

AN ORDINANCE 2014 - 05 - 08 - 0321

AUTHORIZING AN AMENDED AND RESTATED SENIOR CENTER LEASE AGREEMENT WITH BAR PASO PARTNERS, L.P. FOR THE CONTINUED USE AND EXPANSION OF THE PROPERTY LOCATED AT 1751 SOUTH W.W. WHITE ROAD IN CITY COUNCIL DISTRICT 2 AS A SENIOR MULTI-SERVICE CENTER, FOR A FIVE-YEAR TERM FOR THE INITIAL ANNUAL RENTAL RATE OF \$209,861.40 WITH THE RIGHT TO RENEW FOR TWO ADDITIONAL FIVE-YEAR TERMS AND THE OPTION TO TERMINATE THE LEASE AFTER THE THIRD YEAR OF OCCUPANCY.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funding in the amount of \$22,615.00 for this ordinance is available for Fund 11001000, Cost Center 3811090001 and General Ledger 5206010, as part of the Fiscal Year 2014 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Bar Paso Partners, L.P., and should be encumbered with a purchase order.

SECTION 4. 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 allocations 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 5. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 8th day of May, 2014.



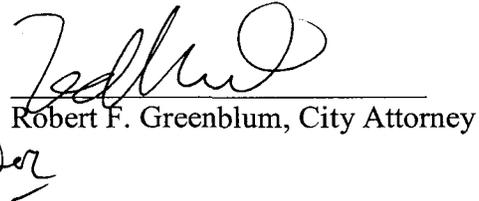
M A Y O R
Julián Castro

Attest:



Leticia M. Vacek, City Clerk

Approved As To Form:



Robert F. Greenblum, City Attorney


Agenda Item:	14 (in consent vote: 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 18, 20)						
Date:	05/08/2014						
Time:	11:48:09 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance related to the Multi-Service Senior Center authorizing to amend and restate a five-year Lease Agreement between the City of San Antonio and Bar Paso Partners, L.P., for the continued use and expansion of the property located at 1751 South W.W. White Road, located in District 2, for an annual rental rate during the five-year term at \$209,861.40, with the right to renew for two additional five-year terms and the option to terminate the lease after the third year of occupancy; and authorizing payment in an amount not to exceed \$505,000.00 for renovations to the Senior Center. [Peter Zaroni, Deputy City Manager; Mike Etienne, EastPoint & Real Estate Services Office]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT I

2014 Amended and Restated Senior Center Lease (District 2 Senior Center, Bar Paso Partners, L.P.)

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Background:

The parties have previously entered into a Senior Center Lease relating to part of the Premises subject to this Lease.

The Previous Lease was signed by the City of San Antonio on July 2, 2010, and was authorized by Ordinance 2010-06-17-0545.

The parties now wish to expand the Premises and otherwise alter the details of their relationship as provided in this instrument.

Upon the Commencement Date this instrument will completely supersede the Previous Lease and is a fully integrated expression of the agreement of the parties going forward.

Rights and Obligations:

1. Basic Information, Definitions. Authorizing Ordinance:

Landlord: Bar Paso Partners, L.P., a Texas limited partnership

Landlord's Address: 6500 Montana Ave., El Paso, Texas 79925

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: CIMS Department, Assistant Director for Real Estate)

Premises: Approximately 15,928 square feet of space in a building located at 1751 S.W.W. White Rd., San Antonio, Texas 78220 consisting of approximately 8,000 square feet of the Existing Premises leased as per the Previous Lease and 7,928 square feet of the Expansion Space (collectively the "Premises"). The property on which the building sits is more particularly described on **Exhibit A-1**. The Premises, as they are to be finished out, are depicted on **Exhibit A-2**.

Previous Lease: The Lease Agreement authorized by the City of San Antonio, Ordinance 2010-06-17-0545.

Expansion Space: The approximately 7,928 square feet of space adjacent to the Premises established by the Previous Lease.

Permitted Use ("Use"): Senior center and all uses from time to time reasonably related to senior center use, as well as other City functions reasonably acceptable to Landlord.

Commencement Date: The later of the date of issuance of a Landlord-obtained Certificate of Occupancy for the Expansion Space or the date the Expansion Space is Move-in Ready.

Move-in Ready: The point at which the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

Initial Term: 60 months commencing on the Commencement Date

Allowance for Finish-out Work: An amount not to exceed \$505,000, payable by Landlord.

Common Areas: All facilities and areas of the Building and Parking Facilities and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all Building tenants.

Essential Services: The following items shall be provided by the Landlord as of the Commencement Date of this Lease: (a) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment) during Building

Operating Hours; (b) hot and cold water for lavatories and drinking; (c) the cleaning and maintenance services required by this Lease; (d) electrical connections to the Premises; and (e) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures and signage on the Premises.

Center: The shopping center located at 1751 South WW White Rd., San Antonio, Texas described on Exhibit "A-1".

The exhibits to this Lease are:

- Exhibit A-1: Description of Land Containing Premises
- Exhibit A-2: Description of Premises within Building
- Exhibit B: Memorandum of Commencement Date
- Exhibit C: Work Letter
- Exhibit D: Initial Cost Memorandum
- Exhibit E: Rules and Regulations of the Center

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. The grant of the Premises also includes the right for tenant and its officials, employees, and invitees to park on a first-come, first-served basis in the parking lot on the property on which the Premises are located, and Tenant has exclusive use of eight parking spaces directly in front of the Premises, in addition to handicapped parking spaces. Landlord must mark the spaces accordingly before the Commencement Date.

2.02. Tenant may cancel the Lease for the Expansion Space and be free of all its obligations if the Commencement Date has not occurred by 270 days after the Binding Date. This deadline will be extended by events of force majeure and by delays by Tenant or Tenant's contractors not occasioned by fault of Landlord. Force majeure means flood, windstorm, riots, civil insurrection, or declared war.

2.03. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord shall determine in the exercise of its sole business judgment, however, Landlord may not permit a Sexually Oriented Business to lease within the Center, as that term is defined in the City Code of the City of San Antonio, Texas.

2.04. LANDLORD IS MAKING NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE. WITHOUT LIMITATION ON THE FOREGOING, TENANT EXPRESSLY WAIVES ANY AND ALL SUCH WARRANTIES, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, THE WARRANTY OF SUITABILITY.

3. Rent.

3.01. Rent during the initial term has three components: (A) Base Rent, (B) Landlord Maintenance Fee, and (C) Recapture of unamortized finish-out from the previous lease. Monthly Rent for the Existing Space shall be paid as per the Previous Lease until the Commencement Date as established by Exhibit B. Rent for the initial term will be paid as follows:

Initial Term Rent Components			Total Monthly Rent
A. Base Rent	B. Landlord Maintenance Fee	C. Recapture of Unamortized Finish-out from Previous Lease	
\$13,000.00	\$2,000.00	\$2,488.45 If the Commencement Date occurs during October 2014 (\$71,819.38 + \$51,725.09 = \$123,544.47 @ 8% for 60 months)	\$17,488.45
\$13,000.00	\$2,000.00	\$2,422.17 If the Commencement Date occurs during November 2014 (\$71,819.38 + \$48,434.82 = \$120,254.20 @ 8% for 60 months)	\$17,422.17
\$13,000.00	\$2,000.00	\$2,355.46 If the Commencement Date occurs during December 2014 (\$71,819.38 + \$45,122.62 = \$116,942.00 @ 8% for 60 months)	\$17,355.46

The amount of unamortized finish-out from the Previous Lease must be reflected in an Initial Cost Memorandum, which should be substantially in the form of Exhibit D. If the parties fail to agree on the amount of unamortized finish-out from the previous lease as of the Commencement Date, Tenant nevertheless owes the proper amount, and the parties must resolve the disagreement according to the dispute-resolution procedures of this Lease. The amount of unamortized finish-out from the previous lease will be amortized over the Initial Term at eight percent a year interest, to be calculated in advance, not in arrears.

In lieu of paying out the Recapture of Unamortized Finish-out from the Previous Lease monthly, Tenant may at any time prepay all or a portion of the balance of the Unamortized Finish-out from the Previous Lease. The balance is determined as of the date of repayment. If Tenant prepays any part of the Unamortized Finish-out from the Previous Lease, the component of the monthly rent for such Finish-out will be

reduced to the amount necessary to amortize the balance, if any, over the remainder of the Initial Term at 8% per annum. The unamortized balance at the Commencement Date shown in the Initial Cost Memorandum is binding on the parties.

3.02. Tenant must pay Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty beginning on the Commencement Date. On each occasion on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 10 days from delivery of Landlord's notice, then Tenant owes a late charge of 3% of the delinquent amount as additional rent. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment. 3.03. If the Commencement Date is not the first of a month, Rent for the first month will be prorated based on the percentage of the month remaining after the Commencement Date.

