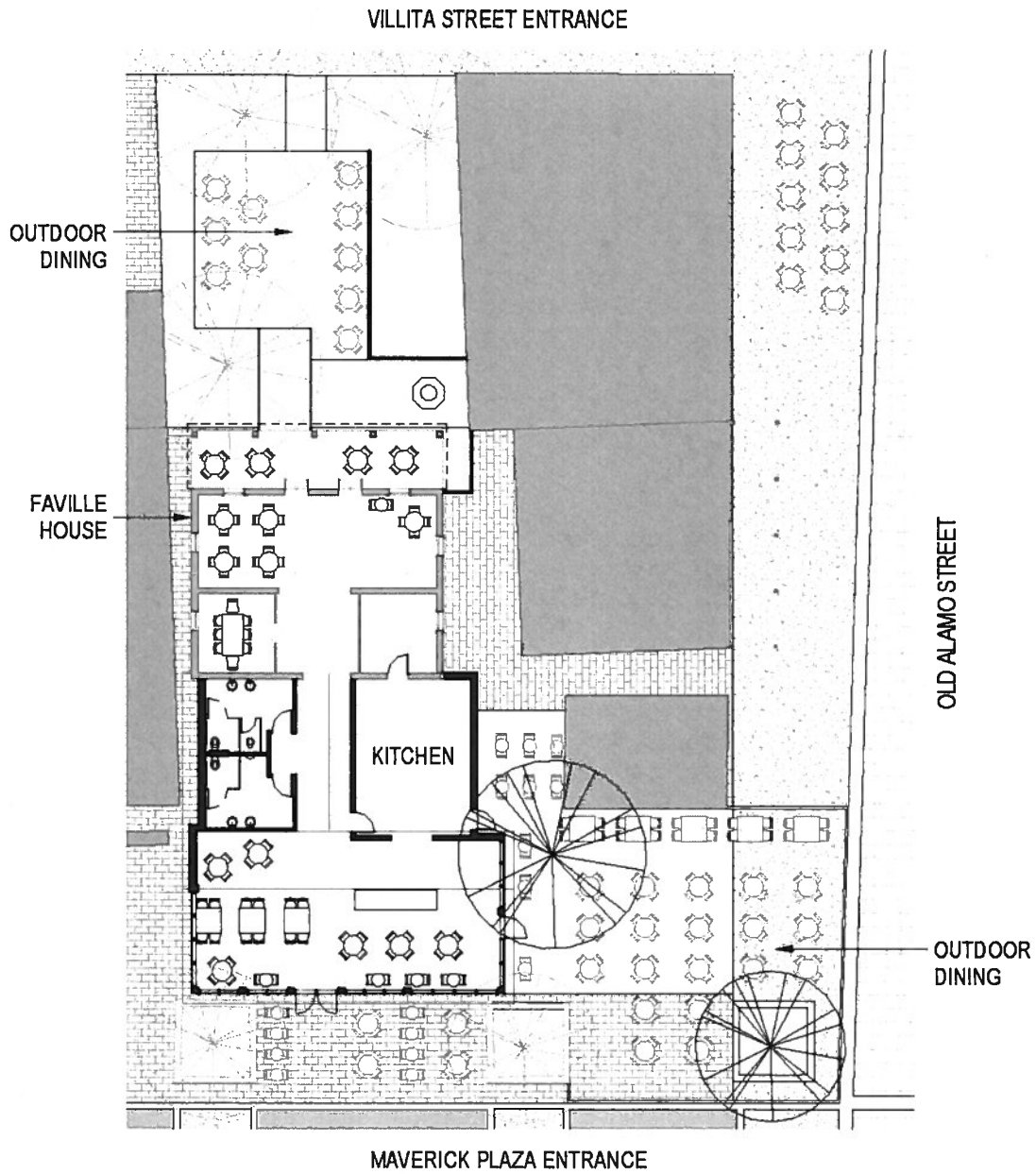


Figure 32. Floor Plan. Total Seating: 276.

Spanish Restaurant Concept Theming Imagery



**EXHIBIT C**  
The City's Work

Consistent with the terms and conditions of this Lease and as set forth in that certain Master Plan for a Culinary Concept in Mayor Maury Maverick Plaza Prepared for the City of San Antonio and Grupo La Gloria LLC by Fisher Heck Architects Dated July 2017 [Attached].

