

AN ORDINANCE 2008-09-11-0786

(A) DECLARING A PUBLIC NECESSITY TO ACQUIRE, BY NEGOTIATION OR CONDEMNATION, THE FORMER K-MART PROPERTY AT 315 S. SANTA ROSA, INCLUDING LOTS 1 AND 2, NCB 13423, AND (B) AUTHORIZING A LIKE-KIND EXCHANGE OF THE CITY'S RIVERBEND GARAGE AT 210 N. PRESA FOR THE FORMER K-MART PROPERTY, 315 S. SANTA ROSA, THE TRANSACTION TO INCLUDE THE CITY RECEIVING \$6,900,000 IN ADDITIONAL, CASH CONSIDERATION, AND AUTHORIZING ALL ANCILLARY TRANSACTIONS INCLUDING A LEASE-BACK OF THE CENTRO INFO FACILITY IN THE GARAGE AND A GUARANTY OF THE LEASE OBLIGATIONS OF THE USO.

* * * * *

WHEREAS, redevelopment of an expanded governmental complex within the area between Durango, IH 35, Dolorosa, and Flores is a public project; and

WHEREAS, acquisition of the former K-Mart property located at 315 S. Santa Rosa is an integral part of the expanded governmental project and is therefore a public necessity; and

WHEREAS, the City and Hixon Properties Incorporated ("Hixon"), the owner of the K-Mart property, have found a like-kind exchange of the K-Mart property for the City's Riverbend Parking Garage, 210 N. Presa, to be a desirable method of accomplishing the City's goal of acquiring the K-Mart property; and

WHEREAS, the City is permitted to negotiate directly with Hixon for the disposition of the Riverbend Parking Garage by Local Government Code § 272.001(b)(6) and Tax Code § 311.008; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. It is a public necessity that the City acquire the former K-Mart property located at 315 S. Santa Rosa and more particularly described as Lots 1 and 2, New City Block 13423, Tex R-39, Central West Area Project 1 Urban Renewal, an addition to the City of San Antonio, Bexar County, Texas according to the map or plat thereof recorded in Volume 5502, Page 28-34, Deed and Plat Records of Bexar County, Texas.

SECTION 2. Expansion and development of a governmental complex in the general area bounded by Durango, IH 35, Dolorosa, and Flores is a public project that would be in the interest of the City and the public to occur.

SECTION 3. The city manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a Real Estate Exchange Contract with Hixon Properties Incorporated in substantially the form attached as **Attachment I**, which is incorporated into this Ordinance for all purposes as if fully set forth, and to consummate the transactions contemplated therein. The city manager and her designee, severally, should take all other actions necessary or convenient to effectuate the transactions, including agreeing to non-material changes to the approved forms and executing all necessary or convenient ancillary instruments and agreements, including all exhibits called for in or incident to the exhibits to the Real Estate Exchange Contract.

SECTION 4. City of San Antonio will transfer title of the River Bend Garage located at 412 East Commerce Street to the Hixon Properties, Inc. in consideration for the property located at 315 South Santa Rosa valued at \$15,500,000.00 and \$6,900,000.00 in cash, less due diligence fees of \$100,000.00 and a lease buyout related to the South Santa Rosa property of \$450,000.00. The \$22,400,000.00 consideration will be split between SAP Fund 53001000, Parking Operating Fund, for the property exchange value and related costs and SAP Fund 53007000, River Bend Garage Sale Fund, for the net cash proceeds. Finance is authorized to record the necessary entries to remove the River Bend Garage from the Parking Operating Fund, and recognize any related gain of sale of the property. Budgeted revenues will be increased by the amount of the net proceeds.

SECTION 5. The amount of \$13,500.00 is appropriated in SAP Fund 53001000, Parking Operating Fund, General Ledger 5201040, and entitled Fees to Professional Contractors and will be encumbered and payable for the due diligence costs related to the sale of the River Bend Garage property.

SECTION 6. The amount of \$450,000.00 is appropriated in SAP Fund 53001000, Parking Operating Fund, General Ledger 5701010, and entitled Land – 5709010, entitled Land (Budget Use Only) for Reallocation Expense and will be encumbered and paid to Kindred Health Care for the lease buyout related to the acquisition of the South Santa Rosa property.

SECTION 7. The amount of \$86,500.00 is appropriated in SAP Fund 53001000, Parking Operating Fund, General Ledger 5701010, and entitled Land – 5709010, entitled Land (Budget Use Only) for Fees to Professional Contractors and will be encumbered and payable for the due diligence costs related to the acquisition of the South Santa Rosa property.

SECTION 8. The amount of \$15,500,000.00 is appropriated in SAP Fund 53001000, Parking Operating Fund, General Ledger 5701010, and entitled Land - 5709010, entitled Land (Budget Use Only).

SECTION 9. The total purchase price of the 4.67 acre site at 315 South Santa Rosa will be transferred from 53001000, Parking Operating Fund to 11001000, General Fund as a capital contribution.

SECTION 10. The total purchase price of the 4.67 acre site at 315 South Santa Rosa will be recorded in Fund 11001000, General Fund.

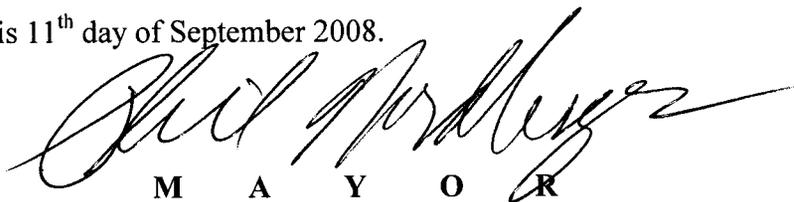
SECTION 11. The amount of \$100,000.00 is budgeted in SAP Fund 11001000, General Fund, Cost Center 8002320006, entitled USO Payment, General Ledger 5206010, and entitled Rental of Facilities and will be encumbered and payable to Hixon Properties, Inc. for the usage of ground floor space in the River Bend Garage for the USO.

SECTION 12. Payment not to exceed the amount of \$15,000.00 is authorized in SAP Fund 53001000, Parking Operation & Maintenance Fund, Cost Center 1910060001, entitled Riverbend Garage, General Ledger 5206010, and entitled Rental of Facilities and will be encumbered and and payable to Hixon Properties, Inc. for the usage of ground floor space and utilities in the River Bend Garage for El Centro Info.

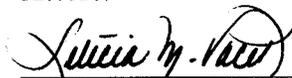
SECTION 13. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 14. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 11th day of September 2008.


M A Y O R

Attest:



City Clerk

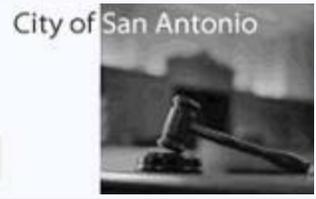
Approved As To Form:



City Attorney
KUS my



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 17

Name:	8, 10, 11, 12, 13, 14, 15, 17, 19, 21, 22, 23, 24, 26, 27A, 27B
Date:	09/11/2008
Time:	01:59:27 PM
Vote Type:	Motion to Approve
Description:	An Ordinance (A) declaring a public necessity to acquire, by negotiation or condemnation, the former K-Mart property at 315 S. Santa Rosa, including Lots 1 and 2, NCB 13423, and (B) authorizing a like-kind exchange of the City's Riverbend Garage at 210 N. Presa for the former K-Mart property, 315 S. Santa Rosa, the transaction to include the City receiving \$6,900,000.00 in additional, cash consideration, and authorizing all ancillary transactions including a lease-back of the Centro Info facility in the garage and a guaranty of the lease obligations of the USO. [Pat DiGiovanni, Deputy City Manager; Mike Frisbie, Director, Capital Improvements Management Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				x
John G. Clamp	District 10		x				

SAN SABA

NUEVA

URBAN

NUEVA ST.

LAREDO

SANTA ROSA

URBAN

4.67 AC.

S. SANTA ROSA ST.

IH 35 S ACCESS

IH 35 S ACCESS

GRAHAM

DURANGO ST.

DURANGO

EXHIBIT "A"

**PROPERTY PROPOSED TO BE ACQUIRED
315 S. SANTA ROSA**

RIVER WALK

CROCKETT

RIVER WALK

LOSOYA

ALAMO PLAZA

PRESA

COMMERCE

COMMERCE ST.

PRESA ST.

1.002 AC.

RIVER WALK

MARKET ST.

MARKET

NAVARRO

VILLITA

EXHIBIT "B"

**PROPERTY TO BE DISPOSED
210 N. PRESA**

RIVER WALK

VILLITA

KING PHILIP V

ALAMO

NUEVA

Attachment I

Real Estate Exchange Contract
(K-Mart/Riverbend Garage)

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This Real Estate Exchange Contract (the "Contract") is being entered into by and between the City of San Antonio, Texas ("City") and Hixon Properties Incorporated ("Hixon") as of the Effective Date (as defined herein).

Predicate Facts

The City of San Antonio has initiated taking certain real property owned by Hixon through eminent domain; and

In connection with the taking, the City of San Antonio has negotiated with Hixon to structure a trade whereby the parties would exchange tracts of property in lieu of the City pursuing condemnation

Rights and Obligations

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Definitions: The following terms shall have the meanings set forth below:

Authorizing Ordinance:

Authority for Negotiated Disposition: Local Government Code § 272.001 (b)(6), Tax Code Sec. 311.008 (b).

City: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Steve Hodges, CIMS)

Phone: 207-8234

Email: chris.kurzon@sanantonio.gov

Type of Entity: Texas municipal corporation

City's Counsel: Kenneth L. Bennight, Jr.

Address: City Attorney's Office, P.O. Box 839966, San Antonio, Texas 78283-3966

Phone: 207-6168

Email: kenneth.bennight@sanantonio.gov

Hixon: Hixon Properties Incorporated

Address: 315 East Commerce Street, Suite 300, San Antonio, Texas 78205 (Attention: John S. Beauchamp)

Phone: 225-3053

Email: johnb@hixonprop.com

Type of Entity: Texas corporation

Hixon's Counsel
(inhouse): John Reinhart

Address: Hixon Properties Incorporated, 315 East Commerce
Street, Suite 300, San Antonio, Texas 78205

Phone: 225-3053

Email: jreinhart@hixonprop.com

Hixon's Counsel
(outside): Stephen L. Golden

Address: Drenner & Golden, Stuart, Wolff, LLP, 300 Convent
Street, Suite 2650, San Antonio, Texas 78205

Phone: 745-3777

Email: sgolden@drennergolden.com

Property A: The land commonly known as the K-Mart site at Nueva and Santa Rosa and more fully described in Exhibit A, together with improvements to the Land, fixtures thereon and appurtenances thereto ("Improvements"). The Property shall include Transferor's interest, if any, in (i) all strips and gores of land adjoining or abutting the Property, (ii) any land lying in the bed of any street, road, avenue or alley, open or proposed, in front of or running through or adjoining the Property, except for streets owned by the City in fee simple as opposed to easement, (iii) any easement, privilege or right of way over, contiguous to or adjoining the Property, and all other easements, if any, inuring to the benefit of the Property, and (iv) any appurtenances or hereditaments belonging to or in any way appertaining to said Property, (v) any and all fixtures, personal property, signs (except for sign faces) and removable improvements situated on the Property, and (vi) all other rights of whatever nature or form, in or to, the above, such land including any and all oil, gas, and mineral rights, if any, with respect to the Property which Transferor may have.

Property B: The land commonly known as the Riverbend Garage at the corner of Commerce and Presa and more fully described in Exhibit B, together with improvements to the Land, fixtures thereon and appurtenances thereto ("Improvements"). The Property shall include Transferor's interest, if any, in (i) all strips and gores of land adjoining or abutting the Property, (ii) any land lying in the bed of any street, road, avenue or alley, open or proposed, in front of or running through or

adjoining the Property, except for streets owned by the City in fee simple as opposed to easement, (iii) any easement, privilege or right of way over, contiguous to or adjoining the Property, and all other easements, if any, inuring to the benefit of the Property, and (iv) any appurtenances or hereditaments belonging to or in any way appertaining to said Property, (v) any and all fixtures, personal property, signs (except for sign faces) and removable improvements situated on the Property, and (vi) all other rights of whatever nature or form, in or to, the above, such land including any and all oil, gas, and mineral rights, if any, with respect to the Property which Transferor may have.

Title Company: Chicago Title Insurance of America (Attention: Doug Becker)

Address: 270 N. Loop 1604 E., Suite 115, San Antonio, Texas
78232

Phone: 482-3560

Fax: 482-3564

Email: doug.becker@ctt.com

Earnest Money: \$50,000

Survey Category: Category 1A Land Title Survey, Condition I

Independent Consideration: The reciprocal covenants, rights and interest City and Hixon grant each other under this agreement

Effective Date: The date the Title Company acknowledges receipt of a fully executed copy of this agreement

County for Performance: Bexar County, Texas

Assignment and Assumption Agreement: An agreement in the form and substance of **Exhibit H** whereby Transferor assigns to Transferee all of its right, title and interest in the parking contracts, lease agreements or other agreements, relating to the Property.

Bill of Sale: An instrument in the form of **Exhibit I** whereby Seller assigns to Buyer all of its right, title and interest in certain personal property.

1. Exchange.

1.01. City and Hixon will exchange Property A for Property B. Hixon intends to report the transaction under Section 1031 and/or 1033 of the Internal Revenue Code.

1.02. As to Property A, the K-Mart site:

- a. City is the Transferee and Hixon is the Transferor.
- b. The agreed value of Property A for the purpose of this exchange is the value of Property B, less \$6,900,000.

1.03. As to Property B, the Riverbend Garage:

- a. Hixon is the Transferee and City is the Transferor.
- b. The agreed value of Property B for the purpose of this exchange is the value of Property A, plus \$6,900,000.

1.04. Because the agreed value of Property B exceeds the agreed value of Property A, in addition to title to Property A, Hixon must deliver additional consideration ("Boot") to City at closing in the amount of \$6,900,000, in funds satisfactory to Title Company.

1.05. Wherever this agreement speaks of the rights and obligations of Transferor and Transferee, those rights and obligations apply to both City and Hixon in their roles as Transferor and Transferee of the tracts they are transferring and accepting, respectively, except as otherwise specifically provided. Wherever this agreement refers to the "Property," in determining the rights and obligations of the parties that are Transferee and Transferor of a particular tract, the reference is to either Property A or Property B as the context may require.

2. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. Central Time, daylight or standard, depending on which is the official time in Texas when the deadline occurs. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence. The following terms and deadlines shall apply to this Agreement, with the delivery obligations contemplated hereby being those of the respective Transferor:

2.01.	Earnest Money Deadline	10	Days after the Effective Date
2.02.	Delivery of Title Commitment	20	Days after the Effective Date
2.03.	Delivery of Survey	30	Days after the Effective Date
2.04.	Delivery of Due Diligence Documents	10	Days after the Effective Date
2.05.	Delivery of Title and Survey Objections	15	Days after Delivery of both Survey and Title Commitment
2.06.	End of Inspection Period	65	Days after the Effective Date
2.07.	Closing Date	November 24, 2008, or such earlier date on which the parties agree	
2.08.	Closing Time	10:00 A.M.	