3.03. All rentals to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand, and at such place or places as may be designated from time to time by Landlord. Tenant's obligation to pay rent under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay rent as required by this Lease. Notwithstanding the fact that the Commencement Date may be subsequent to the Binding Date of the Lease, it is the intention of Landlord and Tenant that each have vested rights hereunder and that this Lease constitutes a binding and valid obligation of each as of the date this Lease is fully executed.

3.04. Except if Tenant is in default under this lease, if Landlord receives prepaid rent from or for the account of Tenant when Tenant is current on rent, Landlord must apply the prepaid rent according to Tenant's directions.

3.05. Except as otherwise provided, Tenant must not abate Rent.

3A. Recapture of Cost for the Current Finish-out.

The cost for the current finish-out must also be reflected in an Initial Cost Memorandum, which should be substantially in the form of Exhibit D. If the parties fail to agree on the cost for the current finish-out, Tenant nevertheless owes the proper amount, and the parties must resolve the disagreement according to the dispute-resolution procedures of this Lease. Tenant must reimburse to Landlord the full amount shown on the Initial Cost Memorandum as Recapture of Current Finish-out no later than the later of (A) the Commencement Date or (B) 30-days after the parties sign the Initial Cost Memorandum.

4. Term and Renewal.

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

4.02. Provided that Landlord has not previously terminated this lease for Tenant's default, Tenant may renew this Lease for two additional 5-year terms by giving Landlord 90 days prior written notice before expiration of the previous term, whether initial or renewal. Renewals are on the same terms and conditions as the Initial Term, except for rent.

4.03. Rent for the renewal terms has two components: (A) Base Rent and (B) Landlord Maintenance Fee. Rent for the renewal terms will be as follows:

Lease Years	Renewal Term Rent Components		Total Monthly Rent
	A. Base Rent	B. Landlord Maintenance Fee	
6 – 10 (1 st renewal term)	\$14,333.33	\$2,333.33	\$16,666.66
11 – 15 (2 nd renewal term)	\$15,666.66	\$2,666.66	\$18,333.32

4.04. Each renewal must be approved by a separate City Council ordinance.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

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

5.02. Pay before delinquency charges for all utilities separately metered for the Premises (including, but not limited to, gas, heat, power, electricity, telephone, garbage removal, and hookup or connection fees or charges) which may accrue with respect to the Premises during the term of this Lease. Charges for water and sewer, which are not separately metered, are built into the Base Rent. Landlord shall in no event be liable to Tenant for any interruption in the service of any such utilities to the Premises not caused by Landlord. Tenant must limit use of water and sewer to normal senior center and restroom use. Tenant acknowledges that it has inspected the utilities available to the Premises and that it has determined that such utilities are sufficient for all anticipated uses of the Premises.

Tenant shall not install any equipment or make any use of the Premises which overloads the utilities available to the Premises and if Landlord deems Tenant's use of equipment to be in violation of this provision, Landlord may, in addition to such other remedies which Landlord has hereunder, require Tenant, at Tenant's expense, to upgrade such utility lines and related equipment including without limitation transformers.

5.03. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.04. Subject to other provisions of this Lease, repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

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

5.06. Vacate the Premises and return all keys to the Premises immediately after the last day of the Term, subject to any holdover rights.

5.07. Upon the request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement in writing certifying to Landlord, any prospective purchaser or encumbrancer of all or any portion of the Center that: (i) this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification and certifying that the Lease as modified is in full force and effect); (ii) that rent and other charges have not been paid more than one (1) month in advance; (iii) there are no uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; (iv) the Lease contains the entire agreement between parties; (v) the Lease has not been assigned or sublet or specifying such assignment or sublease; and (vi) there has been no damage to the Premises from casualty or condemnation or specifying same. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Center. Tenant's obligation to furnish each estoppel certificate within the time period provided herein is a material inducement for Landlord's execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant's obligation to execute and deliver the estoppel certificate. Tenant's failure to deliver such statement within 30 days after Landlord's request for the same, shall be conclusive upon Tenant that: (i) this Lease is in full force and effect; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one month's rent or other charge has been paid in advance; (iv) this Lease has not been modified or amended other than as expressly stated; (v) the Lease has not been assigned or sublet; and (vi) there has been no damage to the Premises by fire or condemnation.

5.08. Occupy and use the Premises solely for the purpose of conducting therein the Use specified in Section 1 above. The Premises shall not be used for any other purpose. Tenant's acceptance of occupancy from Landlord shall constitute acknowledgment by Tenant that Tenant has inspected the Premises and the Center of which the Premises are a part and that same are suitable for Tenant's intended use thereof as stated in this Paragraph. Except as otherwise expressly provided, Landlord is making no warranties, expressed or implied,

regarding the Premises or Center, including, without limitation, the condition thereof, the tenant mix, or the present or future suitability of the Premises or the Center for any particular use.

5.09. Upon completion of the punch list (if any) as provided in Exhibit C, accept the Premises "AS IS" with all faults, subject to the finish-out provisions of this Lease.

5.10. Occupy the Premises upon the Commencement Date and thereafter continuously operate during the normal hours of the Center as determined by Landlord and conduct in one hundred percent (100%) of the Premises the business permitted under Section 1 hereof. Without expanding Tenant's restricted use, Tenant agrees that it shall not use or permit the Premises to be used for an adult bookstore, adult motion picture theater, nude live entertainment club, or similar adult entertainment establishment as such terms are generally understood or as defined in applicable sections of the local Municipal Code. Landlord represents to Tenant that Tenant's operating according to the Permitted Use does not violate the rights of any other tenant in the Center.

5.11. Comply with all applicable laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities pertaining to Tenant's use of the Premises or the Common Areas and with any recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental, health and safety, zoning and land use matters, and with any directive or order of any public officer or officers, or any insurance carrier, underwriter's association or similar authority pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupation of the Premises. Tenant shall require Tenant's agents, employees, contractors, and invitees to observe and comply with all requirements of the Tenant as provided in this paragraph 5.11.

5.12. Comply with all reasonable rules and regulations promulgated by the Landlord for the safety, care, or cleanliness of the Center and for the preservation of good order therein. Tenant's failure to keep and observe the rules and regulations shall constitute a breach of this Lease in the same manner as if the rules and regulations were set forth herein. Provided, however, Landlord shall have no obligation to promulgate such rules or regulations. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Center of any such rules and regulations. The current rules and regulations are attached hereto as Exhibit "E."

5.13. Promptly pay all contractors and materialmen, and prevent any lien from attaching to the Premises or Center on account of work contracted for by Tenant. Landlord shall have the right to require Tenant to furnish a bond satisfactory to Landlord prior to the commencement of any work by Tenant on the Premises. If any lien attaches or is claimed, Tenant, within ten (10) days following the imposing of any such lien, shall cause the same to be released of record by payment or posting of a bond as provided in the Texas Property Code without limitation on any other provision of this Lease, Tenant's failure to cause such

release or to post such bond within ten (10) days following the filing of any lien shall constitute an Event of Default. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including, without limitation, those who may furnish materials or perform labor for any construction or repairs.

5.14. Provide Landlord with a fully executed copy of approved assignments and subleases within ten (10) days of the later of (A) Landlord's approval or (B) consummation of the assignment or sublease. Any such assignment or sublease, even with the approval of Landlord, shall not relieve Tenant from liability for payment of all forms of rental and other charges herein provided or from the obligations to keep and be bound by the terms, conditions and covenants of this Lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or a consent to the assignment or subletting of the Premises. Consent to any assignment or subletting shall not be deemed a consent to any future assignment or subletting. In the event that the rental due and payable by a sublessee or assignee or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto exceeds the rental payable under this Lease then Tenant shall be bound and obligated to pay Landlord in addition to all rental required hereunder, all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee or other transferee, as the case may be.

5.15. Subject to the finish-out provisions of this Lease, accept the Premises as-is.

6. Tenant's Negative Promises.

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Permit waste.

6.04. Alter the Premises.

6.05. Assign this Lease or any interest therein, whether voluntarily, by operation of law, or otherwise, nor sublet the Premises or any part thereof except with prior written permission of Landlord being first had and obtained. Consent of Landlord to any such assignment or subletting shall not be unreasonably withheld if: (i) at the time of such assignment or subletting, Tenant is not in default in the performance and observance of any of the covenants and conditions of this Lease; (ii) the assignee or subtenant of Tenant shall expressly assume in writing all of Tenant's obligations hereunder; (iii) Tenant shall provide proof to Landlord that the assignee or subtenant has a financial condition which is satisfactory to Landlord and Landlord's lender; (iv) the Premises continue to be used solely for the Use

set forth in Section 1 (v) Landlord is furnished with and approves the form of the proposed sublease or assignment document.