1. Conduct utility study
2. Conduct archeological study
3. Conduct environmental assessment (i.e., Phase 1 and, if necessary, Phase2)
4. Conduct all work necessary or required to comply with the provisions of Section 11 (inclusive of subsections) of this Lease
5. Construct and install new utilities and stub-outs (including water, gas, electric, sewer, and telecommunications) to each of the three restaurant sites sufficient to support their operations
6. Remove existing non-historic fences and limestone perimeter wall
7. Remove existing non-historic public restroom
8. Remove existing non-historic concession building
9. Remove and relocate seven (7) trees currently existing within the footprint of the restaurant sites
10. Remove the fence and gates along King Phillip V Street to open Maverick Plaza to this pedestrian street
11. Construct culinary kiosks
12. Construct demonstration kitchen
13. Plant six (6) new trees
14. Improve paving and lighting in Maverick Plaza
15. Remove the gates of Maverick Plaza
16. Construct a stage in Maverick Plaza
17. Adding 4 oak trees around the existing fountain.
18. Preserve the oak trees defining the central space.
19. Rehabilitate or replace the existing fountain and add small tress, potted plants and seating
20. Install new benches and seating and small tables within Maverick Plaza
21. Modify or replace the concrete planters for the six (6) live oak trees to allow for street activation under the shade of the trees
22. Create small play zone or sculpture for children
23. Redevelop the right of way of old Alamo Street as a pedestrian promenade for sidewalk dining and streetscape for culinary kiosks
24. Repave King Philip V Street and provide increased storm drainage capacity to eliminate the ponding of water and provide more accessible surface
25. Install new lighting and paving for Villita Street
26. Resurface Villita Street to create the possibility of a one-way street with attractive

## PUBLIC SITE IMPROVEMENTS PROVIDED BY THE CITY OF SAN ANTONIO

### Maverick Plaza

When developing the master plan, we recognized the importance of retaining the open, cultural plaza as a public gathering space for the community. As time has shown, retaining the plaza is not enough to activate it daily. Some of this may be, in part, due to the walls that surround the plaza, disconnecting it from the adjacent spaces. What the new plan recommends is a plaza that removes the walls, allowing tourists and locals alike to view the plaza interior from afar and at the time connecting it to the new activities along Alamo Street. Reinforcing this concept, the plaza does not end where the east wall and gates used to be, instead it continues east until it arrives at a potential interactive art piece or Alamo Street, helping to draw more people into the space.

In place of the existing walls will be new restaurant structures that help to enclose and activate the space. Each restaurant will have one entrance from the plaza, as well as outdoor seating. In addition, the restaurants will have entries from the side opposite the plaza to help draw more people into the plaza. From outside Maverick Plaza, the common passersby will now see people interacting within and outside of the restaurants. These restaurants and will be covered in more detail under the “Private Improvements” section.



Figure 22. Poor paving and drainage conditions.

Currently, the plaza has 8 mature oak trees that create a border on the north and south edges of the space. The plan recommends retaining all 8 oak trees and adding an additional 4 to the area around the existing fountain. Adding these trees will create a space within the plaza with nearly 100% shade that could be a location for the public to bring their lunch and eat at tables under the trees. At night, this space could be an intimate spot with lighting strands in the trees and the sound of water flowing from the fountain for a couple or family to enjoy an ice cream or drink. To further delineate this space, a new paving pattern will be used in this area that may introduce color and more organic shapes, similar to the paving in the Spanish Governor's Palace courtyard.

#### Key Points:

- Respect the central space (90 ft. x 240 ft.) as a public gathering space
- Preserve the oak trees defining the central space.
- Rehabilitate or replace the existing fountain and add small trees, potted plants and seating to make the fountain area a special place of color and shade.
- Maintain the bust of Mayor Maverick.
- Modify paving where appropriate to enhance the character of the space.
- Update the lighting.
- Continue to have events coordinated by the La Villita Management
- Allow Grupo La Gloria to sponsor a yet to be determined number of events each year.

#### Other Considerations:

Maverick Plaza will continue to be used as a part of NIOSA with the understanding that some of the food and drink booths will be relocated to maintain accessible entrances to the new permanent tenants.

Activate the Plaza with new restaurants opening directly to the plaza while presenting a welcoming face to the surrounding streets.

Activate the plaza with a managed schedule of musicians and entertainers that provide entertainment at lunch as well as in the evenings. These performers would be coordinated by the La Villita management and scheduled by both Grupo La Gloria and the La Villita Management.

Activate the plaza with an outdoor Demonstration Kitchen for educational purposes.

Activate the plaza with kiosks for the sale of refreshments, street foods, and appropriate impulse sales.

