

AN ORDINANCE 2012-09-13-0703

AUTHORIZING AN EXECUTION OF A PARTIAL ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT FROM THE SAN ANTONIO MUSEUM ASSOCIATION, D/B/A THE WITTE MUSEUM TO WITTE TITLE HOLDING COMPANY AND AUTHORIZING AN AMENDMENT OF THAT PORTION OF THE LEASE AGREEMENT FOR PURPOSES OF SECURING NEW MARKETS TAX CREDIT FINANCING BY THE WITTE.

* * * * *

WHEREAS, the San Antonio Museum Association d/b/a The Witte Museum (Witte) is a non-profit organization whose mission is to promote lifelong learning through innovative exhibitions, programs and collections in natural history, science and South Texas heritage; and

WHEREAS, the museum, which first opened in 1923, has average annual visitorship of 350,000 including approximately 150,000 school aged children; and

WHEREAS, the Witte has developed a master plan which reflects growth in three phases: South Texas Heritage Center and the Witte Research Center, the New Witte, and the World of Water; and

WHEREAS, the Witte continues to actively fundraise for this phased implementation of its master plan; and

WHEREAS, the City's 2012-2017 Bond Program will provide \$4 million for the New Witte phase which will provide a new entry and expanded and improved gallery space in the main building; and

WHEREAS, as a part of their fundraising efforts, the Witte has been approved for New Markets Tax Credit financing for its initial master plan phase of the South Texas Heritage Center and the Witte Research Center; and

WHEREAS, the South Texas Heritage Center was completed and opened to the public in May 2012; and

WHEREAS, the Witte Research Center is located in a building adjacent to the Witte leased premises and construction of the first floor and second floor gallery is expected to be completed in 2013 with the remainder of the building completed in 2014; and

WHEREAS, the New Markets Tax Credit financing will provide \$2.6 million of the estimated \$7 million cost for renovation of the Research Center; and

WHEREAS, two associated City actions are necessary to facilitate this financing opportunity for the Witte with regard to the South Texas Heritage Center portion of the premises: 1) approval of an extension of the primary term of the Lease Agreement by forty (40) years, and 2) consent to the assignment of the Lease Agreement to a newly created Witte affiliated non-profit entity; and

WHEREAS, the current term of the Witte lease is through September 7, 2022 with two 25-year renewal options which are subject to City Council approval; and

WHEREAS, this Amendment No. 4 will extend the primary term by 40 years, to September 7, 2062 and eliminate the renewal options; and

WHEREAS, this action will give the New Markets Tax Credit lender assurance that the Witte has a long term Lease Agreement commitment; and

WHEREAS, as a part of the structure of the New Markets Tax Credit financing the Witte Title Holding Company, a separate non profit entity related to the Witte, has been established and the Lease Agreement between the City and the Witte will be assigned to this new entity, which will have an ownership interest in the South Texas Heritage Center facility during the term of the Lease; and

WHEREAS, the City will not be obligated for any costs associated with these actions or the New Markets Tax Credit Program financing; NOW THEREFORE:

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

SECTION 1. The City Manager or her designee, or the Director of the Department of Parks and Recreation or his designee, is authorized to execute a Partial Assignment and Assumption of Lease Agreement with the San Antonio Museum Association, d/b/a The Witte Museum assigning a portion of the Witte Museum Lease Agreement to the Witte Title Holding Company for purposes of securing New Markets Tax Credit financing by the Witte Museum. A copy of said Partial Assignment and Assumption of Lease Agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The City Manager or her designee, or the Director of the Department of Parks and Recreation or his designee, is authorized to execute Amendment No. 4 to the Witte Museum Lease Agreement with the Witte Title Holding Company for purposes of securing New Markets Tax Credit financing by the Witte. A copy of said amendment in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment II**.

SECTION 3. 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 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

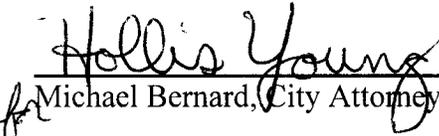
PASSED AND APPROVED this 13th day of September, 2012.