7. Landlord's Affirmative Promises.

Landlord promises that it will:

7.01. Lease to Tenant the Premises for the entire Term, beginning on the Commencement Date.

7.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

7.03. Provide the Essential Services.

7.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) exterior walls and exterior doors, (e) HVAC, electrical and plumbing as provided in section 9 below, and (f) slab foundation (but not carpeting, tile, wood, vinyl or similar floor covering, unless damaged by a problem with the slab foundation).

7.05. Pay the Allowance for Finish-out Work as described in **Exhibit C**.

8. Quiet Enjoyment.

Upon Tenant's paying rent and performing all of the covenants and conditions set forth in this Lease, Tenant shall, subject to all zoning ordinances and other laws and regulations governing or regulating the use of the Premises and all easements, rights-of-way, and prescriptive rights, and all presently recorded instruments which affect the Premises, peaceably and quietly have, hold and enjoy the Premises for the Term provided in this Lease. Landlord represents to Tenant that as of the date of this lease, Landlord has no actual knowledge of any prescriptive rights that would interfere with the Permitted Use.

9. Repair, Maintenance and Replacement Responsibilities.

9.01. Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component allocated to it in the table below:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Premises	Yes	No
Janitorial Services to Common Areas	No	Yes
Utility Lines	No	Yes
Parking Lot Maintenance	No	Yes

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Sign Maintenance	Yes	No
Landscaping	No	Yes
Exposed Electrical Systems	No	Yes
Light bulbs and light tubes	No	Yes
Concealed Electrical Systems	No	Yes
HVAC System	No	Yes
Exposed Plumbing Systems	No	Yes
Concealed Plumbing Systems including under slab drain lines	No	Yes

9.02. Tenant shall at all times keep all parts of the Premises not required herein or as provided in section 7.04 above to be maintained by Landlord in good order, condition and repair and in a clean, orderly, sanitary, and safe condition, damage by unavoidable casualty excepted. Tenant's obligations shall include but not be limited to doing such things as necessary to cause the Premises to comply with applicable laws, rules, regulations and orders of governmental and public bodies and agencies. If replacement of equipment, fixtures and appurtenances thereto are necessary (and the repair, maintenance and replacement of them are allocated to Tenant under this Lease), Tenant shall replace the same with equipment, fixtures and appurtenances of the same quality, and shall repair all damages caused by such replacement. At the termination of this Lease, Tenant shall surrender the Premises in the same condition as they were on the Commencement Date, reasonable wear and tear excepted, and deliver all keys for and all combinations on locks, safes and vaults in the Premises to Landlord. Tenant also shall bear the cost of any repair or replacement to any part of the Premises or Center that results from damage caused by Tenant, its agents, contractors or invitees.

10. Alterations.

Tenant will not paint, decorate, or change the architectural treatment of any part of the exterior of the Premises, nor any part of the interior of the Premises visible from the exterior, without Landlord's prior written approval thereto, and will promptly remove any paint, decoration, alteration, addition, or changes applied or installed without Landlord's approval or take such other action with respect thereto as Landlord directs. Tenant shall not make any structural alterations, additions, or changes to the Premises. Tenant may, at its own cost and expense erect shelves, bins, and removable (i.e., not attached to the realty) trade fixtures (collectively "Trade Fixtures") in the ordinary course of its business, provided such items do not alter the basic character of the Premises, do not damage the Premises, may be removed

without injury to the Premises, and the construction, erection, and installation thereof comply with all legal requirements and other provisions of this Lease. If Landlord consents to any requested alterations, the alterations shall be performed in a good, workmanlike, and lien-free manner in accordance with all applicable legal requirements and any restrictions which may be imposed by Landlord as a condition to its consent. All alterations, changes, additions, and all leasehold improvements made by Tenant or made by Landlord on Tenant's behalf and all fixtures installed by Tenant which are not Trade Fixtures are herein collectively referred to as "Tenant Additions", shall be the property of Landlord. Such Tenant Additions shall not be removed by Tenant on, before, or following expiration or termination of the Lease without Landlord's consent.

11. Insurance.

11.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

11.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 100% of replacement cost.

11.02.01. Each insurance policy of Landlord required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 30-days' prior written notice has been given to:

City Clerk, City of San Antonio City Hall/2nd Floor P. O. Box 839966 San Antonio, Texas 78283-3966 Attention: Risk Manager	and	Department of Capital Improvements Management Services City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966 Attention: Director
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"The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

11.02.02 Landlord's insurance policy required by this Lease shall cover the City of San Antonio, its officials, employees, representatives and volunteers as additional insureds regarding operations and activities under this Lease at the Center.

11.02.03. Within 30 days after the Commencement Date and promptly after Tenant's later request (but in no event more than twice in any twelve (12) month period), Landlord must, at its own expense, provide a certificate of insurance to Tenant's Risk Manager and to the City Clerk, reflecting the required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title.

11.02.04. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

12. Release of Claims/Subrogation and Waiver.

12.01. Landlord and Tenant and all parties claiming under them mutually release and discharge each other and their respective officers, directors, partners, employees and agents from all claims and liabilities arising from or caused by any casualty, hazard or claim to the extent such casualty, hazard or claim is covered in full by the insurance required to be carried under this lease for all amounts claimed and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof; provided that such release shall not operate in any case where the effect is to invalidate such insurance coverage. The failure of a party to insure its property shall not void this waiver. This release shall apply even if the loss or damage shall be caused by the fault or negligence of a party hereto or for any person for which such party is responsible to the extent such casualty, hazard or claim is covered by the insurance required to be carried under this lease for all amounts claimed.

12.02. Landlord, its officers, directors, partners, agents or employees, shall not be liable for, and Tenant waives (as against Landlord and its officers, directors, partners, agents or employees) all claims for damage or loss (except claims caused by or resulting from the gross negligence or willful misconduct of Landlord, its officers, directors, partners, agents or employees), including but not limited to consequential damages and business interruptions, to person, property or otherwise, sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon any part of the Premises or the Center. This waiver shall include without limitation claims for damages resulting from but not limited to, claims for damage resulting from: (a) any equipment or appurtenances becoming out of repair; (b) injury done or caused by wind, water, or other natural elements; (c) any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring or installation thereof, gas, water, and steam pipes, stairs, porches, railings or walks; (d) broken glass; (e) the backing up of any sewer pipe or downspout; (f) the bursting, leaking or running of any tank, tub, washstand, water, snow or ice upon the Premises or the Project; (g) the falling of any fixture, plaster or stucco; (h) damage to or loss by theft or otherwise of property of Tenant or others; (i) acts or omissions of other persons in the Premises, other tenants in the Project, occupants of nearby properties, or any other persons; and (j) any act or omission of owners of adjacent or contiguous property. All property of Tenant kept in the Premises shall be so kept at Tenant's risk only.

13. Casualty/Total or Partial Destruction.

13.01. If the Premises are hereafter damaged or destroyed or rendered partially untenantable for their accustomed use by fire or other casualty Landlord shall (subject to the provisions of this Section 14) repair the same to substantially the condition which they were in immediately prior to the happening of such casualty (excluding stock in trade, trade fixtures, furniture, furnishings, carpeting, floor covering, wall covering, drapes and equipment), and from the date of such casualty until the Premises are so repaired and restored, the monthly rent payments hereunder shall abate in such proportion as the part of the Premises thus destroyed or rendered untenantable bears to the total Premises.

13.02. Landlord's obligation to rebuild is contingent upon its receipt of insurance proceeds sufficient to make such repairs. In the event any mortgagee or lender requires such sums to be applied to any debt, Landlord will not be deemed to have received the proceeds. But if Landlord does not start rebuilding by 45 days after the loss or finish rebuilding by 210 days from the date of loss and if Landlord does not diligently continue rebuilding during the time rebuilding is occurring, Tenant shall have the right upon thirty (30) days written notice to the Landlord and to terminate the lease. The term "start rebuilding" as used in this Section shall mean that Landlord has submitted or applied for permitting with the applicable governmental agency for the repair and/or rebuilding of the Premises or Shopping Center.