Provide new benches and seating within the Plaza. Small tables will be provided in special locations to give visitors a place to eat their brown bag lunch or Maverick Plaza food within the public plaza.

Utility Study may be necessary to coordinate existing and future utility needs, creating zones and phasing of utilities such that plaza renovation is not disturbed after completion.

#### Old Alamo Street Pedestrian Promenade

The Promenade is a vital piece in making Maverick Plaza an active destination. Becoming a transition zone, the Promenade acts as a connector to the plaza for pedestrian traffic from Alamo Street and

Hemisfair Park. The size of the Promenade is large, bigger than Maverick Plaza itself, giving the opportunity for many types of activity: Adjacent to restaurants is outdoor seating spilling in to the Promenade; The extension of Maverick Plaza intersects and becomes one with the Promenade; An interactive sculptural element is possible; Mature oak trees provide shade for seating and walking through; Culinary Kiosks are placed at intervals to keep the Promenade engaging from Villita Street to Nueva Street. Like the new seating area created around the fountain within the plaza, a colorful and context appropriate paving pattern will delineate the area of "The Promenade". An evolving consideration will be to coordinate the eastern edge with design and development of the Alamo Complete Streets project.

**Key Points:**

- Redevelop the right of way of old Alamo Street as a pedestrian promenade that is an appropriate environment for sidewalk dining and a streetscape for culinary kiosks.
- Renew paving to define the street's pathway and enhance the pedestrian space.
- Modify or replace the concrete planters for the six, live oak trees to allow for street activation under the shade of the trees.
- Construct or install new kiosks for the sale of refreshments, street foods, and appropriate impulse sales.
- Create a small play zone or sculpture for children.
- Create "street edges" to define areas for outdoor dining and pedestrian movement.
- New benches and seating will be provided within the Plaza and as appropriate along South Alamo. Small tables will be provided in special locations to give visitors to eat their brown bag lunch or Maverick Plaza food within the public plaza.

**Other Considerations:**

Old Alamo Street will continue to be used as a part of NIOSA with the understanding that some of the food and drink booths will be relocated to maintain accessible entrances to the new permanent tenants.

Utility Study may be necessary to coordinate existing and future utility needs, creating zones and phasing of utilities such that street renovation is not disturbed after completion.

**Villita Street**

Villita Street is an important connection within La Villita, to the Riverwalk, and to Hemisfair Civic Park. One of the new restaurants will have outdoor seating along the Villita Street edge which increases visibility of an active interior space. Villita Street will be resurfaced to create the possibility of a one-way street with attractive sidewalks. The potential vehicular and pedestrian use street will be designed after East Nueva Street with rolled curbs and occasional parking spaces to be used for service vehicles during the day and La Villita users at night. No parking will be allowed during events. New lighting should also be installed.

**Other Considerations:**

Utility Study may be necessary to coordinate existing and future utility needs, creating zones and phasing of utilities such that street renovation is not disturbed after completion.

### King Philip V Street

Currently, this pedestrian street has a lot of character, but there are drainage issues. We propose King Philip V Street to be repaved to provide increased storm drainage capacity, to eliminate the ponding of water and provide a more accessible surface. One of the new restaurants will have outdoor seating along this street edge which increases visibility of an active interior space. Further increasing interest along this street will be a new outdoor Demonstration Kitchen that will be located at the northwest corner of Maverick Plaza. The removal of the west gates of Maverick Plaza will allow the plaza to “spill” to King Philip V Street helping to draw more people in. New lighting should also be installed.

#### Other Considerations:

A Utility Study may be necessary to coordinate existing and future needs for infrastructure coordination of the utility work will be required so that street improvements are not disturbed after completion.



*Figure 23. Poor drainage conditions on King Philip V Street.*



### Nueva Street

The plan calls for Nueva Street to be reduced to three lanes, one in each direction and turn lanes at South Alamo and South Presa Streets. The existing median of Nueva Street will be removed and a new median created with trees planted between the two turn lanes (reflecting the character of the Alamo Complete Streets). The remainder of the roadway and curbs will remain. The street will be re-stripped to allow diagonal parking along the north curb. This will provide approximately 30 metered spaces of parking to entice users into La Villita.

The character of Nueva Street will have a dramatic transformation when most of the stone wall on the south side of Maverick Plaza is removed and replaced with two active restaurant buildings. Being able to see inside the restaurant from this street helps draw people in to La Villita from all directions by creating an active edge.