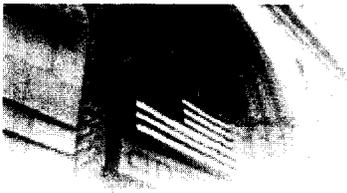

M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

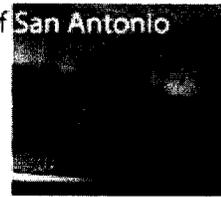
APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 8

Name:	6, 7, 8, 9A, 9B, 10, 11A, 11B, 12A, 12B, 13, 14						
Date:	09/13/2012						
Time:	09:58:23 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a Partial Assignment and Assumption of Lease Agreement from the San Antonio Museum Association d/b/a The Witte Museum to Witte Title Holding Company and authorizing an amendment of that portion of the Lease Agreement for purposes of securing New Markets Tax Credit financing by the Witte. [Ed Belmares, Assistant City Manager; Xavier Urrutia , Director, Parks & Recreation]						
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				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

PARTIAL ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (this "Assignment") is made as of the ____ day of September, 2012 (the "Effective Date"), by and between The Witte Museum, a Texas non-profit corporation (the "Witte"), as assignor, and Witte Title Holding Company, a Texas not-for-profit corporation ("Witte Title Co."), as assignee, and is consented to by the City of San Antonio, a Texas municipal corporation (the "City"), acting by and through its City Manager or her designee, pursuant to Ordinance No. [_____] passed and approved on [_____] , 2012.

WITNESSETH:

WHEREAS, the City and the Witte entered into the San Antonio Museum Association, d/b/a The Witte Museum Witte Museum, Lease with Operating Standards, dated September 8, 1997, as amended by (a) the San Antonio Museum Association, d/b/a The Witte Museum, Lease with Operating Standards Amendment No. 1, dated June 4, 2003, (b) the San Antonio Museum Association, d/b/a The Witte Museum, Lease with Operating Standards Amendment No. 2, dated June 20, 2007, and (c) the Witte Museum, Lease with Operating Standards Amendment No. 3, dated May 31, 2012 (collectively, the "Lease"), pursuant to which the Witte leases from the City certain real property located in San Antonio, Texas, as more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Witte has agreed to transfer to Witte Title Co. its right, title and interest in, to and under the Lease relating to a portion of the Property, as more particularly described below as the Title Corp. Premises.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants set forth below, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby covenant and agree as follows:

1. Partial Assignment.

(a) As of the Effective Date, the Witte hereby assigns and transfers to Witte Title Co. all of the Witte's right, title, interest in and to, and all of its duties and obligations in, to and under, the Lease applicable only as to a portion of the Property particularly described on Exhibit B attached hereto (the "Title Co. Premises"), in its AS-IS condition.

(b) For the avoidance of doubt, the Witte does not assign to Witte Title Co. any of the Witte's right, title and interest in, to and under the Lease as to the portion of the Property not included within the legal description set forth on Exhibit B (such remaining Property being referred to herein as the "Witte Premises").

(c) The Witte does hereby grant, bargain and sell to Witte Title Co. all of the Witte's right, title and interest in and to the improvements located on the Title Co. Premises,

subject, however, to all conditions, restrictions, covenants, limitations and easements of record and to the terms and conditions of the Lease.

(d) It is the intent of the parties that, as of the Effective Date, the Lease shall be bifurcated such that Witte Title Co. and the Witte shall have obligations each as a separate tenant under the Lease and only as to the respective portions of the Property described in Section 1(a) and 1(b), respectively.

(e) From and after the Effective Date, the Lease shall remain in full force and effect with the Witte as a “lessee” or “tenant” thereunder, provided that such Lease shall be applicable only as to the Witte Premises, which Lease obligations are referred to herein as the “Witte Lease.”

(f) From and after the Effective Date, the Lease, as assigned to Witte Title Co. pursuant to this Assignment, shall be effective with respect the Title Co. Premises, with Witte Title Co. as a “lessee” or “tenant” thereunder, which Lease obligations are referred to herein as the “Witte Title Co. Lease.”

2. Acceptance and Assumption. Witte Title Co. hereby accepts the foregoing assignment and transfer of the Witte’s rights, title, interest and obligations, in, to and under the Lease only as to the Title Co. Premises. Witte Title Co. hereby assumes and covenants and agrees to fulfill all of the Witte’s duties and obligations thereunder as of the Effective Date as to the Title Co. Premises. For the avoidance of doubt, Witte Title Co. does not assume any of the Witte’s duties and obligations and under the Lease as to the Witte Premises.

3. Consent: Amended and Restated Lease. This Assignment shall not be effective until City, as lessor, has consented to this Assignment.