13.03. Notwithstanding the above, if the Premises or any portion of the Center are wholly or partially damaged, destroyed or rendered untenantable for their accustomed use by fire or other casualty then Landlord shall have the right to terminate this Lease effective as of the date of such casualty by giving to Tenant, written notice of such termination within 30 days after the later of: (i) the happening of such casualty; (ii) final adjustment with the insurance carrier and any mortgagee or lender. If such notice is given, this Lease shall terminate and provided Tenant is not in default hereunder, Landlord shall promptly repay to Tenant any rent theretofore paid in advance which was not earned at the date of such casualty. If the notice is not given, after Landlord completes its work, Tenant shall promptly repair or replace its stock in trade, trade fixtures, furnishings, furniture, carpeting, wall covering, floor covering, drapes and equipment to the same condition as they were in immediately prior to the casualty, and if Tenant has closed its business, Tenant shall promptly reopen for business upon the completion of such repairs. If the Premises or any portion of the Center are damaged by fire or other casualty caused directly or indirectly by the fault or negligence of Tenant or its agents, employees, contractors, or invitees, the rent under this Lease will not abate and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Premises or the Center caused thereby to the extent that such cost and expense is not covered by collected insurance proceeds. Tenant's disputing Landlord's assertion of Tenant fault or negligence is not a default so long as Tenant has notified the Landlord in writing of its dispute with such assertion within ten (10) days after Landlord or Landlord's insurance carrier delivers to Tenant its determination that Tenant was at fault or negligent regarding such casualty. Any such dispute should be handled according to the dispute resolution procedures of this lease and if none are referenced in this lease under and in accordance with the law.

14. Condemnation/Substantial or Partial Taking.

14.01. If any portion of the Premises or the Center shall be acquired, condemned or damaged as a result of the exercise of any power of eminent domain, condemnation or sale under threat thereof or in lieu thereof (herein called a "Taking"), then Landlord at its election may terminate this Lease by giving notice to Tenant of its election, within one hundred eighty (180) days of the date the condemning authority shall have the right to possession of the Premises or portion of the Center condemned.

14.02. If the Lease shall not be terminated as aforesaid, then it shall continue in full force and effect, and Landlord shall, within a reasonable time after possession is physically taken by the condemning authority (subject to delays due to shortage of labor, materials or equipment, labor difficulties, breakdown of equipment, governmental restrictions, fires, other casualties or other causes beyond the reasonable control of Landlord), restore the remaining portion of the Premises to the extent reasonably possible, to render it reasonably suitable for the Use permitted by Section 1.

14.03. Landlord need not expend an amount greater than the proceeds received from the condemning authority less all expenses incurred in connection therewith (including attorney's fees) for the restoration. In the event any mortgagee or lender requires such proceeds to be applied to any debt, Landlord will not be deemed to have received the proceeds.

14.04. Rent shall be reduced in the proportion that the area of the Premises so taken bears to the total Premises. Rent will not be reduced for a Taking of any Common Area nor will a Taking of the Common Area entitle Tenant to terminate the Lease if there remains parking in compliance with applicable governmental law, code or regulations.

14.05. Landlord reserves and Tenant assigns to Landlord, all rights to damages on account of any Taking or act of any public or quasi-public authority for which damages are payable as to the Premises and the Center. Tenant shall execute such instruments of assignment as Landlord requires, join with Landlord in any action for the recovery of damages, if requested by Landlord, and turn over to Landlord any damages recovered in any proceeding as to the Premises and the Center. Tenant is free to seek its own claim for loss of its leasehold.

15. Holdover.

15.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold-over is the same as the rent for the term being held over, except that if the initial term is held-over, the monthly rent will be reduced by the amount of the Recapture of Unamortized Finish-out from the Previous Lease, if this rent component was still being paid during the 60th month of the initial lease term. All other terms of this Lease apply. Council's authorization of this instrument is

authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Capital Improvements Management Services deems the holdover beneficial.

15.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

15.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

16. Default.

16.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice from the tenant; (ii) failing to provide Essential Services to Tenant within 10 days after written notice from the Tenant; and (iii) failure to pay property taxes before assessment of interest or penalty.

16.02. *Default by Landlord/Tenant's Remedies.* The following provisions relate to Landlord's default under this Lease:

16.02.01. Tenant's sole remedies for Landlord's default are to; (a) sue for actual damages; or (b) if Landlord does not provide an Essential Service within 30 days after default, Tenant shall have the right to cure such default and the reasonable expense incurred by the Tenant shall be offset against the Rent due to the Landlord. Tenant shall submit proof of payment for the reasonable cost of curing of any Landlord default by the Tenant to the Landlord prior to any offset of the Rent by the Tenant.

16.02.02. Landlord shall in no event be charged with default in any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within 30 days (or such additional time as is reasonably required to correct any such default) after written notice to Landlord by Tenant, specifically describing such failure.

16.02.03. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder unless the breach amounts to a constructive eviction under Texas law.

16.03.04. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing.

16.03. *Events of Default by Tenant.* The following shall be considered for all purposes to be an "Event of Default" under and a breach of this Lease: (a) Tenant fails to pay any rent or other amount when due hereunder; and (b) after 10 days notice and opportunity to cure the following:

- (i) fails to perform or observe any other of the terms, provisions, conditions and covenants of this Lease,
- (ii) Tenant submits any false report required to be furnished hereunder;
- (iii) Tenant directly or indirectly interferes in any way with construction or use of any part of the Center or use of any other tenant's space;
- (iv) Tenant abandons, vacates or does not do business in the Premises for 30 days; or
- (v) the Premises are occupied by any person other than expressly permitted under this Lease.

16.04. *Landlord's Remedies.* Upon the occurrence of any event of default specified in this Lease, Landlord, without grace period, demand or notice (the same being hereby waived by Tenant), and in addition to all other rights or remedies Landlord may have for such default under the law, shall have the right to pursue any one or more of the following remedies:

- (i) thereupon or at any time thereafter, change the locks of the Premises in accordance with this Lease;
- (ii) 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 it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without notice or the need to resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby; and, in either event, Landlord may recover from Tenant the amount of all loss and damage which Landlord may suffer by reason of such termination, including, without limitation, all costs of retaking the Premises, and the total rent and charges provided for in this Lease for the remainder of the Term of this Lease (i.e., the duration of this Lease had it not been terminated) all of which shall accelerate and be deemed accrued unpaid obligations as of the date of termination, shall survive such termination and shall be immediately due and payable by Tenant to Landlord as damages for Tenant's breach hereof;
- (iii) without terminating this Lease, enter upon and take possession of the Premises, and expel or remove Tenant and any other person who may be occupying the Premises, or any part thereof, by force if necessary, without notice or the need to

resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby;

(iv) sue for rent as it comes due from time to time in one or more actions; and/or

(v) treat Tenant's breach as an anticipatory breach and recover from Tenant in damages the total rent and charges provided for in this Lease for the remainder of the Term, all of which will be deemed accelerated and immediately due. Landlord may make such alterations and repairs as it deems advisable to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may extend beyond the term of this Lease) and at such rentals and upon such other terms and conditions as Landlord in its sole discretion deems advisable.

16.05. No reletting shall relieve Tenant or any guarantors from their obligations under this Lease or any guaranty. Upon any such reletting, all rentals received by Landlord therefrom shall be applied: first, to any indebtedness other than rent due hereunder from Tenant to Landlord; second, to pay any costs and expenses of reletting, including brokers' and attorneys' fees and costs of alterations and repairs; third, to rent due hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of future rent as it becomes due hereunder. If rentals received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord within ten (10) days from the date of invoice. In no event shall Tenant be entitled to any excess rent obtained by reletting the Premises over and above the rent reserved herein. Landlord will have satisfied its duty to mitigate and will have used objectively reasonable efforts to relet the Premises if Landlord does the following within ninety (90) days after Tenant abandons the Premises:

- (i) Place a "For Rent" or "For Lease" sign at the Premises;
- (ii) Make the Premises available to area brokers; and
- (iii) Show the Premises to qualified prospective tenants who request to see it.

16.06. Landlord and Tenant agree that Landlord's damages for Tenant's breach of the Lease will be difficult if not impossible to determine and agree that Landlord's damages for Tenant's breach of the Lease shall be the rent for the remainder of the term of the Lease, discounted to its present value together with attorneys' fees and expenses and costs of court by Landlord.

16.07 *Remedies Cumulative*. No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such termination is given by Landlord to Tenant. Notwithstanding any such reletting or re-entry or taking possession, without termination, Landlord may at any time thereafter terminate this Lease for any prior breach or default. Landlord shall have the right to dispose of any property left in the Premises upon the expiration or termination of this Lease or Landlord's re-entry following a default by Tenant, in any commercially reasonable manner

including, without limitation, discarding such items in a refuse container. Tenant is entitled to a credit against its monetary obligations to Landlord in the amount of the proceeds realized from such disposition less reasonable disposition costs. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord.

16.08. If Tenant defaults before the Commencement Date, the Tenant's rental obligations hereunder shall be deemed to have commenced upon the Binding Date hereof, and Landlord will be relieved of any construction obligations hereunder. In such case, the rent component for Finish-out Recapture will be based only on the amounts actually spent by Landlord to the date of default.