The deadlines may be altered by the mutual agreement of the parties. City's consent may be made by the Director of Capital Improvements Management Services without further authorization of City Council.

3. Closing Documents.

3.01. As a condition to closing, the Transferor of each Property will deliver the following items at closing:

- a) Deed without Warranty to the Property owned by Transferor in recordable form, subject only to the Permitted Exceptions as defined in the subparagraph entitled "Title Objections," in form substantially similar to **Exhibit E**.
- b) IRS Nonforeign Person Affidavit
- c) Evidence of Transferor's authority to close this transaction
- d) Notices, statements, and certificates as specified in **Exhibit D**
- e) A down-dated Title Policy Commitment, subject only to Transferee's Permitted Exceptions, issued by or through the Title Company for the Property, and showing Transferee as the insured, in the amount of the Total Consideration.
- f) A triplicate original executed Assignment and Assumption Agreement for the Property.
- g) The original executed Bill of Sale for personal property conveying title to all personal property located upon the Property.
- h) The original executed Tenant Estoppel Certificates by each tenant of Property B, if applicable, substantially in the form of **Exhibit L**, except for those leasing merely parking spaces.
- i) As to Property A, evidence property taxes have been paid through the Closing Date pursuant to Section 12.02 herein. Tax proration is according to Section 26.11 of the Texas Tax Code.
- j) Transferor Closing Certificate in the form of **Exhibit K**.
- k) Such other instruments or documentation as may be reasonably required by Transferee or the Title Company to assure the proper conveyance of the Property and to otherwise consummate the transaction contemplated hereby. Not fewer than five (5) business days before the Closing Date, Transferor must give Transferee copies of the proposed closing documents for Transferee's review and approval.
- l) With respect to Property A, a fully executed agreement between Hixon, as lessor, and Kindred Hospitals Limited Partnership, as lessee, terminating their respective rights under that certain lease of Property A dated April 28, 2006, as amended (the "Kindred Lease"), together with a fully executed mutual release of claims with respect to the Kindred Lease and the subject transaction.

- m) With respect to Property B, a fully executed Centro Info Lease between Hixon and City, as referenced in the article entitled "Centro Info Lease", in the form of the attached **Exhibit F**. Such Centro Info Lease shall include a provision whereby any default under the USO Lease (defined below) that is not cured by the City as provided in the guaranty agreement to be executed by City at Closing in accordance with **Exhibit M** will be deemed a default under this Centro Info Lease, which may result in its termination by Transferee.
- n) With respect to Property B, a fully executed Amendment to the USO Lease referenced in the article entitled "USO Lease," in the form of the attached **Exhibit G**, as well as a fully executed guaranty agreement whereby City guarantees the timely payment and performance by the tenant under the USO Lease in the form of **Exhibit M**.
- o) With respect to Property B, evidence that encroachments between the "Schilo's" Restaurant and Property B have been resolved to the satisfaction of Transferee, and a fully executed appurtenant easement in favor of Property B, its successors and assigns over "Casino Street", in recordable form and content reasonably satisfactory to Transferee, granting Transferee full and complete access over Casino Street for purposes of accessing and maintaining Property B.

3.02. At closing, the Transferee of each Property will deliver the following items:

- a. Evidence of Transferee's authority to consummate this transaction
- b. With respect to Hixon, the total amount of any Boot due from Transferee in respect of the transactions contemplated by this agreement.
- c. A triplicate original executed Assignment and Assumption Agreement for the Property.
- d. Such other instruments or documentation as may be reasonably required by Transferor or the Title Company to consummate the transaction contemplated hereby.

3.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be substantially in the form attached as **Exhibit E**.

3.04. The deed may except from conveyance items the Permitted Exceptions reflected in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

4. Exhibits.

The following exhibits are incorporated into this contract for all purposes as if fully set forth:

Exhibit A—Description of Property A

Exhibit B—Description of Property B

Exhibit C—Representations

Exhibit D—Notices, Statements, and Certificates

Exhibit E—Form of Deed

Exhibit F—Centro Info Lease

Exhibit G—USO Lease

Exhibit H—Assignment and Assumption Agreement

Exhibit I—Bill of Sale

Exhibit J—List of Leases and Service Contracts Surviving Closing

Exhibit K—Transferor Closing Certificate

Exhibit L—Tenant Estoppel Form

Exhibit M—City Guarantee of USO Lease

Exhibit N—Amortization Schedule for Centro Info Lease Improvements

5. Transfer and Acceptance of Property.

At Closing, Transferor will transfer and convey the Property to Transferee, and Transferee will accept transfer of the Property.

6. Earnest Money.

6.01. Transferee must deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline referenced in article 2 herein. The Earnest Money must be in funds acceptable to Title Company. Transferee must obtain Title Company's receipt for the earnest money before the Earnest Money Deadline.

6.02. Earnest Money from both Transferees shall be deposited in interest-bearing accounts in a federally insured financial institution in accordance with Title Company's requirements. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the Boot at closing with respect to Hixon, and refunded at Closing with respect to City.

7. Title and Survey.

7.01. *Review of Title.* The following statutory notice is provided to Transferee on behalf of the real estate licensees, if any, involved in this transaction: **Transferee is advised that it should either have the abstract covering the Property examined by an attorney of Transferee's own selection or be furnished with or obtain a policy of title insurance.**

7.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Chicago Title Insurance of America, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Transferee.

7.03. *Survey.*

7.03.01. "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by a surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

7.03.02. If Transferee does not object to the Survey within the time allowed in article 2, the land subject to the survey automatically becomes the Land subject to this contract, and the field notes and plat of the Survey automatically become Exhibit A or B to this agreement, as appropriate, whether or not physically attached.

7.04. *Delivery of Title Commitment, Survey.* Transferor must deliver the Title Commitment and the Survey to Transferee by the deadlines stated in article 2.

7.05. *Title Objections.* Transferee has until the deadline stated in Section 2.05 ("Title Objection Deadline") to review the Survey, Title Commitment, and notify Transferor of Transferee's objections to any of them ("Title Objections"). Transferee will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Transferee has made no Title Objection by the Title Objection Deadline. The matters that Transferee either approves or is deemed to have approved are "Permitted Exceptions." If Transferee notifies Transferor of any Title Objections, Transferor has seven (7) days from receipt of Transferee's notice to notify Transferee whether Transferor agrees to cure the Title Objections before closing ("Cure Notice"). If Transferor does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Transferee may, within five (5) days after the deadline for the giving of Transferor's Cure Notice, notify Transferor that this contract is terminated. If termination notice is given, this contract is terminated, and both parties receive a refund of their Earnest Money, in which event neither party shall have any further rights or obligations under this Agreement. In the absence of such timely notice, Transferee must proceed to close, waiving its objections. At or before closing, Transferor must at its own expense cure Title Objections that Transferor has agreed to cure. Transferor may use Transferor's proceeds from this sale, or other funds, at its discretion, to obtain releases of any liquidated liens, land contracts or mortgages that encumber title to the Property on the Closing Date.

7.06. Property A must be free of leases when title to it is tendered to City at closing, in accordance with the article entitled "Closing Documents." Hixon will accept title to Property B encumbered by the Dante's Pizza, Western Beverages, USO, Hilton

Palacio del Rio, and Centro Info leases, subject to the articles of this agreement entitled "USO Lease" and "Centro Info Lease." City must not modify, extend, amend, or terminate any or all of these leases prior to closing without the express written consent of Hixon, except as expressly contemplated by Sections 18 and 19 of this agreement.

8. Inspection Period.

8.01. *Entry onto the Property.* Transferee may enter the Property before closing to inspect it, subject to the following:

- a. Transferee may not unreasonably interfere with existing operations or occupants of the Property;
- b. Transferee must notify Transferor in advance of Transferee's plans to conduct tests so that Transferor may, at its option, be present during the tests;
- c. If the Property is altered because of Transferee's inspections, Transferee must return the Property to its pre-inspection condition promptly after the alteration occurs;
- d. Transferee must abide by any other reasonable entry rules imposed by Transferor.

8.02. Within ten (10) days after the Effective Date, Transferor will deliver to Transferee any and all of the following: (i) reports within Transferor's possession regarding the physical condition of the Transferor's Property, (ii) leases affecting the Transferor's Property and a rent roll, (iii) contracts affecting the Transferor's Property, and (iv) with respect to Property B, an opinion of the City Attorney's Office that the City has the power and authority to enter into this Agreement and to perform the terms and conditions of it.

8.03. *Transferee's Right to Terminate.* Except as otherwise noted herein, Transferee shall have the duration of the Inspection Period to perform any studies or inspections of any type with respect to the Property. If Transferee finds the condition of the Property to be unacceptable for any reason in Transferee's sole discretion, Transferee may, upon written notice to Transferor and Title Company, which notice shall be given, if at all, within the Inspection Period, terminate this agreement. Upon such termination, this Contract terminates and both Transferees shall receive back their respective Earnest Money in full, whereupon neither City nor Hixon has any further rights or obligations hereunder. If both Transferees fail to notify Transferor of Transferee's election to terminate this contract within the Inspection Period, Transferees' right to terminate this Contract pursuant to this section is waived, and Transferees are thereafter obliged to complete the transaction contemplated herein at Closing, absent a termination of this Contract as otherwise permitted hereby. The Independent Consideration is compensation to Transferor for Transferee's right of cancellation. If either party terminates one end of the exchange, the entire exchange is terminated.

8.04. Despite the foregoing, until 6:00 P.M. on October 24, 2008, City may terminate this contract without penalty only based on concerns over (i) the physical or

environmental condition of the Property, (ii) title or survey-related matters, (iii) casualty loss, (iv) condemnation, and (v) default by Hixon. After 6:00 P.M. October 24, 2008 until the end of the Inspection Period, City may terminate this contract without penalty only based on concerns over (i) title or survey-related matters, (ii) casualty loss, (iii) condemnation, and (iv) default by Hixon.

9. Representations.

The parties' representations stated in **Exhibit C** are true and correct as of the Effective Date and must be true and correct on the Closing Date. Each such representation survives closing.

10. Property Condition until Closing; No Recording of Contract.

10.01. *Maintenance and Operation.* Until closing, Transferor will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property.

10.02. *Casualty Damage.* Transferor will notify Transferee promptly after discovery of any casualty damage to the Property. Transferor must repair or replace the Property if it is materially damaged by casualty before closing. If the damage cannot be repaired before closing, Transferor will make the repairs after closing if the parties cannot agree on an offset at closing to compensate for the damage.

10.03. *Condemnation other than by City.* Transferor will notify Transferee promptly after Transferor receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority, other than City. Transferee may terminate this contract if the condemnation would materially affect Transferee's intended use of the Property by giving notice to Transferor within fifteen (15) days after receipt of Transferor's notice to Transferee (or before closing if Transferor's notice is received less than fifteen (15) days before closing). If Transferee does not terminate this contract, (a) Transferor and Transferee will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Transferee, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10.04. *No Recording.* Transferee may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Transferee records this contract or a memorandum or notice, Transferor may terminate this contract and record a notice of termination. Any such termination terminates both ends of the exchange.

11. Termination.

11.01. Disposition of Earnest Money after Termination

- a. *To Transferor.* If Transferor terminates this contract in accordance with any of Transferor's rights to terminate, Transferee will, within five (5) days of receipt of Transferor's termination notice, authorize Title Company to deliver the Earnest Money to Transferor.
- b. *To Transferee.* If Transferee terminates this contract in accordance with any of Transferee's rights to terminate, Transferor will, within five (5) days of receipt of Transferee's termination notice, authorize Title Company to pay and deliver the Earnest Money to Transferee.

11.02. Duties after Termination. If this contract is terminated, Transferee will promptly return to Transferor all documents relating to the Property that Transferor has delivered to Transferee and all copies that Transferor has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

12. Closing.

12.01. Closing. This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Boot.* Hixon will deliver the Boot and both Transferees will deliver the other amounts that they are obligated to pay under this contract to Title Company in funds acceptable to Title Company. Hixon's Earnest Money will be applied to the Boot.
- c. *Credit for Monthly Parker Deposits.* Hixon gets a credit at closing of \$6,325 for security deposits posted by monthly parkers in the Riverbend Garage and, in exchange for the credit, assumes responsibility for refunding the deposits when parkers turn in their parking cards and pay all charges to the date of termination of their monthly parking rights.
- d. *Credit for Western Beverages and Dante's Pizza Lease Security Deposits.* Hixon likewise gets a credit at closing of \$2,384.50 for the security deposit posted by the tenant under the Western Beverages lease and a credit at closing of \$3,360.15 for the security deposit posted by the tenant under the Dante's Pizza lease. City represents to Hixon that the amounts shown are the actual security deposits posted by the tenants. In exchange for the credit, Hixon assumes responsibility for refunding the deposits according to the terms of the applicable leases.
- e. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents

directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

- f. *Possession.* Transferor will deliver possession of the Property to Transferee, subject to the Permitted Exceptions existing at closing.

12.02. *Transaction Costs*

- a. *Transferor's Costs.* Transferor will pay:

- (i) one-half of the escrow fee charged by Title Company;
- (ii) the costs to obtain, deliver, and record releases of all liens to be released at closing;
- (iii) the costs to record all documents to cure Title Objections agreed to be cured by Transferor;
- (iv) the cost to obtain certificates or reports of ad valorem taxes;
- (v) the costs to obtain the Survey, other than the costs of work required by Transferee to have the survey reflect matters other than those required under this Contract; and
- (vi) Transferor's expenses and attorney's fees.

- b. *Transferee's Costs.* Transferee will pay:

- (i) one-half of the escrow fee;
- (ii) the basic charge for the Title Policy;
- (iii) Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
- (iv) the additional premium for removing the survey and encroachment exception and any other endorsements requested by Transferee;
- (v) the costs of work required by Transferee to have the survey reflect matters other than those required under this Contract to be paid by Transferor;
- (vi) the costs to obtain, deliver, and record all documents other than those to be recorded at Transferor's expense; and
- (vii) Transferee's expenses and attorney's fees.

- c. *Ad Valorem Taxes.* City is not a taxpayer and assumes no responsibility for ad valorem taxes for any period, rollback or otherwise. Hixon is responsible for all taxes on Property A accruing through the date of closing, and for all taxes on Property B accruing after the date of closing.

- d. *Revenue and Expenses.* Revenue and expenses pertaining to operation of the Property, including leases and parking contracts, will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Transferor will pay its share within thirty (30) days of Transferee's invoice.

- e. *Post-closing Adjustments.* If errors in the prorations made at closing are identified within three hundred and sixty five (365) days after closing, Transferor and Transferee will make post-closing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- f. *Brokers' Commissions.* Transferor and Transferee each represent to the other that they have not acted or omitted to act in any way that could give rise to an entitlement to a commission for the transaction to which this agreement relates except as noted at the beginning. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

12.03. *Issuance of Title Policy.* Transferor will, at Transferee's expense, cause Title Company to issue the Title Policy to Transferee as soon as practicable after closing.