4. Binding Effect. This Assignment shall be binding upon the parties hereto and their respective successors and assigns.

5. Headings. Headings in this Assignment are for convenience only and shall not be used to interpret or construe its provisions.

6. Governing Law. This Assignment shall be governed by, and interpreted under, and construed and enforced in accordance with, the laws of the State of Texas.

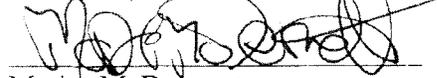
7. Counterparts. This Assignment may be executed in several counterparts, all of which, when taken together, shall constitute one and the same agreement.

8. Recordation. The parties shall record this Assignment in the public records of Bexar County, Texas.

(Remainder of Page Left Intentionally Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date and year hereinabove written.

THE WITTE MUSEUM,
a Texas not-for-profit corporation



Marise McDermott
President & CEO

Witte Title Holding Company,
a Texas not-for-profit corporation



Marise McDermott
President

This Assignment is hereby consented to by: CITY OF SAN ANTONIO

[Name]
City Manager

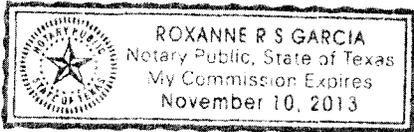
Approved as to form:

City Attorney

[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

STATE OF TEXAS)
) ss:
COUNTY OF Bexar)

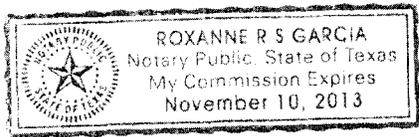
The foregoing instrument was acknowledged before me this 28th day of August 2012, by Marise McDermott, as President & CEO of The Witte Museum, a Texas not-for-profit corporation, on behalf of said corporation. He is personally known to me or presented _____ as identification.



Name: Roxanne R S Garcia
Notary Public, State of Texas
Commission No.

STATE OF TEXAS)
) ss:
COUNTY OF Bexar)

The foregoing instrument was acknowledged before me this 28th day of August 2012, by Marise McDermott, as President of Witte Title Holding Company, a Texas not-for-profit corporation, on behalf of said corporation. He is personally known to me or presented _____ as identification.



Name: Roxanne R S Garcia
Notary Public, State of Texas
Commission No.

STATE OF TEXAS)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____
2012, by _____, as _____ of the City of San Antonio, Texas, on behalf of said
municipal corporation. He is personally known to me or presented _____
_____ as identification.

Name: _____
Notary Public, State of Texas
Commission No.

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED ONCE SURVEY IS COMPLETED]