16.09. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Exercise by Landlord of any one or more remedies hereunder or otherwise available shall not be deemed an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or operation of law, it being understood that such surrender and/or termination can be effected only by the express written declaration of Landlord. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease, provided, however, in the event Landlord is ever held to have a duty to mitigate, Tenant agrees that Landlord's duty shall be limited to listing the Premises for lease with a licensed real estate broker or agent of Landlord's choosing (which may be an affiliate of Landlord) for a period of three (3) months. If no party acceptable to Landlord executes a lease with Landlord on terms acceptable to Landlord (in Landlord's sole discretion) within this three (3) month period, Tenant agrees that Landlord shall conclusively have satisfied any such duty to release or mitigate. In no event will Landlord have any duty to lease the Premises before Landlord leases other vacant spaces in the Center or other property owned by Landlord nor shall Landlord have any duty to lease to and Landlord will not be considered to be acting unreasonably in refusing to lease to any party if: (i) the prospective lessee has a financial condition which is unacceptable to Landlord or Landlord's lenders; (ii) the prospective lessee requires any alterations which are unacceptable to Landlord or Landlord's lender; (iii) the prospective lessee requires tenant improvements to be paid by Landlord; (iv) the prospective lessee requires lease terms different from this Lease or which are otherwise unacceptable to Landlord or Landlord's lender; (v) the prospective lessee requires a rental rate less than that required hereunder plus any costs of reletting, including without limitation, lease commissions; or (vi) if percentage rent is payable and the prospective lessee is likely (in Landlord's sole discretion) to generate percentage rental less than that previously generated by Tenant.

16.10. *Lockout Provisions.* Upon the occurrence of an event of default under the Lease, Landlord shall be entitled to change the locks at the Premises in accordance with this provision or applicable Texas law. Entry may be gained for that purpose through use of a duplicate or master key or any other means and may be conducted out of the presence of Tenant if Landlord so elects. Landlord need not post notice on any door to the Premises (or elsewhere) (other than the notice required by Texas Property Code § 93.002) disclosing the reason for such action or any other information. Landlord need not provide a key to the changed lock to Tenant unless Tenant shall have first brought current all payments due to Landlord under this Lease; provided, however, that if Landlord has theretofore formally and permanently repossessed the Premises, or has terminated this Lease, then Landlord shall be under no obligation to provide a key to the new lock(s) to Tenant regardless of Tenant's payment of past-due rent or other past-due amounts, damages, or any other payment or amounts of any nature or kind whatsoever. Except as stated, this section overrides conflicting provisions of the Texas Property Code (including, without limitation, Chapter 93 thereof, and any amendments or successor statutes thereto), and of any other law, to the maximum extent permitted by applicable law.

16.11. *Landlord's Performance for Account of Tenant.* If the Tenant shall continue in default in the performance of any of the covenants or agreements herein contained after the time limit for the curing thereof, then without limitation or any other remedy available to Landlord for such default Landlord may, but shall not be obligated to, perform the same for the account of Tenant. Any amount paid or expense or liability incurred by Landlord in the performance of any such matter for the account of Tenant shall be deemed to be additional rent and the same (together with interest thereon at the highest lawful rate, herein the "Maximum Rate" from the date upon which any such expense shall have been incurred) may, at the option of Landlord, be added to any rent then due or thereafter falling due hereunder, or shall be payable by Tenant to Landlord on demand.

16.12. Following an Event of Default, and in addition to all remedies available to the Landlord under the law, if a third party claims to be a lessor of equipment, Trade Fixtures, and similar items Tenant has in the Premises and wants to remove the items from the Premises, Landlord shall notify Tenant and ask Tenant if it acknowledges the lessor status of the third party. If Tenant acknowledges the lessor status or does not respond to Landlord within ten (10) days of Landlord's notification, Landlord may permit the third party to remove its leased items, but Landlord must condition its consent upon such lessor agreeing to repair any damage to the Premises caused by such removal and providing adequate financial assurances of its ability to pay for any such damages.

16.13. *Waiver of Liens, Tenant's Recovery of Property.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code. Also as mandated by the above constitutional provision, whenever Landlord locks out Tenant for any reason and Tenant does not regain use and possession of the Premises, Landlord must give Tenant a reasonable opportunity to recover all Tenant's property from the Premises.

17. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

18. Environmental.

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

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

18.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

18.04. To Landlords current knowledge, the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

18.05. To Landlords current knowledge there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3 in violation of applicable laws.

18.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner. Tenant shall immediately advise Landlord in writing of (a) any governmental or regulatory actions instituted or threatened under any Environmental Law affecting the Tenant or the Premises, (b) all claims made or threatened by any third party against Tenant or the Premises or the Center relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or the Center to be classified in a manner which may support a claim under any Environmental Law, and (d) the discovery of any occurrence or condition on the Premises or the Center or any real property

adjoining or in the vicinity of the Premises or the Center which could subject Tenant, the Premises or the Center to any restrictions in ownership, occupancy, transferability or use of the Premises under any Environmental Law. Landlord may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions initiated in connection with any claims under any Environmental Law and to have its reasonable attorney's fees paid by Tenant in the event Tenant or its agents, employees, contractors or invitees directly or indirectly causes a violation of any Environmental Law. At its sole cost and expense, Tenant agrees when applicable or upon request of Landlord to promptly and completely cure and remedy every violation of an Environmental Law caused by Tenant, its agents, employees, contractors or invitees.

18.07. Landlord represents that to its current knowledge without any investigation, (y) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (i) the Property violates any Environmental Law; (ii) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (iii) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (iv) the Property is subject to a lien under any Environmental Laws; and (z) to its current knowledge no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

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

18.10. If reasonable evidence exists of the occurrence or existence of the violation of any Environmental Law or the presence of any Hazardous Material on the Premises or the Center, caused by Tenant, its agents, employees, contractors, or invitees or if required in connection with any financing or sale of the Center, Landlord (by its officers, employees and agents) at any time and from time to time may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Premises, the Center or neighboring properties for the purpose of determining whether there

exists on the Premises, the Center or neighboring properties any environmental condition which could reasonably be expected to result in any liability, cost or expense to Landlord. The Site Reviewers are hereby authorized to enter upon the Premises for purposes of conducting Site Assessments. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials and such other tests on the Premises or the Center as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Tenant agrees to supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The results of Site Assessments shall be furnished to Tenant upon request. The cost of performing such Site Assessments shall be paid by Tenant in the event the Site Assessment is ordered because of the possibility of a breach of an Environmental Law or presence of Hazardous Materials caused by Tenant, its agents, employees, contractors or invitees. The Site Assessments must be conducted so as to avoid unnecessary disruption of Tenant's activities within the Permitted Use.

19. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this agreement, including reimbursement for unamortized Finish-out Recapture, the City may terminate this agreement and have no further liability. This clause does not impair Tenant's liability when funds are appropriated.

20. Dispute Resolution.

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

20.02. 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 a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

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

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

20.05. 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.

20.06. Mediator fees must be borne equally.

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

20.08. If Landlord finds it necessary to retain an attorney in connection with the default by Tenant in any of the agreements or covenants contained in this Lease, Tenant shall pay reasonable attorney's fees to the attorney. In the event of any litigation regarding this Lease, the losing party shall pay to the prevailing party reasonable attorney's fees. Without limitation on the foregoing, Tenant agrees that should Landlord ever file a forcible detainer action or a forcible entry and detainer action, Landlord shall be entitled to its reasonable attorneys fees and costs in such action, and Landlord shall not be required to give Tenant written notice to vacate or any other notice in order to recover such attorney's fees and costs as provided in Section 24.006 of the Texas Property Code, as amended, or similar statutes. **Landlord and Tenant acknowledge the delay, expense and uncertainty associated with a jury trial involving a complex commercial lease of this nature, and in recognition of these inherent problems hereby waive their rights to a jury trial and agree that any litigation regarding this Lease will be tried without a jury.**

21. Prohibited Interests in Contracts.

21.01. 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.

22.02. Landlord warrants and certifies as follows:

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

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

21.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

22. Miscellaneous.

22.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It 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. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

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

22.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

22.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

22.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

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

22.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Address for notice may be changed by giving notice.

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

22.09. *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 their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

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

22.11. *Administrative Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

22.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states a number both in words and in numerals, the numerals control over the words. Whenever this lease states both a number and a calculation how the number was derived, the stated number controls over the calculation. The calculation is stated merely as a convenience to the parties and is surplus for the purpose of interpreting the lease.

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

22.14. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

23. Public Information.

Landlord 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. Nothing in this agreement waives an otherwise applicable exception to disclosure.