13. Default and Remedies.

13.01. *Transferor's Default.* If Transferor fails to perform any of its obligations under this contract or if any of Transferor's representations are not true and correct as of the Effective Date or on the Closing Date ("Transferor's Default"), Transferee may, as its sole and exclusive remedy, terminate this contract by giving notice to Transferor prior to Closing. In such case, Transferor's Earnest Money shall be delivered to Transferee, and Transferee is entitled to a return of all of its Earnest Money. In any event, this provision does not limit Transferor's liability as to those representations and/or warranties which survive Closing and which prove to have not been true and correct as of the Effective Date or on the Closing Date

13.02. *Transferee's Default.* If Transferee fails to perform any of its obligations under this Contract ("Transferee's Default"), Transferor may elect as its sole and exclusive remedy to terminate this Contract by giving notice to Transferee prior to Closing. In such case, Transferee's Earnest Money shall be delivered to Transferor, and Transferor shall be entitled to a return of all of its Earnest Money.

13.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a failure by either party to timely close as required by this agreement cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money is deemed by both parties hereto to be reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default and shall serve as liquidated damages for the non-defaulting party.

14. Prohibited Interests in Contracts.

14.01. 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.

14.02. Hixon warrants and certifies as follows:

- (i) Hixon and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Hixon has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. Hixon acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Dispute Resolution.

15.01. As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to non-binding mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02. Filing suit on a claim that should be mediated hereunder 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 thirty (30) business days of defendant's receipt of notice of the filing of such suit, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

15.05. 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.

15.06. Mediator fees must be borne equally.

15.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

16. Miscellaneous Provisions.

16.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

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

16.03. *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.**

16.04. *Waiver.* This Agreement may not be changed orally but only by a written agreement, signed by both parties hereto. Subject to the foregoing, any of the terms of this Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver, express or implied, affects the right of the waiving party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof. The City Manager or her designee may, without further action of City Council, agree on behalf of City to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

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

16.06. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three (3) days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

16.07. *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to

whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

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

16.09. *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 the number of counterparts, they 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.

16.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this agreement

16.11. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

16.12. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

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

16.14. *Waiver of Consumer Rights.* **Both Parties Waive Their Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq. of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, the Parties Voluntarily Consent To This Waiver.**

16.15. *Cooperation Between Parties.* **Hixon may elect to consummate the transactions contemplated herein as part of a so-called "like kind" exchange pursuant to Section 1031 and/or 1033 of the Internal Revenue Code, and may effect such like kind exchange through the assignment of this agreement, or its rights under this agreement, to a qualified intermediary. City agrees to reasonably cooperate with Hixon to such extent as Hixon may reasonably require, including the execution of such documentation as may be required, in**

order to effect such like kind exchange pursuant to Section 1031 and/or 1033 of the Internal Revenue Code. Despite the foregoing, the City will not represent value or other material facts to the IRS, other than that the exchange occurred.

16.16. Assignment. This agreement shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of both parties hereto. Hixon may, without City's consent, assign this agreement to another entity that is controlled by, affiliated with or owned by Hixon (or to an entity that is involved in an exchange pursuant to Section 1031 and/or 1033 of the Internal Revenue Code), provided that Hixon shall not be released of its obligations hereunder by virtue of any such assignment.

16.17. Monthly Parkers. For 90 days after closing Hixon will not terminate parking privileges in the Riverbend Garage for monthly parkers who are current in paying their rent. Likewise for 90 days after closing, Hixon will not raise the rent charged to monthly parkers.

17. Public Information.

Hixon 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.

18. USO Lease.

In accordance with Section 3.01(n) herein, Hixon will enter into a modification of the USO Lease attached as Exhibit G hereto at Closing permitting the United Services Organization to continue to occupy its present space in Property B throughout the remainder of its current term, February 28, 2009. During the remainder of this term, Hixon will be entitled to receive as rent only the \$626.64 monthly steam and chilled water charge. The amendment to this USO Lease shall provide for the payment of an annual rental (payable in monthly installments) by USO to Hixon of One Hundred Thousand Dollars (\$100,000) for a period of five (5) years, beginning March 1, 2009. USO will have the right to terminate the lease at the end of three years. City will guarantee the rental payable by USO during the first three (3) years of the amended lease, the guarantee to be in the form of **Exhibit M**. Hixon acknowledges that the form lease attached as Exhibit G meets all the above requirements to its satisfaction, and City need not offer any terms different from those on Exhibit G.

19. Centro Info Lease.

19.01. City may occupy and operate the public restroom and information center ("Centro Info Center") at the northeast corner of the Riverbend Garage according to the terms of a lease agreement attached as **Exhibit F** (the "Centro Info Lease") and subject to the provisions of Section 3.01(m) herein, which will be rent-free, but triple net in basis, and will provide that any and all maintenance, utilities, insurance, capital improvements, and security for Property B shall be borne on a pro rata basis by the City at all times during the term of the Centro Info Lease. Notwithstanding the foregoing, City shall be solely responsible for maintaining, at its sole cost and expense, the interior

and exterior of the Centro Info Center in their current condition. Additionally, the City shall be solely responsible for all costs and expenses associated with the operation of the Centro Info Center.

19.02. The Centro Info Lease shall be for an initial term of five (5) years, with two (2) five-year options which shall automatically renew unless City is in default under the Centro Info Lease or its guaranty of the USO Lease, but shall be terminable by Hixon at any time after the initial 5 year term upon notice to the City in the event that Hixon elects to redevelop Property B, which redevelopment may or may not contain a parking component. If Hixon terminates the Centro Info Lease before 14 years from its inception, Hixon must pay City for the unamortized portion of its improvements to the leased premises according to the amortization schedule set out at **Exhibit N**.

19.03. Hixon acknowledges that the form lease attached as Exhibit F meets all the above requirements to its satisfaction, and City need not offer any terms different from those on Exhibit F.

In Witness Whereof, the parties have caused their representatives to set their hands.

City:

Hixon:

City of San Antonio, a Texas municipal corporation

Hixon Properties Incorporated, a Texas corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Title Company Acceptance of Escrow and Receipt for Contract

Hixon: Hixon Properties Incorporated

Address: 315 East Commerce Street, Suite 300, San Antonio, Texas 78205

City: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property A: Former K-Mart site at Nueva and Santa Rosa

Property B: Riverbend Garage

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three (3) fully executed counterpart originals of the Contract on the same date, with one (1) fully executed original Contract being returned to each of Seller and Buyer.

Chicago Title Insurance Company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Receipt for Earnest Money

Hixon: Hixon Properties Incorporated

Address: 315 East Commerce Street, Suite 300, San Antonio,
Texas 78205

City: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property A: Former K-Mart site at Nueva and Santa Rosa

Property B: Riverbend Garage

Title Company acknowledges receipt from Hixon of earnest money in the amount set forth below:

Amount: _____

Title Company acknowledges receipt from City of earnest money in the amount set forth below:

Amount: _____

Chicago Title Insurance Company

By: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit A: Property A Legal Description

Lots 1 and 2, New City Block 13423, Tex R-39, Central West Area Project 1 Urban Renewal, an addition to the City of San Antonio, Bexar County, Texas according to the map or plat thereof recorded in Volume 5502, Page 28-34, Deed and Plat Records of Bexar County, Texas

Exhibit B: Property B Legal Description

Lot 11, Block 10, New City Block 160, Riverbend Parking Garage Subdivision, an addition to the City of San Antonio, Bexar County, Texas according to the map or plat thereof, recorded in Vol. 9523, Page 109, Deed and Plat Records of Bexar County, Texas.

Exhibit C: Representations

Representations.

A. Transferor's Representations to Transferee.

Transferor represents to Transferee that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date. Notwithstanding the preceding, City acknowledges that a lease (the "Kindred Lease") exists on Property A between Hixon and Kindred Hospitals Limited Partnership ("Kindred"). To the extent Hixon makes the following representations as of the Effective Date, it excludes from such representations any rights that Kindred may have or assert under the Kindred Lease.

1. *Authority.* Transferor is incorporated under the laws of the State of Texas and is authorized to complete the transaction contemplated in this Agreement and will provide all documentation as required by the Title Company to issue the Title Policy. Transferor has the full power and authority to enter into this Agreement and perform the terms and conditions of the Agreement.

2. *Litigation.* There is no litigation pending or, to the actual knowledge of Transferor, threatened that might affect the Property or Transferor's ability to perform its obligations under this contract.

3. *Violation of Laws.* To each Transferor's actual knowledge, the Property belonging to the Transferor is not in violation of, nor are there any pending or threatened governmental actions, suits, or proceedings against or affecting the Property or any portion thereof, relating to any violation of any environmental law or regulation.

4. *Licenses, Permits, and Approvals.* Transferor has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* (Except as to the interest shown by City in acquiring Property A) Transferor has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Transferring the Property.* Transferor has not obligated itself to transfer the Property to any party other than Transferee. Transferor's performance of this contract will not cause a breach of any other agreement or obligation to which Transferor is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature

except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Transferee has given its consent.

8. *No Warranty.* Transferor has made no warranty in connection with this contract.

9. The City Manager of the City is not actually, consciously aware of any proposal for the City to regulate rates charged private parties for parking on private property.

10. All monthly parking permits may be terminated upon not more than sixty (60) days written notice.

11. **Exhibit J** is a complete list of all lease agreements and service contracts that will survive Closing as to Property B, and same shall not be modified, amended, or terminated prior to Closing without the prior written consent of Transferee; provided that any service contracts that are terminable shall be terminated by Transferor upon request of Transferee so long as termination is not be effective before Closing. No leases or contracts survive closing as to Property A.

13. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Transferor makes no representation with respect to the Property. Any and all representations by Transferor are hereby deemed to survive closing.

B. "As Is, Where Is."

This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Transferor's Representations To Transferor Set Forth In Section A Of This Exhibit C.

The Property Will Be Conveyed To Transferor In An "As Is, Where Is" Condition, With All Faults. All Warranties Are Disclaimed.

C. Transferee's Representations to Transferor.

Transferee represents to Transferor that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Transferee is the type of entity specified in the signature block adjacent to its name and is duly organized, validly existing, and in good standing under the laws of the state of Texas, with authority to accept the Property from Transferor. This contract is, and all documents required by this contract to be executed

and delivered to Transferor at closing will be, duly authorized, executed, and delivered by Transferee.

2. *Litigation.* There is no litigation pending or threatened against Transferee that might affect Transferee's ability to perform its obligations under this contract.

Exhibit D: Notice, Statements, and Certificates

Intentionally Omitted

Exhibit E: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

State of Texas }
 }
County of Bexar }

**Deed without Warranty
(and Assignment of Claims)**

Authorizing Ordinance:

Grantor:

Grantor's Address:

Grantee:

Grantee's Address:

Consideration: \$10 in hand paid, the benefit to the public to arise from the City's use of the Property, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: The real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas more particularly described on **Exhibit A**, which is incorporated by reference for all purposes as if fully set forth.

Grantor, for the Consideration, Grants, Sells, Bargains, and Conveys the Property to Grantee, together with, all and singular, the rights and appurtenances thereto in anywise belonging, to Have and To Hold unto Grantee and Grantee's successors and assigns forever.

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

But Grantor represents that it has not previously conveyed the Property to anyone else.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

In Witness Whereof, Grantor has caused its representative to hereunto set its hand:

Grantor:

???????, a Texas ??????

By: _____

Printed
Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS ★

COUNTY OF BEXAR ★

This instrument was acknowledged before me this date by _____, of /corpname/, a Texas ?????, in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

After Recording, Return To:

LEASE AGREEMENT

BETWEEN

**HIXON PROPERTIES INCORPORATED
As Landlord**

AND

**THE CITY OF SAN ANTONIO
As Tenant**

AT

**CENTRO INFORMATION CENTER
THE RIVERBEND PARKING GARAGE
SAN ANTONIO, TEXAS**

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EXHIBIT A	Parking Facility Site Plan
EXHIBIT B	Legal Description of Parking Facility
EXHIBIT C		Intentionally omitted
EXHIBIT D	Landlord's Sign Criteria
EXHIBIT E	Rules and Regulations to Use of the Common Area

EXHIBIT FCost of Operation and Maintenance of the Common Area
EXHIBIT GSchedule of Existing Exclusives and Prohibited Uses on
the Parking Facility
EXHIBIT H.....Amortization Schedule

LEASE AGREEMENT

THE STATE OF TEXAS

COUNTY OF BEXAR

This Lease Agreement (the "lease" or "Lease"), entered into this _____ day of _____, 20__ by and between the Landlord and the Tenant hereinafter named.

ARTICLE I. Definitions and Certain Basic Provisions.

- 1.1 (a) "Landlord": Hixon Properties Incorporated
- (b) Landlord's address: 315 E. Commerce St.
- (c) "Tenant": The City of San Antonio
- (d) Tenant's mailing address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, CIMS)
- (e) Tenant's trade name: Centro Information Center
- (f) Tenant's address in Parking Facility: 412 E. Commerce Street
San Antonio, TX 78205
- (g) "Premises": Approximately _____ square feet (computed from measurements to the exterior of outside walls of the building and to the center of interior walls), such premises being shown and outlined on the plan attached hereto as Exhibit A, and being part of the Parking Facility situated upon the property described in Exhibit B attached hereto. "Parking Facility" shall refer to the property described in Exhibit B, together with such additions and other changes as Landlord may from time to time designate as included within the Parking Facility.
- (h) Lease term: Commencing on the "Commencement Date" as defined in Section 3.2 and ending sixty__ (60) months thereafter (the "Primary Term"), except that in the event the Commencement Date is a date other than the first day of a calendar month, said term shall extend for said number of months in addition to the remainder of the calendar month following the Commencement Date.

In addition to the foregoing, Landlord and Tenant agree that Tenant shall have the right and option (the "Renewal Option") to renew this Lease for two (2) additional sixty (60) month terms (each referred to as an ~~the~~ "Option Term") which shall be automatically enacted upon commencement of the Option Term, unless Tenant provides written notice to Landlord of Tenant's election to terminate this Lease upon

expiration of the preceding Primary Term or Option Term, such notice to be delivered to Landlord not less than ninety (90) days prior to the expiration of the then current term, provided (i) Tenant is not in default beyond any applicable notice and cure period afforded to Tenant in this Lease, and (ii) provided further that Tenant is not in default of any of its obligations beyond any applicable notice and cure period afforded to Tenant as Guarantor under its Guaranty of that certain lease entered into between Landlord and USO, as described in Article XIX herein. Subject to the conditions set forth in the preceding sentence, this Lease shall be extended upon the same terms, covenants, and conditions as provided in this Lease.