Figure 24. Existing view into Maverick Plaza from Nueva Street.

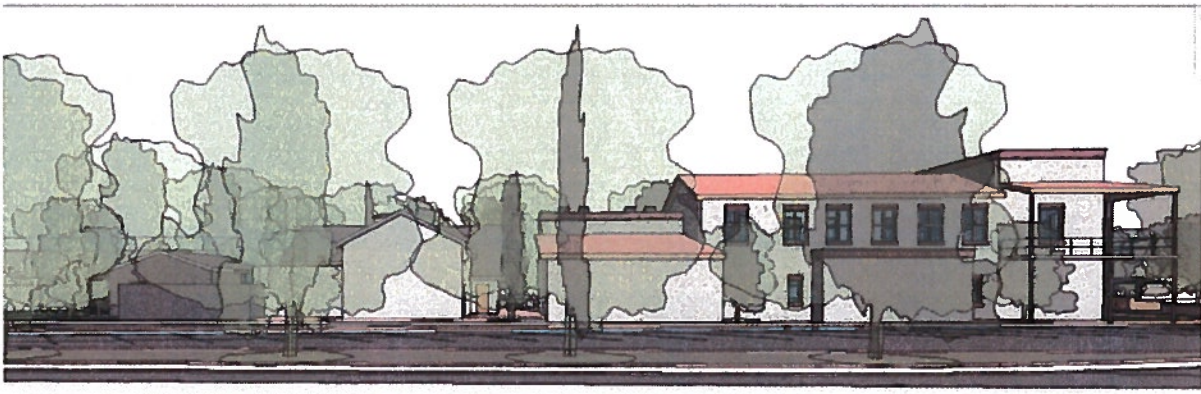


Figure 25. Proposed view into Maverick Plaza from Nueva Street.

**South Presa Street**

Provide new sidewalks for South Presa Street from Market south to the River Walk. (One block)

**Other Public Partner Responsibilities**

- A. Removal of Construction fabric required for the Maverick Plaza Re-design:
  - 1. Remove the Restroom and Concession buildings.
  - 2. Remove most of the limestone wall along Nueva Street.
  - 3. Remove and relocate 7 trees within the footprint of the new buildings.
  - 4. Remove the fence and gates along King Philip the V Street to open Maverick Plaza to this pedestrian street.
- B. Installation of Electrical Service Stub-outs to each development parcel.
- C. Installation of Gas, Water and Sewer Service to accommodate each restaurant and future developments.
- D. Plant 6 new trees.
- E. Archeological Investigations.

sidewalks

27. Repave the concrete sidewalk on Nueva Street to match the character of La Villita
28. Removal of the central median of Nueva Street and replace with a median with tress reflecting the character of the Alamo Complete Streets
29. Restripe Nueva Street to have one movement land in each direction, a center turn land, and diagonal parking along the north curb to provide approximately 30 metered parking spaces for customers
30. Construct new sidewalks along South Presa Street from Market south to the River Walk

**EXHIBIT D**

Bexar County Tax Assessor Letter  
[Attached]



411 N. Frio, P.O. Box 830248  
San Antonio, TX 78283-0248  
Phone (210) 242-2410  
Fax (210) 242-2451  
Website www.bcad.org

## BEXAR APPRAISAL DISTRICT

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January 24, 2018

Lori Houston  
Assistant City Manager  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

Dear Ms. Houston:

Please consider this letter as a written policy statement on the taxability of the restaurant La Gloria La Villita, LLC located in Maverick Plaza. The Bexar Appraisal District's position is that the restaurant is exempt from taxation under Section 11.11 of the Texas Property Tax Code. Further, the restaurant will remain exempt from taxation so long as:

- 1.) Sections 2.03 and 3.02 in the draft lease pertaining to public programming and activities remain in effect and upon the effective date of the lease, a copy of the executed lease and separate Operational and Programming Agreement is received by the Bexar Appraisal District within 30 days of its commencement;
- 2.) The legislature does not amend Section 25.07(4)(A) of the Texas Property Tax Code in any meaningful way;
- 3.) The entire structure remains wholly owned by the City of San Antonio; and
- 4.) The City remains the landlord in the lease, and the lease is not altered in any way that would affect the applicability of Section 25.07.

If you have any questions, please contact me at (210) 242-2413 or Morgan D. Thornton, Bexar Appraisal District In-House Attorney at (210) 242-2415.

Sincerely,

Rogelio Sandoval  
Assistant Chief Appraiser  
Bexar Appraisal District