24. Tenant's Early Termination Right.

24.01. Despite any other provision of this lease, as of any time after the 36th month of the Initial Term, Tenant may terminate this Lease without cause by delivering at least 120 days' prior written notice, which notice must also contain Tenant's payment of the Termination Fee as determined in this paragraph 25 below for the termination to be effective. If Tenant terminates during the Initial Term, it must reimburse and pay to Landlord according to the following calculation ("Termination Fee"):

A. Calculate the unamortized portion of the Broker Commission paid by the Landlord.

B. Calculate the unamortized principal balance remaining, if any, on both categories of Finish-out Recapture as per sections 3.01.03 and 3.01.04 as of the month of termination.

C. The sum of the unamortized principal balance of the Finish-out Recapture and the unamortized portion of the Broker Commission paid by the Landlord is the Termination Fee.

24.02. Tenant may terminate on at least 120 days' prior written notice at any time during the any renewal term without paying a Termination Fee.

25. Broker Commission.

Landlord represents to Tenant that Landlord has not dealt with any broker regarding this Lease other than MIMCO, Inc. Tenant represents to Landlord that Tenant has not dealt with any broker regarding this Lease other than Providence Commercial Real Estate Services, Inc. Landlord pays a commission due to MIMCO, Inc. pursuant to separate agreement. Landlord pays a commission due to Providence Commercial Real Estate Services, Inc. equal to 4% of the total monthly Base Rent (not to include Landlord's monthly maintenance charge) for the expansion space only (approximately 8,000 square feet) for the five-year primary term of the Lease. Such amount will be memorialized in paragraph 2 of the Initial Cost Memorandum being Exhibit "D" attached hereto. Providence's commission is due $\frac{1}{2}$ upon lease execution and $\frac{1}{2}$ upon occupancy by Tenant.

26. Common Areas.

26.01. All parking areas, access roads and facilities furnished, made available or maintained by Landlord in or near the Center, including parking areas, driveways, sidewalks, landscaped areas, retaining walls, fences and rock walls, lighting facilities, and other areas and improvements provided by Landlord for the general use in common of tenants and their customers in the Center (all herein collectively called the "Common Area") shall at all times be subject to the exclusive control and management of Landlord. Except for the eight spaces exclusively allocated to Tenant, Landlord need not provide any particular number of parking spaces or to provide designated parking spaces for the employees or customers of Tenant.

26.02. Tenant and Tenant's business invitees, employees, and customers shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has granted or may hereafter grant rights, to use the Common Area, for ingress and egress and automobile parking. Tenant's use of the Common Area is limited to the purpose herein stated and subject to : (i) rules and regulations for the use thereof as prescribed from time to time by Landlord; (ii) areas, if any, designated for the exclusive use of other occupants of the Center; and (iii) other provisions of this Lease. Tenant shall not interfere with any other occupant's rights to use any part of the Common Area. Without limitation of the foregoing, Tenant will not use any portion of the Common Areas for: (a) the storage, display or sale of any merchandise or

services; (b) the placement, installation, use or operation of any machine, improvement, device, ride, vending machine, telephone or similar items; or (c) advertisements, solicitations or promotions of any kind. Landlord reserves the right, from time to time, to utilize portions of the Common Area for shows, rides and entertainment, outdoor sales, displays, leasing of permanent or temporary kiosks or such other uses which in Landlord's judgment attract the public. No such use by Landlord may impede access to the Premises by Tenant and its employees, customer, and invitees or impair Tenant's ability to use the Premises for the Permitted Use.

27. Sale of Center by Landlord.

In the event of any sale of the Center by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Center shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease relating to the period after the sale. Furthermore, in the event of a sale or conveyance by Landlord of the Center, or the property of which the Center are a part, this Lease shall not be affected by any such sale, and Tenant agrees to attorn to the purchaser thereof.

28. Surrender.

28.01. Upon the expiration or earlier termination of this Lease, whether by forfeiture, lapse of time, or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, to Landlord in good and broom-clean condition and repair, reasonable wear and tear and loss by fire or other casualty excepted. All Tenant additions will, following the expiration or termination of this Lease, remain in the Premises as Landlord's property, unless Landlord directs Tenant to remove all or any portion of same, whereupon Tenant must, at its expense, remove such Tenant additions (or portion thereof directed by Landlord). Tenant may remove its Trade Fixtures, inventory, and other personal property upon the expiration of the Term. Tenant shall repair any damage to the Premises caused by the removal of such Tenant additions, Trade Fixtures, or other items. In no event will any fire sprinklers, fire suppression equipment, HVAC System components, floor tiles, carpeting, ceiling tiles, plumbing fixtures, or similar building system items or any equipment or fixtures attached to the realty be considered "Trade Fixtures" or be removed, unless directed by Landlord to do so.

28.02. Tenant shall remove all Hazardous Materials introduced to the Premises by Tenant or Tenant's employees, contractors, agents and invitees. Any Trade Fixtures or Tenant Additions not removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense. Tenant waives all claims against Landlord for any damages resulting from Landlord's retention or disposal of same. Tenant shall be entitled to no payment or offset for the value of any such property (even if sold by Landlord) and shall pay on demand all costs incurred by Landlord in connection with such removal or disposal. All obligations of Tenant hereunder not full

performed as of the termination or expiration of the Lease shall survive such termination or expiration.

29. Force Majeure.

If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, governmental delays, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Lease (herein a "Force Majeure Event"), the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Provided, however, Tenant shall not be excused from any obligations for payment of Base Rent, Percentage Rent (if any), additional rent or any other payments required by the terms of this Lease when same are due, and all such amounts shall be paid when due.

30. Security Services.

Nothing herein shall obligate Landlord to maintain or provide any security services or systems for the Center. Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or other criminal or willful acts of third parties.

31. Center Modifications.

Notwithstanding anything in this Lease, Landlord reserves the right to change or modify and add to or subtract from the size and dimensions of the Center or any part thereof, the number, locations and dimensions of hallways, parking areas (if the remaining parking complies with applicable governmental law, code, or regulations), malls, and corridors, the size, shape and location and arrangement of Common Area, to construct additional buildings or other improvements in the areas currently identified as Common Area and to design and decorate any portion of the Center it desires. Landlord shall have the right, but not the obligation, at any time and from time to time to temporarily close any portion of the Common Areas to make repairs, replacements, alterations, deletions or other changes, or to prevent the acquisition of public rights in such area, to discourage non-customer parking, or to do such other acts in and to the Common Areas as are necessary. Landlord shall also have the right at any time and from time to time to designate and allow the use of limited portions of the Common Areas for promotional purposes, exclusive drive-thru or parking purposes for certain occupants. In the event of any dispute as to the actual dimensions of the Center, the calculations of Landlord's architect shall be conclusive. For all purposes pertinent under this Lease, the Premises are 8,000 square feet. No such modifications may unreasonably disrupt Tenant's activities within the Permitted Use.

32. Fire Equipment.

Tenant must supply and maintain at its own expense any fire extinguishers required by law, rules, orders, ordinances, and regulations of any city, county, or state in which the Premises

are located and/or required by any insurance carrier, underwriters association, bureau, or any other similar body having jurisdiction involving the Premises.

33. Signs, Awnings, and Canopies.

33.01. Tenant will not place or permit on any exterior door or window or any wall of the Premises, any sign, awning, canopy, advertising matter, decoration, lettering, or other thing of any kind without the prior written consent of Landlord, such consent not to be unreasonably withheld provided such sign is a lighted sign. Tenant must keep its sign lit during its business hours and must remove the sign upon Lease termination. Sign installation and removal must be done in such a manner as to avoid injury, defacement, or overloading of the Premises. Tenant must not individually install a street-side sign on its behalf. All Tenant's existing signs are acceptable to Landlord.

33.02. No later than the Commencement Date, Tenant may have space on the pylon sign in the parking lot pertaining to the Premises. As soon as space at the top of the pylon sign becomes available, Tenant is entitled to that space.

34. Real Estate Taxes.

Landlord has the sole right to render the property of which the Premises are a part to any appropriate taxing authorities.

35. Notices of Appraisal.

Tenant agrees that it shall neither protest nor appeal any appraisal or reappraisal of the Premises or any portion thereof before any governmental or quasi-governmental authority. Tenant further waives any right to receive notices of reappraisal which waiver includes without limitation, any rights which may otherwise exist under Sections 41.413 and 42.015 of the Texas Tax Code, as the same may be amended from time to time.

36. Personal Property Taxes.

During the term of this Lease, Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises, if the taxes are lawfully owing. Tenant does not assume the obligation to pay taxes that it does not otherwise owe.