- (i) Intentionally Omitted.
- (j) **Permitted Use: The operation of a public restroom and information center. Tenant agrees that it may not use the Premises for any business activity without Landlord's prior written consent. No other use shall be allowed without the prior written permission of Landlord.**
- (k) Minimum Guaranteed Rental:

Primary Term

Months 1 through 60: \$ 0.00 per month (\$ 0.00 per square foot per year)

- (l) Percentage Rental: 0.0 % of Gross Sales (as defined in Section 4.5) in excess of \$ N/A per month (such monthly amount being hereinafter referred to as the "Breakpoint") during the calendar year, payable on or before the 10th day of each following month.
- (m) Initial Utility Charge per month under Section 6.3: (See also the provisions of Section 6.3 of this Lease)
- (n) Initial Insurance Escrow Payment per month under Section 13.3: (See also the provisions of Section 13.3 of this Lease)
- (o) Initial Tax Escrow Payment per month under Section 18.2: (See also the provisions of Section 18.2 of this Lease)
- (p) ~~Security Deposit:~~ \$ Intentionally omitted.
- (q) Prepaid Rental: \$ 0.00, together with an amount equal to the sum of the Initial Utility Charge, Initial Insurance Escrow Charge and Initial Tax Escrow Payment.

1.2 Monthly Payment: Subject to adjustment in accordance with the provisions of this Lease, the Monthly Payment shall be the sum of (with respect to the Primary Term):

	Months 1 through 60
Minimum Guaranteed Rental; and \$	0.00
.	
*Initial Utilities Charge; and .	\$
*Initial Insurance Escrow Payment; and .	\$
.	
*Initial Tax Escrow Payment	\$
.	
*Monthly Payment Total	\$
.	

***Subject to adjustment from time to time as provided in the Lease.
Minimum Guaranteed Rental is the same during any renewal term as during the primary term.**

1.3 Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by references thereto in other provisions of this lease.

ARTICLE II. Granting Clause. 2.1 In consideration of the obligation of Tenant to pay rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises TO HAVE AND TO HOLD the Premises for the lease term, all upon the terms and conditions set forth in this lease.

ARTICLE III. Acceptance of Demised Premises. Tenant agrees that, if requested by Landlord, Tenant will furnish Landlord with a written statement that Tenant has accepted the Premises and that Landlord has fully complied with Landlord's covenants and obligations thereunder. Tenant agrees to furnish to Landlord a Certificate of Occupancy from applicable local authorities on or before the Commencement Date.

3.2 Landlord and Tenant each agree that at the request of either they will, following the Commencement Date, execute and deliver a recordable short form lease containing the basic provisions of this lease, acknowledging that Tenant has accepted possession, and reciting the exact Commencement Date and Termination Date of this lease.

3.3 Intentionally omitted.

3.4 Intentionally omitted.

ARTICLE IV. Monthly Payment. 4.1 Monthly Payment, as specified in Section 1.2. shall accrue hereunder from the Commencement Date, and shall be payable at the place designated for the delivery of notices to Landlord at the time of payment, without demand and without set-off or deduction, for any reason whatsoever.

4.2 The first Monthly Payment shall be due and payable on or before the Commencement Date, and subsequent Monthly Payments shall be due and payable on

or before the first day of each succeeding calendar month during the lease term; provided that if the Commencement Date is a date other than the first day of a calendar month, there shall be due and payable on or before such date as Monthly Payment for the balance of such calendar month a sum equal to that proportion of the rent specified for the first full calendar month as herein provided, which the number of days from the Commencement Date to the end of the calendar month during which the Commencement Date shall fall bears to the total number of days in such month.

4.3 Intentionally omitted.

4.4 Intentionally omitted.

4.5 Intentionally omitted.

ARTICLE V. Intentionally omitted.

ARTICLE VI. Common Area. 6.1 The "Common Area" is the part of the Parking Facility designated by Landlord from time to time for the common use of all tenants and parking patrons, including among other facilities, sidewalks, landscaping, curbs, loading areas, private streets and alleys, lighting facilities, hall-ways, malls, rest rooms not in the Premises, and other areas and improvements provided by Landlord for the common use of all tenants and parking patrons, all of which shall be subject to Landlord's sole management and control and shall be operated and maintained in such manner as Landlord, in its discretion, shall determine. Landlord reserves the right to change from time to time the dimensions and location of the Common Area within the Parking Facility as well as the location, dimensions, identity and type of any building within the Parking Facility and to construct additional buildings or additional stories on existing buildings or other improvements in the Parking Facility, and to eliminate buildings from the plan shown on Exhibit A. Tenant and its employees, customers, subtenants, licensees and concessionaires shall have the non-exclusive right and license to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants of the Parking Facility, parking patrons, and other persons permitted by Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. Landlord shall at all times have the right to change such rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for the safety, care or cleanliness of the Parking Facility and for preservation of good order therein, all of which rules and regulation, changes and amendments will be forwarded to Tenant in writing and shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with such rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to prevent the public from obtaining prescriptive rights or to make repairs or alterations.

6.2 Intentionally omitted.

6.3 Tenant agrees to pay as an additional charge each month its proportionate share of ad valorem taxes, insurance and utilities for the Garage Facility . The proportionate share to be paid by Tenant of the cost of the ad valorem taxes, insurance and utility cost to be borne by Tenant shall be computed on the ratio that the total

number of square feet of floor space in the Premises bears to the total number of square feet of gross leasable area within the Parking Facility ("Tenant's Proportionate Share"). Such proportionate share shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord at the beginning of each twelve (12) month period commencing and ending on dates designated by Landlord, each installment being due on the first day of each calendar month. If at any time during such twelve (12) month period it shall appear that Landlord has underestimated Tenant's proportionate share of Common Area utility costs for such twelve (12) month period, Landlord may reestimate Tenant's proportionate share of Common Area Costs and may bill Tenant for any deficiency which may have accrued during such twelve (12) month period and thereafter the monthly installment payable by Tenant shall also be adjusted. Within one hundred twenty (120) days or such reasonable time thereafter (in Landlord's determination) after the end of each such twelve (12) month period, Landlord shall deliver to Tenant a statement of Common Area utility costs for such twelve (12) month period and the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and each party hereby agrees that Tenant shall pay Landlord or Landlord shall credit Tenant's account (or, if such adjustment is at the end of the term, pay Tenant), within thirty (30) days of receipt of such statement, the amount of any excess or deficiency in Tenant's proportionate share of Common Area utility costs paid by Tenant to Landlord during such twelve (12) month period. Failure of Landlord to provide the statement called for hereunder shall not relieve Tenant from its obligations hereunder. The initial Common Area Utility Charge, subject to adjustment as provided herein, shall be that amount set out in Section 1.1(m).

ARTICLE VII. Use and Care of Premises. 7.1 The Premises may be used only for the purpose or purposes specified in Section 1.1(j) above, and for no other purpose or purposes without the prior written consent of Landlord. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the term of this lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. Tenant shall operate its business with attractive displays and in an efficient, high class and reputable manner, taking commercially reasonable steps to provide a safe and secure environment, and shall, except during reasonable periods for repairing, cleaning and decorating keep the Premises open to the public for business with adequate and competent personnel in attendance on all days and during all hours (including evenings) established by Landlord from time to time as store hours for the Parking Facility, and during any other days and hours when the Parking Facility generally is open to the public for business, except to the extent Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation.

7.2 Tenant shall not, without Landlord's prior written consent, keep anything within the Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Premises or other part of the Parking Facility. Tenant shall pay as additional rental, upon demand of Landlord, any such increased premium cost due to Tenant's use or occupation of the Premises. All property kept stored or maintained within the Premises by Tenant shall be at Tenant's sole risk.

7.3 Tenant shall not permit any objectionable or unpleasant odors to emanate from the Premises, nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside

the building or in the Common Area, nor place an antenna, awning or other projection on the exterior of the Premises; nor solicit business or distribute leaflets or other advertising material in the Common Area; nor take any other action which in the exclusive judgment of Landlord would constitute a nuisance or should disturb or endanger other tenants or parking patrons of the Parking Facility or unreasonably interfere with their use of their respective premises or parking places, nor do anything which would tend to injure the reputation of the Parking Facility.

7.4 Tenant shall take good care of the Premises and keep the same free from waste at all times. Tenant shall keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, insects and pests at all times, and shall store all trash and garbage within the Premises, arranging for the regular pickup of such trash and garbage at Tenant's expense. Tenant will store all trash and garbage within the area designated by Landlord for such trash pickup and removal and only in receptacles of the size, design and color from time to time prescribed by Landlord. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas from time to time prescribed by Landlord. Landlord may, at its sole option, arrange for collection of all trash and garbage. Tenant shall not operate an incinerator or burn trash or garbage within the Parking Facility. It is generally understood that mold spores are present essentially everywhere and that mold can grow in most any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Tenant acknowledges the necessity of housekeeping, ventilation, and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. In signing this Lease, Tenant has first inspected the Premises and certifies that it has not observed mold, mildew or moisture within the Premises. Tenant agrees to immediately notify Landlord if it observes mold/mildew and/or moisture conditions (from any source, including leaks), and allow Landlord to evaluate and make recommendations and/or take appropriate corrective action. Tenant relieves Landlord from any liability for any bodily injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold or mildew on the Premises. In addition, execution of this Lease constitutes acknowledgement by Tenant that control of moisture and mold prevention are integral to its Lease obligations.

7.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows and exterior electric signs in front of the Premises lighted from dusk until 12:00 P.M. every day, including Sundays and holidays.

7.6 Intentionally omitted.

7.7 Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

7.8 Non-Smoking Facility. The Premises are deemed a non-smoking area. Tenant shall not allow smoking within the Premises at any time.

ARTICLE VIII. Maintenance and Repair of Premises. 8.1 Landlord shall keep all structural elements of the Premises, including the foundation, the exterior walls (except store fronts, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or other treatment of interior and exterior walls) and the structural elements of the roof of the Premises in good repair, ordinary wear and tear excepted. Any repairs required to be made by Landlord

hereunder which are occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires, shall be paid for by Tenant upon demand to the extent not covered by net insurance proceeds paid to Landlord therefore. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. Landlord's obligation hereunder is limited to repairs specified in this Section 8.1 only, and Landlord shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs.

8.2 Tenant shall furnish, maintain, and replace all electric light bulbs, tubes and tube casings.

8.3 Tenant shall keep the Premises in good, clean condition and shall, at its sole cost and expense, make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacements expressly required to be made by Landlord under the provisions of Section 8.1, Article XV and Article XVI and shall keep all plumbing units, pipes and connections free from obstruction and protected against ice and freezing. Tenant shall keep the Premises free from graffiti at all times, and shall make every effort to remove graffiti from any and all surfaces including interior and exterior walls, bathroom stalls and all windows, as soon as possible. Tenant shall be responsible for the cleaning and maintenance of any grease trap serving the Premises and shall enter into, and furnish Landlord a copy of upon request, a grease trap cleaning contract reasonably acceptable to Landlord. If any repairs, replacements or maintenance required on the part of Tenant hereunder are not accomplished within 60 days after written notice to Tenant from Landlord, Landlord may, at its option, perform such repairs, replacements or maintenance without liability to Tenant for any loss or damage which may result to its or business by reason thereof, and Tenant shall pay to Landlord immediately upon demand as additional rental hereunder the cost of such repairs, replacements or maintenance plus fifteen percent (15%) of such cost. At the expiration of this lease, Tenant shall surrender the Premises in good condition, reasonable wear and tear and loss by fire or other casualty excepted and shall surrender all keys for the Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Upon move out by Tenant, should the Premises require any repairs which are the responsibility of Tenant hereunder, Landlord shall have the right to make such repairs at Tenant's sole cost.

8.4 Maintenance of the air conditioning and heating equipment shall be solely the responsibility of Tenant throughout the entire term of this lease. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems and equipment within the Premises. The maintenance contractor and the contract must be approved by the Landlord. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) within thirty (30) days of the date Tenant takes possession of the Premises. Tenant shall from time to time upon request furnish proof reasonably satisfactory to Landlord that all such systems and equipment are being serviced in accordance with the maintenance/service contract. Within the thirty (30) day period preceding move out by Tenant, Tenant shall

have the systems and equipment checked and serviced to insure proper functioning and shall furnish Landlord satisfactory proof thereof upon request.

ARTICLE IX. Alterations. 9.1 Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of Landlord, except for the installation of unattached, moveable trade fixtures which may be installed without drilling, cutting or otherwise defacing the Premises. All alterations, additions, improvements and fixtures (other than unattached, movable trade fixtures which may be made or installed by either party upon the Premises shall remain upon and be surrendered with the Premises and become the property of Landlord at the termination of this lease, unless Landlord request their removal in which event Tenant shall remove the same and restore the Premises to their original condition at Tenant's expense. Any linoleum, carpeting or other floor covering which may be cemented or otherwise affixed to the floor of the Premises is a permanent fixture and shall become the property of Landlord without credit or compensation to Tenant.

9.2 All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and the requirements of any contract or deed of trust to which the Landlord may be a party and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Parking Facility. Prior to commencement of any such work Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.

9.3 Tenant agrees that all venting, opening, sealing, waterproofing or any other altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense and that when completed Tenant shall furnish to Landlord a certificate from Landlord's roofing contractor stating that all such alterations approved by Landlord have been completed in accordance with the plans and specifications therefore approved by Landlord. Tenant agrees that all improvements, alterations, repairs or other work performed upon the Premises under any provision of this lease shall be performed under the direction of a general contractor approved in writing by Landlord. Tenant further agrees that plans and drawings for installation or revision of mechanical, electrical or plumbing systems shall be designed by an engineer approved in writing by Landlord, such design work to be done at Tenant's expense. Each and every roof penetration that is made by Tenant, its employees, agents or contractors which is not performed in accordance with the aforementioned specification and where Landlord's prior written consent was not obtained for such non conforming work, shall result in a One Thousand and No/100 Dollar (\$1,000.00) charge, payable by Tenant to Landlord within 60 days. Failure to pay such charge shall be considered a material default under this lease.

ARTICLE X. Landlord's Right of Access; Use of Roof. 10.1 Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of inspecting the same, or of making repairs to the Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Premises to prospective purchasers, lessees or lenders.

10.2 Use of the roof above the Premises is reserved to Landlord. Tenant shall not be allowed on the roof without Landlord's prior written consent.

ARTICLE XI. Signs; Store Fronts. 11.1 Tenant shall not, without Landlord's prior written consent (a) make any changes to or paint the store front; or (b) install any exterior lighting, decorations or paintings; or (c) erect or install any signs, banners, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type for its display window. All signs, decorations and advertising media shall conform in all respects to Landlord's sign criteria attached hereto as Exhibit D. All signs shall be kept in good condition and in proper operating order at all times. Pictures of Tenant's current window displays are at Exhibit ???. Landlord acknowledges that such displays conform to all applicable Landlord rules.

11.2 Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached. Should Tenant fail to do so, Landlord shall have the sign removed and the cost of the removal plus 20% shall be deducted from Tenant's security deposit.