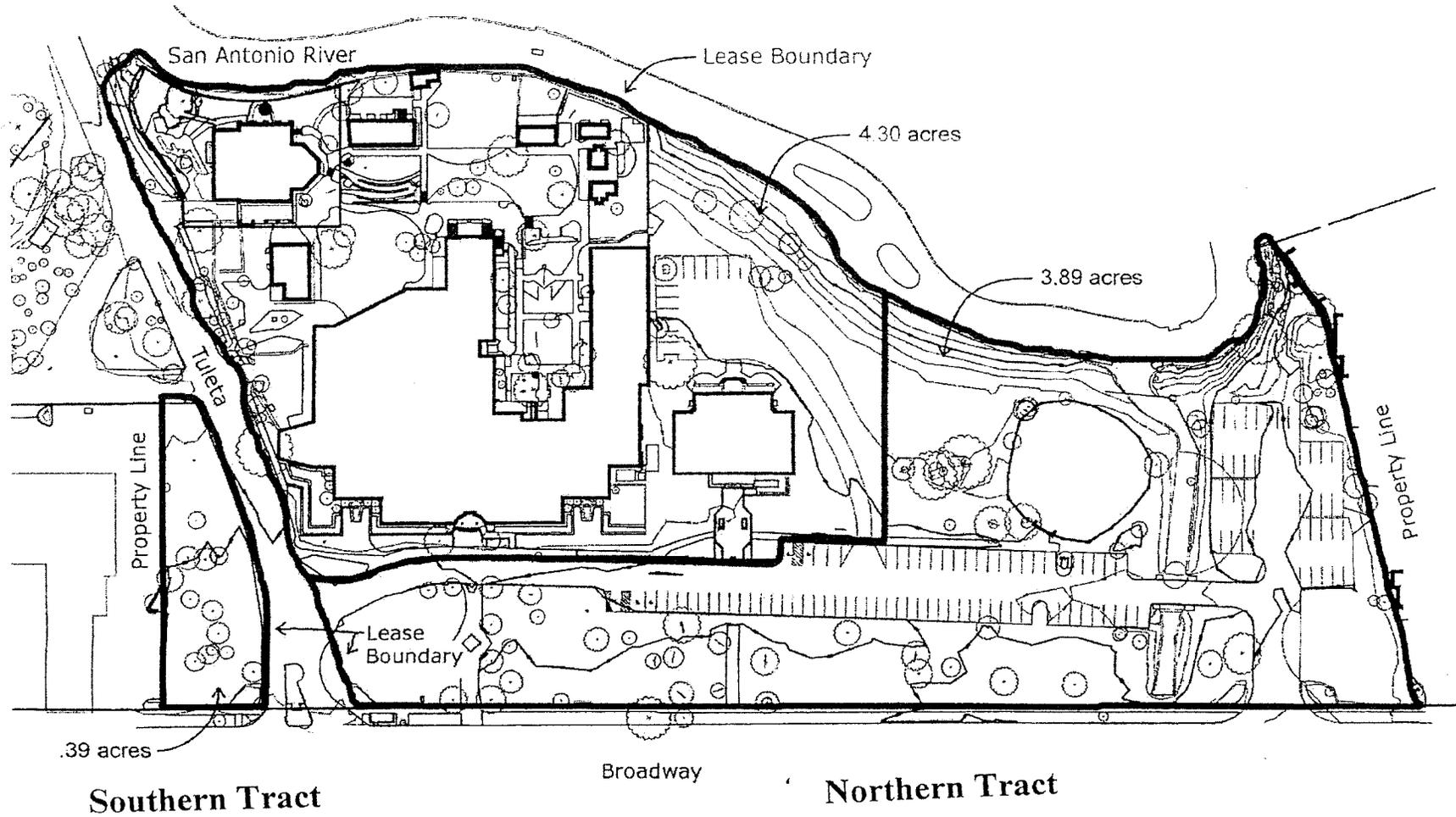


Exhibit A

EXHIBIT B
LEGAL DESCRIPTION OF THE TITLE CO. PREMISES
[TO BE ATTACHED ONCE SURVEY IS COMPLETE]



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES
FOR

A 0.760 of an acre, or 33,080 square feet, more or less, tract of land located in Brackenridge Park, in the City of San Antonio, Bexar County, Texas, and being out of that certain tract of land conveyed from The Water Works Company to the City of San Antonio by deed dated November 20, 1899 and recorded in Volume 185, Pages 183-188 of the Deed Records of Bexar County, Texas, and also out of a tract of land acquired by the City of San Antonio by condemnation dated July 14, 1908 and Decree dated July 31, 1908 and recorded in Volume 284, Page 635 of the Deed Records of Bexar County, Texas. Said 0.760 of an acre also being part of that certain tract of land described in lease agreement between the City of San Antonio and the Witte Museum per Ordinance No. 2007-05-31-0620 passed and approved May 31, 2007. Said 0.760 of an acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone;

COMMENCING: At a found ½ inch iron rod on the northwest right-of-way line of Broadway Avenue, a 100-foot right-of-way, for the southeast corner of Lot 36, New City Block A-49, Boardwalk Subdivision recorded in Volume 7900, Page 74 of the Deed and Plat Records of Bexar County, Texas;

THENCE: South 30°10'35" West, with the northwest right-of-way line of said Broadway Avenue, a distance of 490.29 feet to a point;

THENCE: North 59°49'25" West, departing the northwest right-of-way line of said Broadway Avenue, a distance of 111.38 feet, over and across the above referenced tract described in Volume 284, Page 635 of the Deed Records of Bexar County, Texas, to a set mag nail with washer for the POINT OF BEGINNING;

THENCE: Continuing over and across said tract described in Volume 284, Page 635 and also crossing the above referenced tract described in Volume 185, Pages 183-188, the following bearings and distances:

South 32°33'38" West a distance of 104.23 feet to a set mag nail with washer,

North 59°16'51" West a distance of 342.59 feet to a set "X" on a rock wall on the south bank of the San Antonio River;

THENCE: Along the rock wall on the south bank of the San Antonio River the following bearings and distances:

North 57°40'16" East a distance of 96.50 feet to a point on said wall, and

North 64°09'49" East a distance of 21.77 feet to a set "X",

THENCE: South 59°16'50" East, departing said wall, a distance of 290.21 feet to the POINT OF BEGINNING, and containing 0.760 of an acre in the City of San Antonio, Bexar County, Texas, Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc. under job number 9222-12.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: August 6, 2012
JOB NO. 9222-12
DOC. ID. N:\Survey12\12-9200\9222-12\WORD\0.760 AC.doc



**THE WITTE MUSEUM
WITTE MUSEUM LEASE WITH OPERATING STANDARDS
AMENDMENT NO. 4**

This Amendment No. 4 ("Amendment") to Lease Agreement is by and between the City of San Antonio, a Texas municipal corporation (the "City"), acting by and through its City Manager or her designee, pursuant to Ordinance No. _____ passed and approved on _____, 2012, and The Witte Title Holding Company (the "Witte Title Co.") and applies only to the Witte Title Co. Premises as shown on Exhibit A.

WHEREAS, pursuant to Ordinance No. 86520, passed and approved on August 28, 1997 City and The Witte Museum (the "Witte") entered into a Witte Museum Lease with Operating Standards ("Original Lease") for the property located at 3801 Broadway, for a term beginning September 8, 1997 and ending on September 7, 2007; and

WHEREAS, pursuant to Ordinance No. 97698, passed and approved on May 29, 2003, the Original Lease was amended to expand the Premises to include Pioneer Hall and to extend the term until September 7, 2022; and

WHEREAS, pursuant to Ordinance No. 2007-05-31-0620, passed and approved on May 31, 2007, the Original Lease was further amended to modify the Premises and to provide for two, twenty-five year mutual renewal options; and

WHEREAS, pursuant to Ordinance No. 2012-05-31-0396, passed and approved on May 31, 2012, the Lease was amended to modify the process for increases in general admission fees; and;

WHEREAS, pursuant to Ordinance No. [_____] , passed and approved on [_____] , 2012, a portion of the Premises ("Witte Title Co. Premises") was assigned to the Witte Title Co. as documented in the "Partial Assignment and Assumption of Lease Agreement" (the "Assignment") and this amendment applies solely to the Witte Title Co. Premises assigned thereby; and;

WHEREAS, entering into a fourth Amendment to the Lease, which is applicable to the Witte Title Co. Premises shown on Exhibit A, is the best interest of City and Witte (the Original Lease as amended from time to time is referred to herein as the "Lease"); and;

WHEREAS, pursuant to the Assignment to the extent the Lease is applicable to the Witte Title Co. Premises all references in the Lease to Witte shall be references to Witte Title Co., with the exception of Articles XI, XII, XIII, XIV, XV and XXVI.

NOW THEREFORE, in consideration of the mutual covenants and agreement set forth below, City and the Witte Title Co. agree as follows.

1. ARTICLE I. TERM IS MODIFIED AS FOLLOWS

Section 1.1, the third sentence is amended as follows:

The term of this agreement shall commence September 8, 1997 and shall continue until September 7, 2062, unless earlier termination or renewal shall occur according to the provisions hereinafter set forth.

Section 1.2 is hereby amended by deleting the first two sentences.

2. ARTICLE III: USES PERMITTED ARE AS FOLLOWS

Section 3.1 is amended and restated as follows:

The Premises are herein leased to the Witte Title Co. for the operation and maintenance of a museum and other activities incidental to a museum, or for any other lawfully permitted public purpose, subject to the consent of the City.

3. ARTICLE IV: CONSTRUCTION AND OWNERSHIP OF IMPROVEMENTS ARE AS FOLLOWS

Section 4.2 is amended and restated as follows:

It is expressly understood and agreed that any and all machinery, equipment, collections and items of personal property of whatsoever nature owned by the Witte Title Co. and at any time placed or maintained by the Witte Title Co. on any part of the Premises shall be and remain the property of the Witte Title Co., provided, however, that all improvements constructed and all attached fixtures, other than fixtures erected in connection with the display of museum objects, alterations, additions or improvements made upon the Premises shall become the property of the City after the termination of this Agreement.