37. Right of Entry.

Landlord, its agents and employees, shall have the right to enter the Premises from time to time at reasonable times to examine, to show them to prospective purchasers and other persons, and to make such repairs, alterations, improvements or additions as Landlord deems desirable. Rent shall not abate during any such entry by Landlord, including without limitation, during the period of any such repairs, alterations, improvements, or additions. During the last six (6) months of the term of this Lease, Landlord may exhibit the Premises to prospective tenants and maintain upon the Premises notices deemed advisable by Landlord. In addition, during any apparent emergency, Landlord, its agents and employees, may enter the Premises forcibly without liability therefor and without in any manner affecting Tenant's

obligations under this Lease. Nothing herein contained, however, shall be deemed to impose upon Landlord any obligation, responsibility or liability whatsoever, for any care, maintenance or repair except as otherwise herein expressly provided. No such activities by Landlord may unreasonably impair Tenant's ability to operate the Premises according to the Permitted Use.

38. Subordination and Attornment.

38.01. Tenant accepts this Lease subject and subordinate to (i) any mortgage, deed of trust, or other lien presently existing on the Premises or the Center as a whole, and to any amendments, renewals, extensions, consolidations, modifications, assignments and refinancing thereof; (ii) all presently existing ground and underlying leases; (iii) all presently existing restrictive covenants which affect the Center; (iv) all presently existing easement agreements which affect the Center; and (v) all prior leases in the Center, without the necessity of any further instrument or act on the part of the Tenant. Any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust, or other lien to this Lease.

38.02. Tenant will subordinate this lease to subsequently granted deeds of trust, or other lien hereafter placed on the Premises or the Center as a whole, if the mortgagee commits not to disturb Tenant's occupancy under this lease for so long as Tenant is not in default and further agrees to assume the obligations of Landlord under this Lease. In such case, Tenant agrees on demand to execute such instruments confirming such subordination of this Lease and provide such further assurances as Landlord or any mortgagee may reasonably request, provided the rights of Tenant shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants and conditions of this Lease. No such mortgagee shall be required to assume any liabilities for defaults occurring prior to its ownership of the Center. Tenant covenants and agrees that upon foreclosure of any deed of trust, mortgage or other instrument of security and the sale of the Premises or Center pursuant to any such document, to attorn to any purchaser at such a sale and to recognize such purchaser as the landlord under this Lease. The agreement of Tenant to attorn to any purchaser pursuant to such a foreclosure sale or trustee's sale in the preceding sentence shall survive any such sale.

39. Application of Payments Received from Tenant.

39.01. Landlord shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to Landlord according to Landlord's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by Landlord of a check or checks drawn by a party other than Tenant shall not affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment or sublease of this Lease by Tenant. Landlord's acceptance of a partial payment on account will not constitute an accord and satisfaction or a waiver of Landlord's right to the balance of the rent due and owing for the month.

39.02. Landlord's rights under this section pertain only to claims of Landlord against Tenant pertaining to this Lease. Without limiting the above generality, it does not pertain to claims Landlord may have against Tenant arising from Tenant's actions as a municipality when those actions are taken in the course of Tenant's actions as a municipality and not as Tenant under this Lease.

Remainder of Page Intentionally Left Blank

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

Tenant	Landlord
City of San Antonio, a Texas municipal corporation	Bar-Paso Partners, LP, a Texas limited partnership, by and through its sole general partner
By: _____	Mesita Investors, LLC, a Texas limited liability company
Printed Name: _____	By: <u>L</u>
Title: _____	Printed Name: <u>MEYKA MARCOS</u>
Date: _____	Title: <u>Mgr</u>
Attest: _____	Date: <u>4/25/14</u>
_____ City Clerk	
Approved as to Form:	
_____ City Attorney	

Exhibit A-1: Description of Land Containing Premises

METES AND BOUNDS

A tract of land containing 1.890 acres, more or less, out of Lot B, Block 2, New City Block 13502, EASTLAND OF TEXAS INC. SUBDIVISION, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 4700, Page 237, Deed and Plat Records of Bexar County, Texas, being more particularly described in metes and bounds as follows.

BEGINNING at a 1/2" iron pin found on the North Right of Way line of Sea Breeze Drive, said point being the Southwest corner of Lot B, Block 2, New City Block 13502;

THENCE N 00°26'00" W, along the West line of Lot B, Block 2, New City Block 13502, a distance of 200.00 feet to a 1/2" iron found for the Northwest corner of herein described;

THENCE N 89°34'00" E, a distance of 404.60 feet along the North line of said Lot B. to an 1/2" iron pin found for the Northeast corner of herein described tract on the arc of curve along the West Right of Way line of W.W. White Road (Loop 13);

THENCE With said curve to the left whose radius is 2919.90 feet, Whose central angle is 03°23'26", an arc distance of 172.78 feet to a 1/2" iron pin found for a Point of Reverse curvature;

THENCE With said curve to the right whose radius is 25.00 feet, whose central angle is 96°36'28", an arc distance of 42.15 feet to a 1/2" iron pin found on the North Right of Way line of said Sea Breeze Drive for the Point of Tangency;

THENCE S 89°34'00" E, a distance of 394.56 feet along the North Right of Way line of Sea Breeze Drive to the POINT OF BEGINNING and containing 1.890 acres of land, more or less.

Exhibit B: Memorandum of Commencement Date
Memorandum of Commencement Date

Landlord: Bar Paso Partners, L.P.

Tenant: City of San Antonio

Lease: Senior Center Lease (District 2 Senior Center, Bar Paso Partners, L.P.)

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The Lease Term is to begin upon the date Landlord secures a Certificate of Occupancy for the Premises, after the completion of Finish-out Work provided for in the Lease.

For their mutual benefit, the parties now wish to memorialize the actual date on which the Lease's term begins.

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:

1. Defined Terms.

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

2. Lease Commencement.

The Lease term commenced on _____, 2014. That date is the Commencement Date.

3. No Default.

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.

c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

4. Conflict of Terms.

This instrument controls over anything to the contrary in the Lease.

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

Tenant	Landlord
City of San Antonio , a Texas municipal corporation	Bar-Paso Partners, LP , a Texas limited partnership , by and through its sole general partner
By: _____	Mesita Investors, LLC , a Texas limited liability company
Printed Name: _____	By: _____
Title: _____	Printed Name: _____
Date: _____	Title: _____
Attest:	Date: _____
_____ City Clerk	
Approved as to Form:	
_____ City Attorney	

Exhibit C: Work Letter

This Work Letter is between Landlord and Tenant in connection with the Lease.

Landlord: Bar Paso Partners, L.P.

Tenant: City of San Antonio

Lease: Senior Center Lease (District 2 Senior Center, Bar Paso Partners, L.P.)

1. Definitions. Capitalized words have the meanings ascribed to them in the Lease. If not defined in the Lease, they have the following meanings:

Allowance for Finish-out Work: Up to a maximum of \$505,000 payable by Landlord as necessary to complete Finish-out Work.

Finish-out Work: All work necessary to complete the work reflected in the Final Plans in a good and workmanlike manner, whether or not specific tasks were foreseen.

Preliminary Drawings: Construction-ready, detailed drawings of Finish-out Work approved by both Landlord and Tenant and containing all interior and exterior work to be completed by Landlord, to enable Landlord to timely secure a Certificate of Occupancy for the Premises.

Final Plans: Preliminary Drawings and, if any, Extra Drawings approved by both Landlord and Tenant

Punch List: List of deficiencies in Finish-out Work, provided to Landlord by Tenant within 30 days of the date of Commencement Date, which must be cured by Landlord, no later than fifteen 15 days after receipt from Tenant of the Punch List.

2. Performance of Finish-out Work.

(a) The space plan attached to the Lease as **Exhibit A-2** is the plan on which Preliminary drawings must be based. The Preliminary Drawings, when completed, must put the Premises substantially in the form shown on **Exhibit A-2** to the Lease.

(b) The details that Tenant may specify in the Preliminary Drawings include, but are not limited to the following:

- (i) the location of file cabinets, special equipment, fixtures, and furniture;
- (ii) the location of doors and windows;

- (iii) electrical, air conditioning and plumbing requirements;
- (iv) telephone equipment requirements and telephone outlet locations;
- (v) electrical outlet and switch locations;
- (vi) room sizes, configurations, and locations;
- (vii) interior and exterior lighting requirements;
- (viii) cabinet work or other millwork requirements;
- (ix) acoustical and special wall finish requirements;
- (x) all interior and exterior finish colors and material selections;
- (xi) data wiring and computer locations,
- (x) equipment specifications and locations;
- (xi) location of entrances, covered canopies, covered patios/gazebos, stairs, escalators, elevators, service areas, and floor design of the Premises;
- (xii) exterior signs; and
- (xiii) rear driveway and concrete dumpster pad site/parking lot expansion.