11.3 Tenant shall pay its prorated cost of electricity if Tenant maintains a pylon sign. Furthermore, Tenant waives any liability on the part of Landlord arising out of Tenant's use of a pylon sign.

11.4 During the period that is six (6) months prior to the end of the lease term and at any time Tenant is in default hereunder and such default has remained uncured for at least thirty (30) days, Landlord shall have the right to erect on the Premises signs indicating that the Premises are available for lease.

ARTICLE XII. Utilities. 12.1 Landlord agrees to cause to be provided and maintained the necessary mains, conduits and other facilities necessary to supply water, electricity, gas (if applicable), telephone service and sewerage service to the Premises, subject to any special provisions contained in Exhibit C. Landlord shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Premises. Tenant shall at Tenant's sole cost and expense make application and arrange for the installation of all such meters or other devices. To the extent that Tenant's utilities are not separately metered from the utilities for the Parking Facility, Landlord may, at Landlord's option, either (i) install a separate meter for the Premises, at Tenant's expense, or (ii) allocate an estimated usage of said utilities by Tenant. The utility usage reflected by such meter for the Premises, or the estimated allocation of Tenant's usage, shall be billed to Tenant on a monthly basis and shall be payable to the Landlord on or before the 11th day of each following month.

12.2 Tenant shall promptly pay all charges for electricity, water, gas, telephone service, sewerage service and other utilities furnished to the Premises and shall promptly pay any maintenance charges therefore. Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase such services as are tendered by Landlord, and shall pay on demand as additional rental the rates established therefore by Landlord which shall not exceed the rates which would be charged for the same services if furnished directly by the local public utility companies.

Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service.

12.3 Landlord shall not be liable for any interruption or failure whatsoever in utility services and Tenant shall comply with all terms and provisions of this lease notwithstanding any such failure or interruption.

ARTICLE XIII. Public Liability Insurance and Fire Extended Coverage Insurance. 13.1 Landlord shall not be liable to Tenant or to Tenant's employees, agents or visitors, or to any person or entity whomsoever, for injury to person or damage to or loss of property on or about the Premises or the Common Area caused by the negligence or misconduct of Tenant, its officers, partners, employees, agents, subtenants, licensees, concessionaires, visitors or any other person entering the Parking Facility under the express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations hereunder or resulting from any other cause except Landlord's sole negligence. The provisions of this section shall survive the termination of this lease with respect to any claims or liability occurring prior to such termination.

13.2 Tenant is self-insured.

Tenant will not permit the Premises to be used for any purpose or in any manner that would (a) void the insurance thereon, (b) increase the insurance risk, or (c) cause the disallowance of any sprinkler credits. Tenant shall pay any increase in the cost of any insurance on the Premises or the building, which is caused by Tenant's use of the Premises, or because Tenant vacates the Premises

13.3 Tenant agrees to pay its proportionate share of Landlord's cost of property and liability insurance as carried by Landlord from time to time with respect to the Parking Facility, including without limitation fire and extended coverage, business interruption, general liability and umbrella liability insurance in such amounts as Landlord deems necessary or desirable ("Insurance"). During each month of the lease term, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of its proportionate share of the Insurance on the Parking Facility which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this section to pay the cost of Insurance. Each Insurance Escrow Payment shall be due and payable at the same time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Insurance Escrow Payment will be that amount set out in Section 1.1(n) above. The initial monthly Insurance Escrow Payment is based upon Tenant's proportionate share of the estimated Insurance on the Parking Facility for the year in question, and the monthly Insurance Escrow Payment is subject to increase or decrease as determined by Landlord to reflect an accurate monthly escrow of Tenant's estimated proportionate share of the Insurance. The Insurance Escrow Payment account of Tenant shall be reconciled annually. If Tenant's total Insurance Escrow Payments are less than Tenant's actual proportionate share of the Insurance on the Parking Facility, Tenant shall pay to Landlord upon demand the difference; if the total Insurance Escrow Payments of Tenant are more than Tenant's actual proportionate share of the Insurance on the Parking

Facility, Landlord shall retain such excess and credit it to Tenant's Insurance Escrow Payment account. Tenant's proportionate share of the cost of Insurance on the Parking Facility shall be computed by multiplying the cost of Insurance by a fraction, the numerator of which shall be the total number of square feet of floor space in the Premises and the denominator of which shall be the total number of square feet of gross leasable area within the Parking Facility ("Tenant's Proportionate Share").

ARTICLE XIV. Non-Liability for Certain Damages. 14.1 Landlord and Landlord's agents and employees shall not be liable to Tenant or any other person or entity whomsoever for any injury to person or damage to property caused by the Premises or other portions of the Parking Facility becoming out of repair or damaged or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, nor shall Landlord be liable to Tenant or any other person or entity whomsoever for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Parking Facility or of any other persons or entities whomsoever, excepting only duly authorized employees and agents of the Landlord. With respect to latent or patent defects in the Premises or in the building of which they form a part, Landlord's liability shall not extend beyond one (1) year from the date of substantial completion of construction of the Premises, whether or not such defects are discovered within such one-year period.

ARTICLE XV. Damage by Casualty. 15.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty.

15.2 In the event that the Premises are damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises, except that Tenant shall pay a proportionate share of any deductible applicable under Landlord's insurance with respect to any casualty occurring in the Premises unless Tenant, another tenant (or the employees, agents, contractors, concessionaires, licensees or subtenant of Tenant or any other tenant), or parking patron is responsible for such casualty by way of negligence or willful misconduct, in which event the responsible party shall pay the entire amount of the deductible upon demand. If the building in which the Premises are located shall (i) be destroyed or substantially damaged by a casualty not covered by the Landlord's insurance; or (ii) be destroyed or rendered untenable to an extent in excess of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance; or (iii) be damaged to such extent that the remaining term of this lease is not sufficient to amortize the cost of reconstruction, then Landlord may elect to either terminate this lease as hereinafter provided or to proceed to rebuild and repair the Premises. Should Landlord elect to terminate this lease it shall give written notice of such election to Tenant within ninety (90) days after the occurrence of such casualty. If Landlord should not elect to terminate this lease, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. In the event of any damage or destruction to the Premises, Tenant shall, upon notice from Landlord, forthwith remove, at Tenant's sole cost and expense, such portion or all of Tenant's shelves, bins, machinery and other

trade fixtures and all other property belonging to Tenant or to Tenant's licensees from such portion all of the Premises as Landlord shall request.

15.3 Landlords' obligation to rebuild and repair under this Article XV shall in any event be limited to restoring the Parking Facility and the Premises to substantially the condition in which the same existed prior to the casualty, and shall be further limited to the extent of the insurance proceeds available to Landlord for such restoration, and Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures and equipment and other items.

15.4 Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, provided the damage to the Premises is not caused by the negligence or intentional misconduct of Tenant, then the Monthly Payment shall be reduced to such extent as may be fair and reasonable under the circumstances, however, there shall be no abatement of the Percentage Rental and other charges provided for herein.

15.5 Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligation hereunder shall cease and terminate.

15.6 Each of Landlord and Tenant hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way or subrogation or otherwise from any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, including any other tenants, parking patrons, or occupants of the Parking Facility; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of Landlord and Tenant agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra cost shall be charged therefore, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so. If such other party fails to pay such extra cost, the release provisions of this section shall be inoperative against such other party to the extent necessary to avoid invalidation of such releasor's insurance.

ARTICLE XVI. Eminent Domain. 16.1 If more than twenty percent (20%) of the floor area of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by

private purchase in lieu thereof, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

16.2 If less than twenty percent (20%) of the floor area of the Premises should be taken as aforesaid, this lease shall not terminate; however, the Monthly Payment payable hereunder during the unexpired portion of this lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Percentage Rental shall be adjusted to reflect such change in the Monthly Payment. Following such partial taking, Landlord shall make all necessary repairs or alterations necessary to make the Premises an architectural whole, provided that Landlord shall in no event be obligated to spend more than the amount awarded to it by the condemning authority.

16.3 If any part of the Common Area shall be taken as aforesaid, this lease shall not terminate, nor shall the rental payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the area of the Common Area remaining following such taking shall be less than seventy percent (70%) of the area of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Premises or Common Area shall be the property of Landlord and Tenant hereby assigns its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or for the taking of Tenant's fixtures and other property if a separate award for such items is made to Tenant. Tenant shall in no event be entitled to any award for the value of the unexpired term of this lease.

ARTICLE XVII. Assignment and Subletting. 17.1 Due to the fact that Tenant is permitted to occupy the Premises free of Minimum Rent, other than for reimbursements and charges provided for herein, Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises without the prior written consent of Landlord, which may be granted or withheld at Landlord's sole discretion.

17.2 Tenant shall give Landlord at least sixty (60) days advance written notice of any proposed assignment or subletting, such notice to be accompanied by a copy of the proposed sublease or assignment. Landlord shall have the right to terminate this lease effective as of the proposed effective date of the assignment or subletting by giving Tenant written notice thereof within thirty (30) days after Landlord's receipt of said notice from Tenant. Should Landlord not elect to so terminate this lease in connection with any proposed subletting or assignment, Landlord shall continue to have the right to disapprove same.

17.3 Intentionally omitted.

17.4 Tenant shall not mortgage, pledge or otherwise encumber its interest in this lease or in the Premises.

17.5 In the event of the transfer and assignment by Landlord of its interest in this lease and in the building containing the Premises to a person expressly assuming Landlord's obligations under this lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE XVIII. Property Taxes. 18.1 Landlord is not liable for any taxes levied against personal property and trade fixtures placed by Tenant in the Premises. If any such taxes are levied against Landlord or Landlord's property, Landlord must notify Tenant and Tenant will explain Tenant's tax exempt status to the governmental entity imposing the tax.

18.2 Tenant agrees to pay its proportionate share of all taxes, assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Parking Facility, any other charges, taxes and/or impositions now in existence or hereafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefore and any ad valorem tax, fee, levy, assessment, or any charge which is imposed as the result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer (all of the foregoing being hereinafter referred to as the "Taxes"), as well as any costs or expenses incurred or arising out of the protest or appeal of such Taxes, including fees, costs and expenses of tax consultants, accountants or attorneys engaged for such purpose, except that Tenant need not pay any portion of Landlord's federal income tax liability or any expenses relating thereto. During each month of the term of this Lease, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of its proportionate share of the Taxes on the Parking Facility which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this Section 18.2 to pay the Taxes levied or assessed against the Parking Facility. Each Tax Escrow Payment shall be due and payable at the same time and in the same manner as the time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Tax Escrow Payment will be that amount set out in Section 1.1(o) above. The initial monthly Tax Escrow Payment is based upon Tenant's proportionate share of the estimated taxes on the Parking Facility for the year in question, and the monthly Tax Escrow Payment is subject to increase or decrease as determined by Landlord to reflect an accurate escrow of Tenant's estimated proportionate share of the Taxes. The Tax Escrow Payment account of Tenant shall be reconciled annually. If the Tenant's total Tax Escrow Payments are less than Tenant's actual pro rata share of the Taxes on the Parking Facility, Tenant shall pay to Landlord upon demand the difference; if the total Tax Escrow Payments of Tenant are more than Tenant's actual pro rata share of the Taxes on the Parking Facility, Landlord shall retain such excess and credit it to Tenant's Tax Escrow Payment account. Tenant's proportionate share of the Taxes on the Parking Facility shall be computed by multiplying the Taxes by a fraction, the numerator of

which shall be the total number of square feet of floor space in the Premises and the denominator of which shall be the total number of square feet of gross leasable area within the Parking Facility ("Tenant's Proportionate Share").

18.3 The Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair Tax burden on the Parking Facility. Tenant shall pay to Landlord upon demand from time to time, as additional rent, the amount of Tenant's pro rata share as aforesaid of the cost of such service.

18.4 In addition to the payments under Section 18.2, Tenant shall pay upon demand Tenant's pro rata share as aforesaid of any fees, expenses and costs incurred by Landlord in contesting any assessments, levies or tax rate applicable to the Parking Facility or portions thereof.

18.5 Any payment to be made pursuant to this Article XVIII with respect to the real estate tax year in which this lease commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as that part of such tax year covered by the term of this lease bears to a full tax year.

18.6 Tenant need not pay any portion of charges for tax consultants or other tax contest expenses greater than the amount of Tenant's share of tax savings realized by the contest.

ARTICLE XIX. Default by Tenant and Remedies. 19.1 The following events shall be deemed to be events of default by Tenant under this lease without any notice or demand whatsoever:

(1) Tenant shall fail to pay any installment of rental when due or any other expense due or demanded by Landlord as herein provided and such failure shall continue for a period of ten (10) days.

(2) Tenant fails to comply with any term, provision or covenant of this lease, other than those contained within this Article 19.1, and does not cure such failure within thirty (30) days after written notice thereof to Tenant.

(3) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(4) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligation under this lease.

(5) A receiver or Trustee shall be appointed for all Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this lease.

(6) Tenant shall desert or vacate any portion of the Premises.

(7) Tenant shall do or permit to be done anything which creates a lien upon the Premises.

(8) Any default by the tenant under that certain lease entered into between USO, as tenant, and Landlord, as assignee of the City of San Antonio's interest as

landlord (the "USO Lease") with respect to other lease space within the Parking Facility which is not cured by Tenant as Guarantor of USO's obligations under the USO Lease within any applicable cure period.

Tenant shall fail to comply with any terms or conditions of any other contract or agreement by and between Landlord and Tenant which relate to the Lease Premises.

Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

A. Terminate this lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in rental, enter upon and take possession of the Premises 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 of damages therefore.

B. Enter upon and take possession of the Premises 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 with or without having terminated the lease.

C. Do whatever Tenant is obligated to do under the terms of this lease (and enter upon the Premises in connection therewith if necessary) without being liable for prosecution or any claim for damages therefore, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease, plus interest thereon at the lesser of the highest rate permitted by law or eighteen percent (18%) per annum, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.

D. Alter all locks and other security devices at the Premises without terminating this lease.

E. Exclude Tenant from the Premises by changing all door locks located thereon and thereafter Landlord or its agent shall place a written notice on Tenant's front door stating the name and address or telephone number of the individual from whom a new key may be obtained and that such key may only be obtained during the hours stated. Landlord shall, however, have absolutely no obligation to furnish a new key unless and until Tenant (i) cures all existing defaults and (ii) delivers to Landlord a sum of money determined by Landlord in its sole discretion which shall be added to and become a part of the security deposit of Tenant hereunder. Landlord and Tenant intend that this sub-paragraph (E) expressly supersedes any conflicting provisions contained in Section 93.002 of the Texas Property Code, or any successor statute.

19.2 Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected 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 shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any event of default, to the aforesaid exercise of dominion over Tenant's property

within the Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Tenant agrees that any 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, and Landlord shall not be liable in trespass or otherwise.

19.3 In the event Landlord elects to terminate the lease by reason of an event of default, then notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein the sum of all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to date of such termination, plus, as damages, an amount equal to Tenant's Utility Charge, Insurance Escrow Payment and Tax Escrow Payment hereunder for the remaining portion of the lease term (had such term not been terminated by Landlord prior to the date of expiration stated in Article I).

