



St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbpg.net

#13

Kerri Callais
*Councilmember
at Large*

Richard "Richie" Lewis
*Councilmember
at Large*

Gillis McCloskey
*Councilmember
District A*

Nathan Gorbaty
*Councilmember
District B*

Howard Luna
*Councilmember
District C*

Wanda Alcon
*Councilmember
District D*

Manuel "Monty" Montelongo III
*Councilmember
District E*

Roxanne Adams
Clerk of Council

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA ON TUESDAY, DECEMBER 5, 2017 AT SEVEN O'CLOCK P.M.

On motion of Ms. Callais, seconded by Mr. McCloskey, it was moved to adopt the following ordinance:

ORDINANCE SBPC #2020-12-17

Summary No. 3543

Introduced by: Administration on 11/7/17

Public hearing held on 11/21/17

Tabled on 11/21/17 until 12/5/17

AN ORDINANCE AUTHORIZING THE LEASE/GRANT OF SERVITUDE FOR 434 E. JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA 70043.

ST. BERNARD PARISH COUNCIL DOES HEREBY ORDAIN:

SECTION 1. The St. Bernard Parish Council does hereby authorize the Parish President to lease/grant the servitude located at 434 E. JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA 70043 to El Paso Chalmette, LLC in accordance with the attached GRANT OF SERVITUDE agreement.

SECTION 2. Effective Date. This Ordinance shall become effective immediately upon authorizing signature by the Parish President. In the event of a presidential veto, this Ordinance shall become effective upon a two-thirds favorable vote of the total membership of the Council pursuant to Sections 2-11 and 2-13 of the St. Bernard Parish Home Rule Charter.

SECTION 3. Severability. If any section, clause, paragraph, provision or portion of this ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, paragraph, provision or portion of this Ordinance, the St. Bernard Parish Council hereby expresses and declares that it would have adopted the remaining portion of this Ordinance with the invalid portions omitted.



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Extract #13 continued
December 5, 2017

The above and foregoing having been submitted to a vote, the vote thereupon resulted as follows:

YEAS: McCloskey, Gorbaty, Luna, Alcon, Montelongo, Callais

NAYS: None

ABSENT: None

The Council Chair, Mr. Lewis, cast his vote as YEA.

And the motion was declared adopted on the 5th day of December, 2017.

Ashley Adams

ASHLEY ADAMS
DEPUTY CLERK OF COUNCIL

RJL

RICHARD LEWIS
COUNCIL CHAIR

Delivered to the Parish President

12/7/2017 1:50pm

Date and Time

Received by

Guy McInnis

Approved



Vetoed

Parish President

Guy McInnis

Returned to Clerk of the Council

12/7/2017 1:52pm

Date and Time

Received by

Jennifer Lemarie

GRANT OF SERVITUDE
BY
ST. BERNARD PARISH
TO
**El Paso Mexican Grill Chalmette,
LLC**

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF ST. BERNARD

BEFORE ME, a duly commissioned and qualified Notary Public, in and for the parish/county and state below referenced, and in the presence of the undersigned competent witnesses,

PERSONALLY CAME AND APPEARED:

- (1) ST. BERNARD PARISH GOVERNMENT (**hereinafter sometimes referred to as "Parish**), herein represented by Guy McInnis, Parish President, its duly authorized representative; and
- (2) EL PASO MEXICAN GRILL CHALMETTE, LLC, (**hereinafter sometimes referred to as "Grantee**), appearing through its Managing Member, **Ruben Chasez**;

WHO DECLARED THAT:

The Parish hereby grants Grantee a predial servitude of right-of-use to Grantee as described herein:

Air rights and correlated ground space for the existing encroachments of an awning on/over the public right of way and for the construction of parking spaces on the public right of way as shown in attachment "A."

I. CERTAIN DEFINITIONS

The following terms have the meanings given to them in this Section 1:

- (a) **Right-of-way:** Parish owned property adjacent to the dominant estate, of which the servitude exists upon a portion.
- (b) **Property:** The dominant estate, made up of the immovable, adjacent to the right-of-way and which has improvements that encroach onto the right-of-way.
- (c) **Grantee:** EL PASO MEXICAN GRILL CHALMETTE, LLC
- (d) **Encroachment:** the portion of the property that occupies the right-of-way, as shown in Exhibit "A."
- (e) **Servitude:** The predial servitude pursuant to La. C.C. Art. 646, consisting of the right to use the airspace and correlated ground for an encroachment on the right-of-way as shown on Attachment "A," described as "LEASE AREA."

II. SERVITUDE AND CONSENT

- (a) **Consent of Parish:** As permitted in La. C.C. Art. 646, Parish does hereby consent to the exercise by Grantee of all the following rights:
 - (1) The exclusive right to construct, maintain, and repair parking spaces burdening the Right-of-way according to Attachment "A."
 - (2) Right to construct, maintain, and repair the Encroachment burdening the Right-of-way according to Attachment "A."