3. *Plan Preparation.* Within 30 days after the Binding Date, Landlord must submit architect-prepared, proposed Preliminary Drawings to Tenant. Tenant's failure to ask for specific revisions within 15 business days is Tenant's acceptance of the Preliminary Drawings as proposed. If Tenant timely asks for revisions, Landlord must have its architect revise accordingly and resubmit to Tenant. As before, Tenant's failure to ask for revisions within 15 business days is Tenant's acceptance. If Tenant timely asks for revisions, the revision process repeats.

4. *Cost of Finish-out Work.* The planned cost of the Finish-out Work must not exceed the Allowance for Finish-out Work. If at any time during the plan preparation stage a party determines that the cost of Finish-out Work exceeds \$505,000, Tenant and Landlord must work together to revise the Plans to bring the Finish-out Work within the Budget Amount. If the parties cannot reach agreement in two weeks, either party may terminate the Lease and each party is relieved from all liability under it. **Under no circumstances may Tenant compel Landlord to spend more than \$505,000 on Finish-out Work.**

5. *Management of Finish-out Work.* The Finish-out Work will be managed by Mark Fenton of Insite Architects ("Finish-out Manager"). His fee of \$9,031.60 is payable by Landlord

upon receipt of a certificate of occupancy for the Premises and is an allowable expense for the Finish-out Work.

6. *Payment.* Costs for Finish-out Work will be paid as follows:

(a) All work required to implement the Final Plans, including but not limited to permit fees, sales tax, architectural fees, Finish-out management fees, and engineering fees, must be paid for by Landlord out of the Allowance for Finish-out Work. The reasonable cost of putting the Final Plans into effect actually incurred by Landlord will, on written notice to Tenant, be inserted into the Initial Cost Memorandum (Exhibit "D") to the Lease.

(b) Landlord will make disbursements to contractors and materialmen from the Allowance for Finish-out Work promptly upon request of the general contractor. Except as both Landlord and Tenant may otherwise agree in writing, Landlord must not disburse more than the total Allowance for Finish-out Work.

(c) The provisions of this section survive the expiration or termination of the Lease.

(d) For the purposes of all per-square-foot calculations, the Premises contain 15,886 square feet.

7. *Substantial Completion.* Substantial Completion of Finish-out Work will be the later of the date the Premises are move-in ready or date of issuance of the Landlord obtained Certificate of Occupancy for the Premises (the same test as for the Commencement Date to be memorialized in Exhibit B of the Lease). Move-in ready means that the Final Plans (as defined in the Work Letter) are fully performed except for minor items such as are routinely corrected with a punch list. Tenant must have the opportunity to inspect the Premises. Tenant may deliver a Punch List to Landlord within 30 days after the Commencement Date. Failure to timely deliver a Punch List is Tenant's acceptance of the work. Delivering a Punch List does not postpone the Commencement Date. Landlord must cure all Punch List items within 15 days of receipt of the Punch List from Tenant. This period may be extended to 30 days with Tenants written approval. Landlord may enter the Premises at any reasonable time to cure Punch List items but must not unnecessarily disrupt Tenant's activities.

8. *Early Access.* Tenant may enter the Premises during the construction period for the purpose of installing its fixtures and equipment, but Tenant must coordinate such activities with Landlord and Landlord's contractors and must not interfere with their work. Any such entry is subject to all of the terms and conditions of the Lease, except no rent is due for any period before the Commencement Date.

9. *Counterparts.* This Work Letter 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

Exhibit D: Initial Cost Memorandum
Initial Cost Memorandum

Landlord: Bar Paso Partners, L.P.

Tenant: City of San Antonio

Lease: Senior Center Lease (District 2 Senior Center, Bar Paso Partners, L.P.)

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The leasing commission and Finish-out Work costs are relevant to the parties' rights and obligations under the Lease.

For their mutual benefit, the parties now wish to memorialize the actual

costs. *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:

1. Defined Terms.

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

2. Lease Commission.

The total lease commission paid or to be paid by Landlord regarding the Lease is _____.

3. Unamortized Finish-out from Previous Lease.

The remaining balance of the Unamortized Finish-out from the Previous Lease as of the Commencement Date is _____.

4. Current Finish-out Work.

Landlord's total costs for Current Finish-out Work under this Lease are _____.

5. No Default.

Landlord and Tenant represent to each other that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.
- c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

6. Conflict of Terms.

This instrument controls over anything to the contrary in the Lease.

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

Tenant	Landlord
<p>City of San Antonio, a Texas municipal corporation</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Attest:</p> <p>_____</p> <p>City Clerk</p> <p> </p> <p>Approved as to Form:</p> <p>_____</p> <p>City Attorney</p>	<p>Bar-Paso Partners, LP, a Texas limited partnership, by and through its sole general partner</p> <p>Mesita Investors, LLC, a Texas limited liability company</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>

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Exhibit E: Rules and Regulations of the Center

RULES AND REGULATIONS FOR 1751 S WW WHITE RD.

- (a) Tenant shall not place or maintain any merchandise, vending machines or other articles in any vestibule or entry of the Premises or outside the Premises;
- (b) Tenant shall store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers inside the Premises or at such other location as directed by Landlord. Tenant shall remove the same frequently and regularly, subject to the direction of Landlord by such means and methods and at such times and intervals as are designated by Landlord, all at Tenant's cost;
- (c) Tenant shall not permit any excessive audible sound system or objectionable visible advertising medium outside or within the Premises;
- (d) Tenant shall keep all mechanical equipment free of vibration and noise, and in good working order and condition;
- (e) Tenant shall not commit a nuisance upon the Premises, and shall not permit waste or cause odors to emanate or be dispelled from the Premises;
- (f) Tenant shall not solicit business in the Common Area nor distribute advertising matter in or upon the Common Area;
- (g) Tenant shall not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles which will interfere with the use of the Common Area in the Center nor permit its employees to park anywhere in the Center other than those areas designated from time to time by Landlord as "employee parking areas";
- (h) Tenant shall not place a load on any floor in the Center which exceeds the floor load per square foot which such floor was designed to carry;
- (j) Tenant shall have no right whatsoever to the exterior walls or the roof of the Premises or any portion of the Center outside the Premises, except as otherwise provided in this Lease; and
- (k) Tenant shall make no use of the Premises or the Center which would cause the premiums on the insurance carried by Landlord, if any, to be increased or which would cause such insurance to be cancelled.
- (l) If Tenant is a restaurant or food service(s) provider with a commercial kitchen, i.e., not a warming kitchen, Tenant shall additionally comply with the following items (i) through (viii) listed below. Notwithstanding the preceding sentence, Landlord reserves the right upon notice to Tenant to enter into a contract with a third party for either

the maintenance, repair or services for all or any of the items listed below or other repair or maintenance costs associated with Tenant's restaurant operations. If Landlord enters into such a contract, Tenant agrees to reimburse Landlord for all costs associated with such contract within ten (10) days of a billing therefore, plus a 15% fee for Landlord's overhead and administration.

- (i) Tenant shall, at its own expense, install commercial grade safeguards for the compilation of grease in the manner of installation of a G2 Grease Guard Rooftop Defense System (or equivalent system as approved).
- (ii) Tenant shall acquire and maintain an outdoor grease vat with regularly scheduled service pick-up times as required by need or as determined by Landlord.
- (iii) Tenant shall not cause or permit any odors, of any kind, to emanate from the Premises except as required by exterior ventilation. Tenant must construct the Premises so that odors do not escape into the interior Common Areas, if any, or other tenant's premises.
- (iv) Tenant shall be responsible for preventive maintenance costs associated with grease buildup. Tenant shall provide preventive maintenance service contracts for the following, at a minimum: (i) semi-annual contract for water jet cleaning of the sewer line from the Premises to its connection with the municipal sewer line (ii) monthly cleaning of the grease traps in conjunction with daily automatic enzyme line treatments (iii) monthly cleaning of the grease catch pans located on the roof or elsewhere (iv) and monthly power washing of sidewalks, under and around designated outdoor trash receptacles, and any other areas which may become stained, soiled, or unsightly.
- (v) Tenant shall under no circumstances dispose of hot grease, butter, or other flammable liquids or oils with general trash.
- (vi) Tenant shall not dispose of any trash, refuse, food, or other restaurant products into trash receptacles utilized by other tenants of the Shopping Center. Tenant shall be required to maintain and contract for refuse service separately from the Shopping Center and separately from all other tenants and to pay all of the costs of such service.

- (vii) Tenant shall be required to maintain, at a minimum, a monthly service contract for the control of pests in and around the Premises and to pay all of the costs of such service.
- (viii) Tenant shall provide copies of all required service contracts to Landlord. Landlord may, at any time, request from Tenant or service provider documentation of the work performed.