19.4 In the event that Landlord elects to repossess the Premises without terminating the lease, then Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to the date of such repossession plus Tenant's Utility Charge, Insurance Escrow Payment and Tax Escrow Payment required to be paid by Tenant to Landlord during the remainder of the lease term until the date of expiration of the term as stated in Article I, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided in Section 19.5 hereof). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in the Section 19.4 may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the lease term.

19.5 In case of any event of default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above, broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises; the costs of removing and storing Tenant's or other occupant's property; the cost of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies including reasonable attorneys' fees which shall be not less than fifteen percent (15%) of all sums then owing by Tenant to Landlord.

19.6 Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use of the Premises). If Landlord elects to relet the Premises, it shall only

be required to use the same efforts it then uses to lease other space or properties which it owns or manages; provided, however that Landlord shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such available space regardless of when such alternative space becomes available; provided, further, the Landlord shall not be required to observe any instruction given by Tenant about such reletting or accept any tenant offered by Tenant unless such offered tenant has a credit worthiness acceptable to Landlord, leases the entire Premises, agrees to use the Premises in a manner consistent with the lease and leases the Premises at the same rent, for no more than the current term and on the same terms and conditions as in this lease without any expenditure by Landlord for tenant improvements or broker's commissions. In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable.

19.7 In the event Tenant is comprised of more than one person and/or entity, all such persons and/or entities shall be jointly and severally liable for all of the obligation and liabilities of Tenant under this lease.

19.8 Intentionally omitted.

19.9 In the event of any default by Landlord, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days (or such longer period as may be reasonably required in the exercise of due diligence) in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions. The term "Landlord" shall mean only the owner, for the time being, of the Parking Facility, and in the event of the transfer by such owner of its interest in the Parking Facility, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provisions hereof, in the event of any breach or default by Landlord in any term or provision of this lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the land and improvements which constitute the Parking Facility; however, in no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord or any of its partners or officers. Landlord shall not have any personal liability hereunder. The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Parking Facility shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Parking Facility and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency. Additionally, to the extent allowed by Law, Tenant hereby waives any statutory lien it may have against Landlord or its assets, including without limitation, the Parking Facility.

19.10 Intentionally omitted.

19.11 The right and remedies of Landlord herein stated shall be in addition to any and all other rights and remedies which Landlord has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

ARTICLE XX Mechanics' Liens. 20.1 Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and shall discharge any such lien by payment or bonding within ten (10) days after filed, failing which Landlord shall have the right, but no obligation, in addition to all other remedies, to discharge such lien at Tenant's expense and Landlord's cost thereof, plus interest thereon at the lesser of the highest rate permitted by law or eighteen percent (18%) per annum, shall be reimbursed by Tenant upon demand as additional hereunder.

20.2 Intentionally omitted

ARTICLE XXI. Holding Over. 21.1 In the event Tenant remains in possession of the Premises after the expiration of this lease with Landlord's written consent but without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the then current market rental for like retail space within the Central Business District of San Antonio and otherwise subject to all the conditions, provisions and obligations of this lease insofar as the same are applicable to a month to month tenancy. The foregoing shall not constitute Landlord's consent for Tenant to holdover. In the event Tenant remains in possession of the Premises after the expiration of this lease without Landlord's consent, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including without limitation the loss of any proposed subsequent tenant for any portion of the Premises.

ARTICLE XXII. Subordination. 22.1 Tenant accepts this lease subject to and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter created upon the Premises and/or the Parking Facility, and to any renewals and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this lease. Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust or other lien hereafter placed upon the Premises and/or the Parking Facility, and to any renewals and extensions thereof, and Tenant agrees upon demand to execute such further instruments subordinating this lease as Landlord may request, and, upon any failure of Tenant to do so, without limitation of Landlord's remedies, Landlord shall have the right to execute the same as attorney-in-fact for Tenant. In addition, Tenant agrees to execute a subordination, non-disturbance and attornment agreement as requested by Landlord or Landlord's mortgagee from time

to time, in form and with content reasonably required by Landlord and/or Landlord's mortgagee, to effect that Tenant's rights under this lease shall be confirmed as subordinate to any such mortgage, deed of trust or other lien, and Tenant shall agree to attorn to any such mortgagee; provided that such document shall contain provisions that Tenant's right of possession hereunder shall not be disturbed so long as Tenant is not in default hereunder.

ARTICLE XXIII Landlord's Right to Develop. Notwithstanding anything to the contrary herein, Landlord shall have the right to terminate this Lease at any time after the expiration of the Primary Term of five (5) years in the event that Landlord wishes to develop the Parking Facility and/or the underlying property as a new commercial development, which may or may not include a parking component. In the event that Landlord elects to terminate the Lease in accordance with this provision, Landlord shall provide Tenant with ninety (90) days prior written notice of Landlord's election to terminate the Lease and the effective date of such termination. In the event that such termination takes effect prior to the expiration of the first Option Term (the 10th anniversary of this Lease), then upon termination of this Lease by Landlord, Landlord shall owe Tenant an amount equal to the unamortized cost of Tenant's improvements to the Premises, which amortization is reflected on the schedule attached hereto as Exhibit H. Such payment shall be due and payable within thirty (30) days of the effective date of such termination by Landlord. Notwithstanding the foregoing, Landlord shall not be liable to Tenant for the reimbursement of any portion of the unamortized cost of Tenant's improvements if Landlord terminates the Lease as a result of Tenant's default pursuant to the provisions of Article XIX or XXXII herein.

ARTICLE XXIV Notices. 24.1 Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, Certified or Registered Mail, Return Receipt Requested, addressed to the parties hereto at the respective address set out in Section 1.1 (d) above, or at such other addresses as they may have hereafter specified by Written Notice.

24.2 If and when included within the term "Landlord" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to Landlord; if and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included with the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment.

ARTICLE XXV. Late Charges. 25.1 In the event Tenant fails to pay to Landlord when due any installment of rental or other sum to be paid to Landlord which may become due hereunder, Landlord will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Landlord and Tenant. If Tenant should fail to pay to Landlord when due any installment of rental

or other sum to be paid hereunder, Tenant will pay Landlord on demand a late charge equal to the greater of (i) \$100.00, or (ii) ten percent (10%) of the past due amount. Failure to pay such later charge upon demand therefore shall be an event of default hereunder. Provision for such late charge shall be in addition to all other rights and remedies available to Landlord hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner.

25.2 If Tenant pays any installment of any sum payable hereunder by check, and such check is returned for insufficient funds or other reason not the fault of Landlord, then Tenant shall pay to Landlord on demand a processing fee of Fifty and No/100 Dollars (\$50.00) per returned check.

ARTICLE XXVI. Intentionally omitted.

ARTICLE XXVII. Miscellaneous. 27.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereof, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include other gender.

27.2 The captions used herein are for convenience only and do not limit or amplify the provision hereof.

27.3 One or more waivers of any covenant, term or condition of this lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

27.4 Time is of the essence with respect to all provisions of this lease, except that whenever a period of time is herein prescribed for action to be taken by a party, the party shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the party. At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering Landlord's interest in the Premises, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

27.5 Landlord agrees that if Tenant shall perform all of the covenants and agreements, herein required to be performed by Tenant, Tenant shall, subject to the

terms of this lease, at all times during the continuance of this lease have the peaceable and quiet enjoyment and possession of the Premises.

27.6 This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

27.7 Tenant represents that it has had no dealing with any broker or agent in connection with the negotiation or execution of this lease other than _____(NONE)_____ (who exclusively represents the Landlord in this lease transaction, and provides no representation for the Tenant).

27.8 Tenant agrees to furnish from time to time when requested by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Parking Facility or the improvements therein or the Premises or any interest of Landlord therein, or any prospective mortgagee, purchaser or ground lessee of all or any part of the Parking Facility or the improvements therein or the Premises or any interest of Landlord therein, a certificate signed by Tenant confirming and containing such factual certifications and representations deemed appropriate by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Parking Facility or the improvements therein or the Premises or any interest of Landlord therein, and Tenant shall, within 30 days following receipt of said certificate from Landlord, return a fully executed copy thereof to Landlord. No such certification or representation, however, may increase Tenant's obligations or decrease its rights under this Lease. In the event Tenant shall fail to return a fully executed copy of such certificate to Landlord within the foregoing five-day period, then Tenant shall be deemed to have approved and confirmed all of the terms, certifications and representations contained in such certificate. Tenant hereby irrevocably appoints Landlord as attorney-in-fact for the Tenant with full power and authority to execute and deliver in the name of Tenant such certificate if Tenant fails to deliver the same within such five-day period and such certificate as signed by Landlord shall be fully binding on Tenant.

27.9 The laws of the State in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this lease. If any provision of this lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this lease shall not be affected thereby, and it is also the intention of the parties to this lease that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

27.10 The terms, provisions and covenants contained in this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representative except as otherwise herein expressly provided.

27.11 Intentionally omitted.

27.12 Landlord reserves the right at any time to change the name by which the Parking Facility is designated.

27.13 The person(s) executing this lease on behalf of Tenant hereby represent and warrant to Landlord that such execution has been duly authorized by all requisite action of Tenant so that upon such execution this lease will be binding upon and enforceable against Tenant in accordance with its terms. Tenant agrees to furnish to Landlord from time to time upon request such written proof of such authorization as Landlord may reasonably request.

27.14 Intentionally omitted.

27.15 This Lease shall be effective only when it is signed by both the Landlord and Tenant. The Tenant's submission of a signed Lease for review by the Landlord does not give the Tenant any interest, right, or option in the Premises.

27.16 Tenant hereby waives the benefit of all warranties, express or implied, with respect to the Premises including, without limitation, any implied warranty that the Premises are suitable for any particular purpose.

ARTICLE XXVIII. Intentionally Omitted

ARTICLE XXIX. Hazardous Waste. 29.1 The term "Hazardous Substances", as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required, or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local law, rule or ordinance relating to pollution or protection of nuisance, workplace safety or protection of human health, or the environment. Tenant hereby agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Materials") and only in such quantities necessary for the regular conduct of Permitted Activities provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws; (iii) no portion of the Premises will be used as a landfill or a dump and Tenant will not accumulate any hazardous or other waste for such time or in such manner that the Premises or any part thereof would be deemed to be a storage facility under any Environmental Law; (iv) Tenant will not install any underground tanks of any type or any above ground storage vessels having a volume capacity exceeding five (5) gallons; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (vi) Tenant will not permit any Hazardous Substance to be brought onto the Premises, except for the Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws.

ARTICLE XXX. Credit Report. 30.1 Landlord may request and obtain from any entity chosen by Landlord, in its sole discretion, a credit report evidencing a credit history and credit worthiness of Tenant. Tenant hereby waives any and all claims against Landlord, its employees or agents, arising from or related to the use in the ordinary course of business of the information, including without limitation, communication of the same with third parties or confirmation of the same with third parties.

ARTICLE XXXI. Americans with Disabilities Act. 31.1 Notwithstanding any other provision of this Lease to the contrary, Tenant shall comply with The Americans With Disabilities Act, and all regulations and orders promulgated pursuant thereto, as well as any related state, county, and local laws, regulations, and building codes (collectively, the "ADA"). Tenant shall make all alterations to the Premises required by the ADA and shall use and occupy the Premises at all times in compliance therewith. No approval by Landlord of alterations made by Tenant shall constitute a warranty by Landlord that such alterations comply with the ADA.

ARTICLE XXXII. This lease relates solely to the landlord-tenant relationship between Landlord and Tenant. Nothing in this Lease relieves Landlord of any generally applicable ordinances, rules, or regulations of the City of San Antonio, and nothing that the City of San Antonio does in the exercise of its municipal powers is a violation of its obligations as Tenant under this Lease. Notwithstanding the foregoing, any failure on the part of the City of San Antonio to perform its obligations as Tenant under this Lease shall be deemed a default by Tenant under this Lease, and in the event that Landlord elects to terminate this Lease as a result of such default, Tenant shall not be entitled to reimbursement of any unamortized cost of improvements pursuant to Article XXIII herein.

EXECUTED this _____ day of _____, 20____.

WITNESS FOR LANDLORD

LANDLORD: Hixon Properties Incorporated

By: Jack J. Spector
Its: President

WITNESS FOR TENANT

TENANT: City of San Antonio

By: _____

Its: _____

Approved as to Form:

City Attorney

EXHIBIT "D" (*To Exhibit F to the Real Estate Exchange Agreement*)

RULES AND REGULATIONS TO USE OF THE COMMON AREA

The use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

1. Intentionally omitted.
2. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances as shall be designated from time to time for such purposes by Landlord.
3. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the sole discretion of Landlord shall be necessary for the proper operation of the Parking Facility.
4. No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designated.
5. Except as permitted in a Tenant's lease of the Premises or except as permitted by Landlord's prior written consent, no person shall within the Common Area:
 - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - b. Exhibit any sign, placard, banner, notice or other written material;
 - c. Distribute any circular, booklet, handbill, placard or other material (other than in connection with the permitted use of the Centro Information Center in connection with the distribution of information regarding the City of San Antonio);
 - d. Solicit membership in any organization, group or association or contribution for any purpose;
 - e. Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Parking Facility, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interests of any business establishments within the Parking Facility;
 - f. Use the Common Area for any purpose when none of the business establishments within the Parking Facility is open for business or employment;

- g. Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind (Tenant agrees to crush boxes and deposit in trash container);
 - h. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements within, or property situated within the Common Area or the Parking Facility; and
 - i. Solicit any other business or display any merchandise.
6. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.
7. All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.
8. No portion of the Common Area or the Parking Facility shall be used for any lodging or illegal purposes.
9. The sidewalks, halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways of the Common Area or the Parking Facility shall not be obstructed by any Tenant or used by any Tenant for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways are not for the use of the general public and Landlord shall at all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interest of the Parking Facility and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No Tenant and no employee or invitee of any Tenant shall go upon the roof of any building in the Parking Facility except for the sole purpose of servicing its air conditioning units or rooftop equipment.
10. In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Parking Facility during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Parking Facility and Common Area.

EXHIBIT "D" (To Exhibit F to the Real Estate Exchange Agreement)

RULES AND REGULATIONS TO USE OF THE COMMON AREA

11. No Tenant shall place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or where the same can be seen or heard in the Common Area without the prior written consent of Landlord.
12. No person shall use any part of the Common Area for any purpose other than those for which the Common Area is intended.
13. No part of the Common Area shall be used for storing or maintaining any material or property, whether on a temporary basis or otherwise.
14. Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act or negligence of any Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by such Tenant upon demand to the extent not covered by insurance proceeds paid to Landlord therefore.
15. No Tenant shall make any alteration, addition or improvement to or remove any portion of the Common Area, and no Tenant shall make any changes to or paint any portion of the Common Area, or install any lighting, decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media of any type in the Common Area.
16. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Parking Facility.