4. ARTICLE V: ENCUMBRANCES AND FINANCING PROVISIONS ARE MODIFIED AND ADDED AS FOLLOWS

The title of this article is hereby amended and restated as follows: "ARTICLE V: ENCUMBRANCES AND FINANCING"

Section 5.2 is added as follows:

Provided that the Witte Title Co. has given the City written notice of the existence of a leasehold deed of trust, mortgage or other security interest as described in Section 5.1 above (any such instrument being referred to herein as a "Mortgage"), and the name and notice address of the benefitted party thereunder (any such party being referred to herein as a "Mortgagee"), the City, upon providing the Witte Title Co. any notice of: (a) default under this Lease; (b) a termination of this Lease; or (c) a matter on which the City may predicate or claim a default, shall at the same time provide a copy of such notice to each Mortgagee. No such notice by the City to the Witte Title Co. shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Mortgagee. From and after such notice has been given to each Mortgagee,

each Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given. The City shall accept such performance by or at the instigation of a Mortgagee as if the same had been done by the Witte Title Co.. The Witte Title Co. authorizes any Mortgagee to take any such action at such Mortgagee's option and does hereby authorize entry upon the Premises by each Mortgagee for such purpose.

Section 5.3 is added as follows:

(a) If any default shall occur under this Lease which entitles the City to terminate this Lease and the City did not notify Mortgagee simultaneously with the Witte Title Co., the City shall have no right to terminate this Lease unless the following acts are taken following the expiration of the period of time given the Witte Title Co. to cure such default or the act or omission which gave rise to such default, the City shall notify, in writing, each Mortgagee of the City's intent to so terminate (the "Termination Notice") at least thirty (30) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money (the "Termination Notice Period"). The provisions of subsection 5.3(c) and 5.3(d) of this Lease shall apply if, during such thirty (30) or forty-five (45) day Termination Notice Period, each Mortgagee shall:

(i) notify the City of the Mortgagee's desire to comply with the provisions of subsections 5.3(c) and 5.3(d) below; and

(ii) pay or cause to be paid all rent, additional rent and other payments then due and in arrears as specified in the Termination Notice and which may become due during such 30 or 45-day period; and

(iii) comply, or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in default; provided, however, that the Mortgagee shall not be required during such 30 or 45-day period to cure or discharge any lien, charge or encumbrance against the Witte Title Co.'s interest in this Lease or the Premises junior in priority to the lien of the Mortgage.

(b) Any notice to be given by the City to each Mortgagee pursuant to any provision of this Lease shall be deemed properly addressed if sent to each Mortgagee at the address specified by such Mortgagee in writing to the City.

(c) If the City shall elect to terminate this Lease by reason of any default of the Witte Title Co., and a Mortgagee shall have proceeded in the manner provided for in subsection 5.3(a) of this Lease, the specified date for the termination of this Lease as fixed by the City in its Termination Notice may be extended for a period of up to six (6) months, provided that a Mortgagee shall, during such period:

(i) Pay or cause to be paid the rent, additional rent and other monetary obligations of the Witte Title Co. under this Lease as the same become due, and continue its good faith efforts to perform all of the Witte Title Co.'s other obligations under this Lease; and

(ii) if not enjoined or stayed, and approved by the City, take steps to acquire or sell the Witte Title Co.'s interest in this Lease by foreclosure of the Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(d) If at the end of such extended period specified in Section 5.3(c) above, a Mortgagee is complying with the provisions of subsection 5.3(c)(i) of this Lease, this Lease shall then not terminate, and the time for completion by such Mortgagee of its proceedings to acquire the Witte Title Co.'s interest shall continue so long as such Mortgagee is proceeding to complete steps to acquire or sell the Witte Title Co.'s interest in this Lease by foreclosure of such Mortgage or by other appropriate means with reasonable diligence and continuity (and shall also continue during any period in which such Mortgagee is enjoined or stayed from proceeding). Nothing in this subsection 5.3(d), however, shall be construed to extend this Lease beyond the term of this Lease, nor to require such Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and such Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if the Witte Title Co. had not defaulted under this Lease.

Section 5.4 is added as follows:

In the event of the termination of this Lease for any reason whatsoever including, without limitation, as a result of the Witte Title Co.'s default or as a result of a rejection of this Lease in any state or federal proceedings, the City shall, in addition to providing the applicable notices of default and termination as required by Sections 5.2 and 5.3 of this Lease, provide each Mortgagee with written notice (the "New Lease Notice") that this Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to the City. The City agrees, at the option of the senior Mortgagee, to enter into a new Lease (the "New Lease") of the Premises with the senior Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination, at the rent and additional rent, and upon the terms, covenants and conditions of this Lease provided:

(a) The senior Mortgagee shall make written request upon the City for such New Lease within sixty (60) days after the date such senior Mortgagee receives the City's New Lease Notice.