III. LIMITATIONS IN GENERAL

The grant of the servitude and accessory rights by Parish and the exercise thereof by Grantee shall be subject and subordinate to the public use of the Right-of-way, governmental laws and regulations, compliance with all of the rights reserved herein by Parish, and the terms of this agreement.

- (a) **Limitations on Right of Use:** Exercise of the Servitude granted in Section I shall be

subject to the following limitations:

- (1) Grantee's right of use shall be subject to the public's use of the Right-of-way.
- (2) Grantee shall perform all work in a safe and reasonably expeditious manner at its expense, and if required by the terms of this GRANT OF SERVITUDE shall restore the premises of Parish and any third party to the same condition as existed prior to commencement of any work by Grantee, and shall be responsible for any damage caused to the Right-of-way or any third parties resulting from any work by Grantee;
- (3) Any right of use shall be exercisable only to the extent that such rights are reserved to Grantor pursuant to this servitude agreement and subject to any limitations or requirements imposed thereby.
- (4) If the Servitude may not be used or exercised due to Parish's need to use the Right-of-way for a public purpose, Grantee assumes all costs associated with repair, replacement, or demolition of said construction and Encroachment.

IV. CONSIDERATION

- (a) **Initial Payments:** In consideration of this Servitude, Grantee shall pay to Parish the sum of \$1.00 upon execution of this agreement and shall record this agreement in the St. Bernard Parish Mortgage and Conveyances records.
- (b) **Annual Payments:** In further additional consideration of this agreement, Grantee shall pay to Parish the sum of \$1.00 per year due on February 1st of each year. Grantee shall record this Servitude Agreement in the St. Bernard Parish Mortgage and Conveyances records.

V. TERM

Except as set forth below, the Servitude and Consent shall be perpetual.

- (a) **Termination:** Notwithstanding the foregoing, the Servitude and Consent shall terminate if:
 - (1) The building, construction, and/or Encroachment is demolished, substantially

damaged, destroyed, or removed and not reconstructed or replaced within one (1) year after such destruction or damage;

(2) The Encroachment is taken or removed by the Parish for public purposes in whole or in such part that it is not fit for Grantee's intended purposes, which right is expressly reserved by Parish;

(3) Grantee is found to be in default of any of its obligations hereunder.

(b) Results of termination: Upon termination of the servitude, there shall be no right or obligation to reconstruct the Encroachment, unless such right or obligation is established by law.

VI. INDEMNITY AND INSURANCE

(a) At all times during the term of this Servitude, Grantee shall and does hereby agree to hold harmless and indemnify the Parish from and against any and all claims of Grantee or of any third persons for injuries to persons, including death, or damages to property, occurring on the Right-of-way and arising from Grantee's use or occupancy of the Encroachment, including the defense of all actions brought against the Parish for such damages, arising from the negligent acts or omissions of the Grantee, its employees, guests, invitees, agents or independent contractors.

(b) Grantee shall furnish and maintain in effect during the Term of this Servitude, an insurance policy or policies with the limits of not less than \$1,000,000/\$5,000,000 covering general commercial liability, in which policy or policies the Parish shall either be carried as an additional named insured or provision shall be made to insure the liability of Grantee under the above indemnification and hold harmless agreement under the contractual coverage provisions of said insurance policy or policies. A copy of such policy or policies, or certificate of insurance with reference to same, shall be delivered to the Parish upon execution of this Servitude.

VII. ASSIGNMENT OR TRANSFER

In the event that any of the building which the Encroachment forms a part of is sold by private or public sale, this Servitude shall be assigned or transferred without the prior consent of the Parish to the purchaser of said property. Any instrument assigning or transferring the

Servitude shall be delivered to the Parish along with proof of insurance as required in Section V within thirty (30) days of the recordation of said assignment or transfer.

VIII. NOTICE

All notices, demands, payments and requests by Grantee to Parish shall be deemed to have been properly given or made when received by the Parish if served personally on, or if sent by United States Postal Service, certified mail, return receipt requested, postage prepared addressed to the Parish as follows:

Parish President
St. Bernard Parish Government
8201 W. Judge Perez Drive,
Chalmette, LA, 70043

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the _____ day of _____, 2017.

WITNESS:

ST. BERNARD PARISH GOVERNMENT

BY: _____

**Guy McInnis, Parish President
St. Bernard Parish**

NOTARY

IN WITNESS WHEREOF, on this _____ day of _____, 2017, in
_____, Louisiana.

**GRANTEE: EL PASO MEXICAN GRILL CHALMETTE,
LLC.**

WITNESS:

BY: _____

Ruben Chasez, Managing Member

WITNESS:

Permanent Mailing Address of Grantee:

NOTARY