Landlord shall at all times have the right to change these rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care or cleanliness of the Parking Facility, for preservation of good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the Lease Agreement to which this Exhibit is attached, the provisions of the Lease Agreement shall control. No such new or changed rules may decrease Tenant's rights or enlarge its obligations under this Lease as to occupancy of the Premises or the cost of occupying the Premises.

EXHIBIT "E" *(To Exhibit F to the Real Estate Exchange Agreement)*

Intentionally omitted.

EXHIBIT "H" (To Exhibit F to the Real Estate Exchange Agreement)

AMORTIZATION SCHEDULE
FOR CENTRO INFORMATION CENTER IMPROVEMENTS

If cancellation occurs during this period of the lease:	Then Landlord must pay to Tenant the following sums for unamortized improvements to the Centro Info space:
Through month 60	Lease cannot be canceled
Between month 61 and month 72	\$572,640
Between month 73 and month 84	\$501,060
Between month 85 and month 96	\$429,480
Between month 97 and month 108	\$357,900
Between month 109 and month 120	\$286,320
Between month 121 and month 132	\$214,740
Between month 133 and month 144	\$143,160
Between month 145 and month 156	\$71,580
Month 157 or later	0

Exhibit G: USO Lease

THIS AMENDMENT TO LEASE (the "Amendment") is entered into this _____ day of _____, 2008, by and between **HIXON PROPERTIES INCORPORATED**, a Texas corporation ("Landlord") and **UNITED SERVICES ORGANIZATION COUNCIL OF METROPOLITAN SAN ANTONIO, d/b/a U.S.O.**, a Texas non-profit corporation ("Tenant").

RECITALS:

WHEREAS, Tenant and the City of San Antonio ("COSA"), as owner of the parking structure located at 210 N. Presa Street, San Antonio, Texas, which includes certain retail space at street level (the Garage and retail space collectively referred to herein as the "Riverbend Garage"), have previously entered into a Lease Agreement (the "Lease") dated December 30, 1988, as amended by a Renewal and Extension of Lease Agreement dated January 19, 2006, with respect to approximately 10,444 square feet of gross leaseable floor space (the "Leased Premises"); and

WHEREAS, the renewal term of the Lease will expire by its own terms on February 28, 2009; and

WHEREAS, COSA has sold, conveyed and assigned its entire interest in the Riverbend Garage, including the Leased Premises, to Landlord; and

WHEREAS, both Landlord, as assignee of COSA's interest under the Lease, and Tenant desire to enter into an agreement which provides for an extension of the term of the Lease.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Term.** The term of the Lease shall be extended for an additional term of five (5) years, commencing March 1, 2009 and ending February 28, 2014. Tenant shall have the option to terminate this Lease after the third (3rd) year of the five (5) year extended term, provided that Tenant provides written notice to Landlord of its intent to terminate the Lease, such notice to be delivered to Landlord on or before November 30, 2011, provided that Tenant is not in default under this Lease at the time of such election or immediately prior to the termination of the Lease.
2. Section 5.1 of the Lease is hereby amended to read in its entirety as follows:
"Rent. Effective March 1, 2009 and continuing throughout the remainder of the term of this Lease, Tenant shall pay to Landlord, an annual rental in the amount of One Hundred Thousand Dollars (\$100,000), payable in equal monthly installments of Eight Thousand Three Hundred Thirty Three and 33/100 Dollars (\$8,333.33)."
3. Section 5.2 and 5.3 of the Lease is hereby amended to read in its entirety as follows:
"5.2 The monthly sum to be paid for rent as set forth above does not include "Costs of Common Areas" as set forth in Article XV herein or "Costs of Utilities" as defined in Article XIX. Costs of utilities and common area shall be paid directly to Landlord within fifteen (15) days of Tenant's receipt from Landlord of written notice of Tenant's utility costs and common area costs.

5.3 Tenant shall also pay a contribution toward maintenance and operation of the Common Area as set forth in Article XV, hereinafter and known hereunder as "Common Area Costs".

4. Section 5.5 of the Lease is hereby deleted in its entirety.
5. Section 15.5 of the Lease is hereby deleted in its entirety.
6. Section 21.2 of the Lease is hereby amended to provide for the following new address for Landlord, which shall also serve as the proper address for notices to Landlord pursuant to Section 31.1 of the Lease:

Hixon Properties Incorporated
315 E. Commerce St., Suite 300
San Antonio, TX 78205
Attn: Jack Spector

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first written above.

LANDLORD:

TENANT:

HIXON PROPERTIES INCORPORATED

UNITED SERVICES
ORGANIZATION COUNCIL OF
METROPOLITAN SAN
ANTONIO

By _____
Its: President

By _____
Its: _____

Exhibit H: Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment and Assumption Agreement") is made and entered into as of the ____ day of _____, 2008, by and between CITY OF SAN ANTONIO, TEXAS, a municipal corporation ("Assignor"), and HIXON PROPERTIES INCORPORATED, a Texas corporation ("Assignee").

Predicate Facts:

This Assignment and Assumption Agreement is made with reference to the following facts:

Concurrently herewith, Assignor is conveying to Assignee by a good and sufficient Deed all of Assignor's right, title, interest and estate in and to certain real property known as the Riverbend Garage at the corner of Commerce and Presa, San Antonio, Bexar County, Texas (the "Property").

Pursuant to the Real Estate Exchange Contract dated on or about ????, as amended from time to time, by and between Assignor and Assignee (the "Real Estate Exchange Contract"), Assignor is also transferring to Assignee its interest in any and all monthly parking permits, lease agreements and service contracts pertaining to the Property listed on Exhibits 2 and 3 (the "Contracts").

Assignor desires to assign to Assignee and Assignee desires to accept and assume all of Assignor's right, title and interest in and to the Contracts.

Rights and Obligations:

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Assignor hereby sells, transfers, assigns and delegates unto Assignee, its successors and assigns, all of Assignor's right, title, interest, duties and obligations in, to and under the Contracts. **Exhibit 1**, attached hereto and incorporated herein by this reference, contains the form of monthly parking permit agreement utilized for the Property. **Exhibit 2** contains the list of all monthly parking permit holders and their respective monthly parking charge. **Exhibit 3**, if applicable, contains a list of Contracts assigned hereby other than the monthly parking permits.
2. Assignee hereby accepts the assignment of the Contracts and agrees to assume and perform all covenants and obligations required of Assignor thereunder occurring or accruing from and after the date hereof.
3. Assignor hereby agrees to deliver to Assignee all revenue paid to Assignor under any of the Contracts for the time period after the Closing Date. Assignee hereby agrees to

deliver to Assignor all revenue paid to Assignee under any of the Contracts for the time period before the Closing Date. Any revenue received after the date hereof shall belong to the party entitled to it, and the party receiving such revenue shall transfer such funds within fifteen business days of receipt thereof to the party entitled to receive it.

4. The parties hereto agree to execute such further documents and agreements as may be necessary or appropriate to effectuate the purposes of this Assignment and Assumption Agreement.

5. This Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

6. This Assignment and Assumption Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. It shall not be necessary that the signatures of all parties be contained on any one counterpart. It shall be necessary to account for only one such counterpart in proving the existence or terms of this Assignment and Assumption Agreement.

7. As used in this Assignment and Assumption Agreement, the singular number shall include the plural and the plural shall include the singular, and the use of any gender shall be applicable to all genders, unless the context would clearly not admit such construction.

8. This Assignment and Assumption Agreement constitutes a contract made under and shall be construed and interpreted in accordance with the laws of the State in which the Property is located.

9. Capitalized terms not defined herein have the meaning ascribed to them in the Real Estate Exchange Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the date first above written.

City:

City of San Antonio, a Texas municipal corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Hixon:

Hixon Properties Incorporated, a Texas corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit I: Bill of Sale

BILL OF SALE

This Bill of Sale is executed and delivered as of the ____ day of _____, 20____, pursuant to that certain Real Estate Exchange Contract (“Agreement”) dated _____, 20__ by and between City of San Antonio, Texas (“Seller”) and Hixon Properties Incorporated (“Buyer”), covering the real property situated in San Antonio, Bexar County, Texas, such real property being more particular described therein and in Exhibit A attached hereto and made part hereof for all purposes (the “Property”).

1. Sale of Personalty. For good and valuable consideration, Seller hereby sells, assigns, transfers, sets over and conveys to Buyer the following (the “Other Assets”):

(a) Tangible Personalty. All of the furniture, fixtures, equipment, machines, apparatus, supplies and personal property of every nature and description and all replacements thereof that are now owned by Seller and located in or on the Property, including, but not limited to, furniture, fixtures, equipment, hardware, software, booths, golf carts, surveillance/security equipment, cameras, computers, lockers, safes and signage (the “Tangible Personalty”); and

(b) Intangible Personalty. All the right, title and interest of Seller, if any, in and to the names Riverbend Garage and Riverbend Parking Garage, the plans and specifications and other architectural and engineering drawings for the Property and improvements located on the Property,; warranties; governmental permits, approvals and licenses to the extent assignable; and telephone exchange numbers (if assignable and if Seller’s use of the numbers is limited solely to the Property).

2. Warranty. **THE SALE OF THE OTHER ASSETS IS ON AN “AS-IS, WHERE-IS” BASIS AND WITH ALL FAULTS AS OF THE DATE HEREOF, WITHOUT ANY REPRESENTATIONS OR WARRANTIES AS TO THE PHYSICAL CONDITION OR ENVIRONMENTAL CONDITION OF THE OTHER ASSETS, OR ANY OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN THE ACQUISITION, DEVELOPMENT, OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER HAS INDEPENDENTLY INVESTIGATED AND INSPECTED THE OTHER ASSETS TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT IT IS RELYING ON SUCH INDEPENDENT INVESTIGATION AND INSPECTION, AND THAT SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE OTHER ASSETS, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, AND BUYER IS NOT RELYING ON ANY SUCH INFORMATION. EXCEPT AS PROVIDED IN THE AGREEMENT (DEFINED ABOVE), SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR**

OBLIGATIONS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS, TO, CONCERNING, OR WITH RESPECT TO, THE OTHER ASSETS, THE FINANCIAL CONDITION OR ACCURACY OF ANY FINANCIAL INFORMATION OBTAINED BY BUYER IN CONNECTION WITH THE OTHER ASSETS, OR THE MERCHANTABILITY OR FITNESS OF THE OTHER ASSETS FOR ANY PARTICULAR PURPOSE.

3. Applicable Law. This Bill of Sale shall be construed, interpreted and enforced in accordance with the laws of the State of Texas.

4. **Further Assurances**. On or after the Closing Date, Seller will take commercially reasonable actions and execute (or attempt to cause to be executed) documents, instruments or conveyances which are reasonably necessary to carry out any of the provisions hereof.

Executed by the Seller as of the date set forth above.

SELLER:

City of San Antonio, a Texas municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attachments:

Exhibit A (Land Description)

Exhibit J: List of Leases and Service Contracts Surviving Closing

Service Contracts:

No service contracts survive closing

Leases:

USO Lease

Western Beverages Lease

Dante's Pizza Lease

Centro Info Lease

Hilton Parking Lease

Monthly parking contracts

Exhibit K: Transferor Closing Certificate

Transferor Closing Certificate

The undersigned, as of the date set forth at the end hereof, certifies that Transferor is duly qualified and authorized to execute and deliver this Certificate and further certifies that:

- (1) To the undersigned's actual knowledge, there are no pending or threatened actions, violations, suits or proceedings against or affecting Transferor or the Property or any portion thereof, relating to or arising out of the ownership, leasing, operation, management, use or maintenance of the Property.
- (2) To the undersigned's actual knowledge, there are no proceedings presently pending or threatened for the taking of all or any part of the Property by exercise of the power of eminent domain or for public or quasi public purpose.
- (3) There is no fact presently known to Transferor that has not been disclosed to Transferee, including any proposed City ordinance, which adversely affects, nor as far as Transferor can foresee, might adversely affect, the Property or its operations or condition (financial or otherwise) of Transferee, other than general economic conditions and other matters knowledge of which is available to the general public.
- (4) All monthly parking permits may be terminated upon sixty days written notice.
- (5) There are no lease agreements and service contracts affecting each Property that will survive Closing. (*As to Property A*) The only lease agreements and service contracts surviving closing are those listed on Exhibit J to the Real Estate Exchange Agreement to which this certificate pertains. (*As to Property B*)
- (6) The undersigned is a Texas municipal corporation/Texas corporation in good standing and is authorized to complete the transactions contemplated in this Agreement and will provide all documentation as required by the Title Company to issue each Title Policy.
- (7) The undersigned has the full power and authority to enter into this Agreement and perform the terms and conditions of the Agreement.
- (8) To the undersigned's actual knowledge, the Property is not in violation of, nor are there any pending or threatened, governmental actions, suits, or proceedings against or affecting the Property or any portion thereof relating to any violation of any environmental law or regulation.
- (9) There are no security deposits being held by the undersigned relating to any existing leases or parking contracts.

(10) The undersigned has performed, in all material respects, all covenants, agreements and conditions required by the Real Estate Exchange Contract to be performed or complied with by it prior to or on the date hereof. The provisions of this Certificate survive Closing.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement.

Date: _____

/signature block for the appropriate Transferor/

Exhibit L: Tenant Estoppel Form

TENANT ESTOPPEL CERTIFICATE
"CERTIFICATE"

RE: Lease dated _____ (the "Lease") by and between the City of San Antonio ("Landlord") and _____ ("Tenant") for the Premises located at _____, San Antonio, Texas (the "Premises") and d/b/a _____.

Ladies and Gentlemen:

The undersigned is Tenant under the Lease. Tenant hereby certifies to Hixon Properties Incorporated (the "Buyer") and acknowledges and agrees that:

1. The following information concerning the Lease is true and correct:
 - a. Commencement Date: ___/___/___
 - b. Expiration Date of Current Term: ___/___/___
 - c. Amount of Security Deposit: \$_____
 - d. Current Monthly Rent under the Lease: \$_____
 - e. Existing Renewal Option (if any): _____
 - f. Dates of any Modifications, Extensions or Modifications of the Original Lease:

2. The Lease represents the entire agreement between Landlord and Tenant and has not been modified or amended except as indicated above.

3. The Lease (modified as indicated above) is presently in full force and effect in accordance with its terms and Tenant has accepted the Premises.

4. All rent and additional rent payable under the Lease as of the date of this letter has been paid in full and no rent or additional rent to become payable under the Lease has been paid more than 30 days in advance.

5. The Lease contains the entire agreement between Landlord and Tenant with respect to the subject matter thereof, no options to purchase or rights of first refusal are contained therein, and there are no other agreements between them, oral or written, regarding the Premises or the Property.

6. To the best of Tenant's knowledge, no party to the Lease is in default thereunder, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default thereunder.
7. Tenant has no counterclaims, defenses or offsets to its obligations under the Lease or to the enforcement of any of the Landlord's rights thereunder.
8. Landlord has completed all alterations, additions, painting and refurbishing to the Premises and the Property required to be performed by Landlord, and there are no rent concessions, rebates, free rents or similar inducements except as set forth in the Lease.