(b) The senior Mortgagee or its designee shall pay or cause to be paid to the City at the time of execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which the City shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by the City from the Witte Title Co. or other party-in-interest under this Lease.

(c) The senior Mortgagee or its designee shall agree to remedy any of the Witte Title Co.'s defaults of which the senior Mortgagee was notified by the City's New Lease Notice.

(d) The lessee under such New Lease shall have the same right, title and interest in and to the Premises and the improvements thereon as the Witte Title Co. had under this Lease.

Section 5.5 is added as follows:

The City and the Witte Title Co. hereby agree that all rights and options of the Witte Title Co. under this Lease may be exercised directly by or on behalf of each Mortgagee.

Section 5.6 is added as follows:

Notwithstanding anything to the contrary in this Lease, the City agrees that the senior Mortgagee shall, to the extent provided for in the senior Mortgage, be entitled to participate in any settlement regarding insurance proceeds or condemnation awards received by Witte or Witte Title Co. related to Witte Title Co. Premises and to supervise and control the receipt of such proceeds or awards. The City further agrees that the senior Mortgagee may be added as the primary loss payee to the "Loss Payable Endorsement" attached to any and all insurance policies required to be carried by the Witte for the Witte Title Co. Premises under this Lease and City shall be the primary loss payee to the "Loss Payable Endorsement" attached to any and all insurance policies required to be carried by the Witte for any other Premises under this Lease.

Section 5.7 is added as follows:

In the event (a) any prospective Mortgagee or (b) any federal, state or local agency, department or governmental authority providing financing through a leasehold mortgage, grant or other funding (including, but not limited to, the U.S. Department of Housing and Urban Development) requires modifications to this Lease as a condition to providing such financing, the City shall cooperate with the Witte Title Co. in executing such amendments so long as the economic terms of this Lease and the City's remedies for default by the Witte Title Co. are not materially and adversely changed.

Section 5.8 is added as follows:

If any Mortgage is in effect, the City will not accept a voluntary surrender of this Lease, unless agreed to in writing by Mortgagee.

Section 5.9 is added as follows:

The provisions of this Article V are for the benefit of each Mortgagee and may be relied upon and shall be enforceable by each Mortgagee. Neither a Mortgagee nor any other holder or owner of the indebtedness secured by a Mortgage or otherwise shall be liable upon the covenants, agreements or obligations of the Witte Title Co. contained in this Lease, unless and until such Mortgagee or that holder or owner acquires the interest of the Witte Title Co..

Section 5.10 is added as follows:

Nothing contained in this Lease shall be construed as a subordination of the City's interest in the Premises or its reversionary interest in the improvements to any Mortgage. Upon the expiration or termination of this Lease, except as specifically otherwise provided in this Article V, any Mortgage of the Witte Title Co.'s interest in the Premises shall be null and void.

Section 5.11 is added as follows:

If a Mortgagee, its designee, or transferee (each, a "Successor Lessee") following (a) a foreclosure or exercise of any power of sale, (b) any deed in lieu of foreclosure or assignment of leasehold interest in lieu of foreclosure, (c) a transfer resulting from an order given in a bankruptcy, reorganization, insolvency or similar proceeding, or (d) other similar judicial or non-judicial exercise of remedies by a Mortgagee succeeds to the interests of the Witte Title Co. under this Lease, then the City shall recognize such Successor Lessee as the lessee under this Lease, and such Successor Lessee may use or further sublease the Premises the terms of this Lease

5. ARTICLE X: PERMITTED ASSIGNMENTS ARE ALLOWED AS FOLLOWS

Section 10.2 is added as follows:

Notwithstanding anything else contained herein, (a) the Witte Title Co. may lease the Title Co. Premises to the Witte without any further consent from the City and with any other subtenant in compliance with the operational covenants set forth herein (each a "Subtenant"), (b) any Subtenant may continue to enter into sub-subleases in compliance with Section 10.1 above, and (c) the City agrees to accept performance of the operating covenants and standards by either the Witte Title Co. or the Witte, as appropriate and applicable given the nature of the operations of a title holding corporation and an operating business within the Premises.