Tenant acknowledges that Landlord has requested this letter in connection with a proposed sale of the Premises, and that the Buyer may rely on the information set forth in this letter.

By: _____
Name: _____
Title: _____

Exhibit M: City Guarantee of USO Lease

LEASE GUARANTY

THIS LEASE GUARANTY (this "Guaranty") is executed by **The City of San Antonio**, a Texas municipal corporation ("Guarantor") in consideration of, and as an inducement for **Hixon Properties Incorporated**, a Texas corporation ("Landlord") to enter into an Amendment to Lease ("Amendment") with respect to a certain lease agreement (the "Lease") dated December 30, 1988, as amended by a Renewal and Extension of Lease Agreement dated January 19, 2006, entered into between Guarantor and the **United Services Organization Council of Metropolitan San Antonio d/b/a "USO"** ("Tenant"), in Hixon's capacity as assignee of Guarantor's interest in said Lease, concerning leased premises located on the street level of the Riverbend Parking Garage located at 210 N. Presa Street, San Antonio, Bexar County, Texas, as more particularly described in the Lease. Guarantor has requested Landlord to agree to and enter into the Amendment, and Landlord has required Guarantor to execute this Guaranty as a condition to Landlord's obligations under the Amendment to the Lease. Landlord is relying upon the representations and warranties of Guarantor contained herein.

In consideration of the foregoing, Guarantor hereby guarantees to Landlord, its successors; and assigns, the timely payment of rent to be paid by Tenant under the Lease, and the timely performance by Tenant of all of the terms, conditions, covenants, and agreements of the Lease to be performed by Tenant, during the initial three (3) years of the primary term of the Amendment to the Lease, commencing March 1, 2009 and ending February 28, 2012. Guarantor also promises to pay all of Landlord's expenses, including reasonable attorneys' fees, incurred by Landlord, in enforcing this Guaranty.

This Guaranty shall remain in full force and effect notwithstanding any assignment or subletting of Tenant's interests under the Lease, if Guarantor consents to assignment or sublease of Tenant's interest. The validity of this Guaranty and the obligations of Guarantor hereunder shall not in any way be terminated, affected, or impaired by reason of any action which Landlord might take or be forced to take against Tenant, or by reason of any waiver of or failure to enforce any of the rights or remedies reserved to Landlord in the Lease or otherwise, or by reason of extension of time or other forbearance granted to Tenant by Landlord. In order to hold the undersigned Guarantor liable hereunder, there shall be no obligation on the part of Landlord, at any time, to resort to Tenant or to any other guaranty or to any security or other rights and remedies for payment or performance, and Landlord shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or actions are pending or being taken seeking resort to or realization upon or from any of the foregoing.

Without limiting the generality of the foregoing, Guarantor agrees that:

(a) At Landlord's option, Guarantor may be joined in any actions or proceedings commenced by Landlord against Tenant or any other guarantor in connection with and based upon any provisions of the Lease or any other guaranty of the Lease, and recovery may be had against Guarantor in such actions or proceedings, or in any independent actions or proceedings against Guarantor without requirement that Landlord, its successors, or assigns, first assert, prosecute, or exhaust any remedy or claim against Tenant, its successors, or assigns, or any other guarantor or other person who may now or hereafter become liable for performance of Tenant's obligations under the Lease;

(b) In the event of any bankruptcy, reorganization, winding up, or similar proceedings with respect to Tenant, no limitation on Tenant's liability under the Lease which may now or hereafter be imposed by any federal, state, or other statute, law, regulation, or judicial or administrative determination applicable to such proceedings shall in any way limit Guarantor's obligations hereunder;

(c) Guarantor waives notice of any and all notices or demands which may be given by Landlord to Tenant, or required to be given under the Lease; and

Guarantor's liability hereunder will not be released, reduced, impaired, or affected by the occurrence of any event save Tenant's full performance or written release from liability, including any one or more of the following events: Landlord's obtaining collateral from Tenant or any other person to secure payment or performance under the Lease; the assumption of liability by any other person (whether as guarantor or otherwise) for payment or performance under the Lease; the release, surrender, exchange, loss, termination, waiver, or other discharge of any collateral securing payment or performance under the Lease; the subordination or assignment of Landlord's rights relating to the Lease or any collateral described therein; a full or partial release from liability of Tenant or any other person now or hereafter primarily or secondarily liable for payment or performance under the Lease or under any other guaranty of the Lease; the death, insolvency, bankruptcy, reorganization, disability, discharge, waiver, or other exoneration of Tenant or any other person now or hereafter liable for payment or performance under the Lease; the assignment by Landlord, modification, or amendment from time to time of the Lease during the initial term of the Lease; the failure, delay, waiver, or refusal by Landlord to exercise any right or remedy held by Landlord under the Lease or by law; the sale, encumbrance, transfer, or other modification of Tenant's interest under the Lease; the invalidity, unenforceability, or insufficiency of the entirety of or any one or more of the terms of the Lease, any other guaranty of the Lease, or any collateral securing payment or performance thereof; or the failure of Guarantor to receive notice of any one or more of the foregoing actions or events.

Guarantor waives diligence, presentment, protest, notice of dishonor, demand for payment, notice of non-payment or non-performance, notice of acceptance of this Guaranty and all other notices of any nature in connection with the exercise of Landlord's right under the Lease or this Guaranty. Guarantor waives all rights to setoffs and counterclaims against Landlord and agrees that any rights which Guarantor might now or hereafter hold against Tenant will be subordinate, junior, and inferior to all rights which Landlord might now or hereafter hold against Tenant.

The obligations of Tenant and all guarantors shall be joint and several and Landlord may enforce this Guaranty against Guarantor without joinder of Tenant or any other guarantor (hereunder or otherwise).

Other agreements similar to this Guaranty may, at Landlord's sole option and discretion, be executed by other persons with respect to the Lease. This Guaranty shall be cumulative of any such agreements and the liabilities and obligations of the undersigned Guarantor under this Guaranty shall not be affected or diminished by reason of any such other agreements. Moreover, if Landlord obtains another signature of more than one guarantor on this Guaranty or by obtaining additional guaranty agreements, or both, Guarantor agrees that Landlord, in Landlord's sole discretion, may (a) bring suit against all Guarantors of the Lease, jointly and severally, or against any one or more of them (b) compound or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, and (c) release one more of the guarantors from liability. No such action shall impair the rights of Landlord to enforce the Lease or any guaranty obligations against any remaining guarantor or guarantors, including the undersigned Guarantor.

This Guaranty is an irrevocable, absolute, continuing guarantee of payment and not a guarantee of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to sums due under the lease arising after any attempted revocation by Guarantor.

If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

This Guaranty shall be binding upon Guarantor and Guarantor's heirs, executors, administrators, personal representatives, successors, and assigns, and shall inure to the benefit of Landlord and its successors and assigns.

This Guaranty shall be construed under the laws of the State of Texas and venue for any action brought hereunder shall be in Bexar County, Texas.

All obligations of Guarantor under this instrument are limited by the following:

All obligations of the City of San Antonio under this guaranty 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. The City has no liability under this guaranty for any period as to which the City Council fails to appropriate money for this guaranty in an annual City of San Antonio Budget. Notwithstanding the foregoing, any default by Guarantor under this Guaranty, and any failure by Guarantor to perform its obligations hereunder as a result of its failure to appropriate money required to perform its obligations as Guarantor of the Lease, shall be deemed a material default by Guarantor as tenant under that certain lease agreement entered into between Guarantor and Landlord with respect to the Centro Information Center at the Riverbend Parking Garage.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the Lease.

GUARANTOR:

City of San Antonio,
a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Approved As To Form:

City Attorney

Exhibit N: Amortization Schedule

If cancellation occurs during this period of the lease:	Then Landlord must pay to Tenant the following sums for unamortized improvements to the Centro Info space:
Through month 60	Lease cannot be canceled
Between month 61 and month 72	\$572,640
Between month 73 and month 84	\$501,060
Between month 85 and month 96	\$429,480
Between month 97 and month 108	\$357,900
Between month 109 and month 120	\$286,320
Between month 121 and month 132	\$214,740
Between month 133 and month 144	\$143,160
Between month 145 and month 156	\$71,580
Month 157 or later	0



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 17
Council Meeting Date: 9/11/2008
RFCA Tracking No: R-3793

DEPARTMENT: Capital Improvements
Management Services

DEPARTMENT HEAD: Mike Frisbie

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Purchase of 315 Santa Rosa in exchange for City-owned garage at 210 N. Presa

SUMMARY:

This ordinance authorizes the following actions in connection with the potential site for the proposed Public Safety Headquarters facility:

- A. The sale of the River Bend Garage property, located at 210 N. Presa Street to Hixon Properties, Inc. in the amount of \$22,400,000.00, in exchange for the acquisition of the 315 South Santa Rosa Street property valued at \$15,500,000.00 and cash proceeds of \$6,900,000.00, less related closing fees.
- B. The payment for expenses associated with due diligence actions for the sale of the River Bend Garage property of \$13,500.00.
- C. The payment for expenses associated with due diligence actions for the acquisition of the 315 South Santa Rosa Street property of \$86,500.00 plus expenses related to the buyout of the existing lease on the acquired property payable to Kindred Health Care in the amount of \$450,000.00 in exchange for their termination of any property rights they currently have.
- D. The recording of necessary entries to remove the River Bend Garage from the Parking Operating Fund, and recognize any related gain of sale of the property, to include amending the FY 2009 Budgeted Revenues and Expenses.
- E. The establishment of River Bend Garage Sale Fund within the Parking Fund for the receipt of cash proceeds from the property exchange to be used for the payment of debt.
- F. The contribution of the 315 South Santa Rosa Street property from the Parking Fund to the General Fund for the potential usage of the site for the proposed Public Safety Headquarters facility.

- G. The execution of agreements to allow the City the ability to continue to occupy the Centro Info ground level space at a nominal rent of \$1.00 per year plus expenses for the next five years and providing for a new lease for USO in their existing space for at least five years at the rate of \$100,000.00 per year, plus expenses, with payment during the first three years guaranteed by the City.
- H. The authorization of \$15,000.00 per year with annual escalation based upon reasonable increases in expenses from the Parking Fund for the Centro Info ground level lease and utilities for fiscal year 2009.
- I. The City Manager to complete negotiations for the transaction proposed and to execute all documents required to complete the transactions contemplated herein.

BACKGROUND INFORMATION:

The FY 2008 Capital Improvement Program included \$100 million to fund a Public Safety Headquarters. The new Public Safety Headquarters will serve as a downtown headquarters for both the Fire and Police Departments. The proposed fee simple acquisition is to be included as a part of the new Headquarters.

Additionally, on April 2, 2008, the U.S. General Services Administration announced their intention to build San Antonio's new Federal Courthouse at the current site of the current Police Headquarters. While this does fall in line with the plan for developing the Public Safety Headquarters, it requires adherence to a more stringent time-line.

As proposed, the entire cost of acquiring the 4.67 acre site at 315 South Santa Rosa Street, (\$15,500,000.00) plus expenses, (\$550,000.00) will be entirely offset by the sale of the City-owned real property known as the River Bend Parking Garage, located at 210 N. Presa Street, which has a value of \$22,400,000.00 to Hixon Properties Incorporated, or its affiliates with the remaining balance of \$6,350,000.00 being deposited into the River Bend Garage Sale's Fund.

The properties proposed for acquisition are located at 315 South Santa Rosa Street on the west side of Santa Rosa Street, north of Durango Boulevard and south of Nueva Street, while the properties proposed for disposition are located at 210 N. Presa Street, at the general corner of East Commerce and North Presa Streets. The properties involved are more specifically shown on attached Exhibits "A" and "B". Both properties involved in this project are located within District 1. The total proposed area of the property proposed for acquisition consists of approximately 4.67 acres, while the property proposed for disposition consists of approximately 1.002 acres.

As a condition of the sale of the River Bend Garage, the City would be granted the right to continue occupancy of the space currently occupied by Centro Info at a nominal amount of \$1.00 per year plus expenses. Additionally, USO would be granted the right to continue to occupy their existing space at the rate of \$100,000.00 annually plus building expenses with a condition that the City guarantee the annual rent in the first 3 years as opposed to the \$115,000.00 currently allocated in the General Fund to pay for USO's lease expense.

The direct sale of the disposed property is authorized by Tax Code Chapter 311 and Local Government Code Chapter 272.001 subsection (b)(6) which authorize sale of

property located in a reinvestment zone. In this instance the disposed property is located in the Inner City Tax Increment Reinvestment Zone.

Pursuant to City Charter the sale of City-owned property is subject to consideration and approval by the City's Planning Commission. Additionally, an acquisition such as the one contemplated herein is also subject to Planning Commission consideration. This item was reviewed by the Planning Commission on September 10, 2008.

Under separate action staff will request City Council consideration of the abandonment of Casino Street which is adjacent to the River Bend Garage. The transaction proposed herein anticipates a value for the abandoned alley, as a result no consideration will be paid by the acquirer of the River Bend Garage for an interest in Casino Alley.

ISSUE:

Staff requests the exchange and sale of the River Bend Parking Garage property for the proposed property at 315 South Santa Rosa Street and cash of \$6,350,000.00 in order to provide a location for the City's new Public Safety Headquarters. This project is consistent with the City's efforts to redevelop the west side of downtown and supports our greater vision of a Civic Master Plan in the downtown area.

ALTERNATIVES:

The alternative to approval of this item would be to continue the process of identifying alternative sites sufficient in size for the required property acquisition; however, this could result in project delay which would adversely impact the timely development of the Federal Courthouse on the current Police Department Headquarters location.

FISCAL IMPACT:

The City will exchange the City-owned River Bend Garage property for the total consideration of \$22,400,000.00, consisting of the acquisition of the 315 South Santa Rosa Street site for \$15,500,000.00 plus due diligence fees of \$100,000.00 and the Kindred Health Care lease buyout of \$450,000.00, and cash of \$6,350,000.00, which will be deposited into the River Bend Garage Sale Fund.

Conclusion of the deal with Hixon Properties for the sale of the River Bend Garage Property will impact the FY 2009 Budget to include an impact to budgeted revenues and expenses as well as potential reorganization of City staff assigned to the garage.

RECOMMENDATION:

Staff recommends approval of the exchange of the City-owned River Bend Garage for the property at 315 South Santa Rosa as part of the Public Safety Headquarters project to allow the City the opportunity to acquire a site in the downtown area large enough to accommodate the proposed facility without the necessity to incur additional debt and at the same time place in service on the tax rolls an asset with substantial value.

ATTACHMENT(S):

File Description

[Exhibits A and B](#)

[Voting Results](#)

File Name

Exhibits A and B.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Debbie Sittre Assistant Director Capital Improvements Management Services

APPROVED FOR COUNCIL CONSIDERATION:

Pat DiGiovanni Deputy City Manager