6. ARTICLE XI: OPERATING COVENANTS ARE ALLOWED AS FOLLOWS

Section 11.4 is hereby added:

In the event that the Premises is no longer operated as the Witte Museum, the specific operating covenants relating to the Witte Museum set forth in Sections 11.1, 11.2 and 11.3 above shall no longer apply to the tenant under this Lease (or its subtenant operator), provided, however, that any tenant under this lease (or its subtenant operator) shall operate the Premises for another public purpose and shall use the Premises only for the uses permitted by Article III of this Lease.

7. ARTICLE XII: CITY SUBSIDY TO WITTE MUSEUM IS AS FOLLOWS

Section 12.3 is hereby added:

In the event that the Witte assigns its interest in this Lease pursuant to Section 10.2 above and so long as Witte Museum operates at the Premises as a subtenant after such assignment, this Article XII shall continue to apply to the Witte as subtenant. In all other instances, this Article XII shall not be applicable to any successor or assign of the Witte.

**8. ARTICLE XIII: OPERATIONAL PRINCIPLES AND UNDERSTANDINGS
APPLICABILITY TO WITTE AND SUCCESSORS OR ASSIGNS**

Section 13.1 is amended as follows:

The first sentence of Section 13.1 is hereby deleted.

Section 13.2 is amended and restated as follows:

The City desires to insure that its citizens have the opportunity to enjoy the use of the Premises by leasing the Premises to the Witte Title Co. for the purposes set forth in Article III hereof.

Section 13.3 is amended to add this following sentence at the end:

In the event that the Premises is no longer operated as the Witte Museum, the specific operating covenants relating to the Witte Museum set forth in this Section 13.3 shall no longer apply to the tenant under this Lease (or its subtenant operator), provided, however, that any tenant under this lease (or its subtenant operator) shall operate the Premises for another public purpose and shall use the Premises only for the uses permitted by Article III of this Lease.

Section 13.4 is hereby deleted.

**9. ARTICLE XIV: OPERATING STANDARDS APPLICABILITY TO WITTE AND
SUCCESSORS OR ASSIGNS**

Section 14.1 is amended as follows:

The first sentence of Section 14.1 is hereby deleted.

Section 14.3 is hereby added:

In the event that the Premises is no longer operated as the Witte Museum, the operating standards relating to the Witte Museum set forth in this Article XIV shall no longer apply to the tenant under this Lease (or its subtenant operator), provided, however, that any tenant under this lease (or its subtenant operator) shall operate the Premises for another public purpose and shall use the Premises only for the uses permitted by Article III of this Lease.

**10. ARTICLE XXIII: INDEPENDENT CONTRACTOR STATUS NOT
APPLICABLE**

Article XXIII is hereby deleted in its entirety.

11. ARTICLE XXVI: PARTIES BOUND

Section 36.1 is hereby amended and restated as follows:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

12. ARTICLE XLIII. RECORDING OF LEASE

Article XLIII is hereby added:

XLIII. RECORDING OF LEASE

43.1 The parties shall record a memorandum of this Lease in the public records of Bexar County, Texas.

13. EFFECT

Except as modified herein, all of the other terms and conditions of the Lease shall remain in full force and effect.

(Remainder of Page Left Intentionally Blank)

Executed this _____ day of _____ 2012.

THE WITTE TITLE HOLDING COMPANY CITY OF SAN ANTONIO



Marise McDermott
President and CEO

[Name]
City Manager

Approved as to form:

City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF THE TITLE CORP. PREMISES

CHICAGO-#123208-v5-Witte_Lease_Amendment.DOC



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES
FOR

A 0.760 of an acre, or 33,080 square feet, more or less, tract of land located in Brackenridge Park, in the City of San Antonio, Bexar County, Texas, and being out of that certain tract of land conveyed from The Water Works Company to the City of San Antonio by deed dated November 20, 1899 and recorded in Volume 185, Pages 183-188 of the Deed Records of Bexar County, Texas, and also out of a tract of land acquired by the City of San Antonio by condemnation dated July 14, 1908 and Decree dated July 31, 1908 and recorded in Volume 284, Page 635 of the Deed Records of Bexar County, Texas. Said 0.760 of an acre also being part of that certain tract of land described in lease agreement between the City of San Antonio and the Witte Museum per Ordinance No. 2007-05-31-0620 passed and approved May 31, 2007. Said 0.760 of an acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone;

COMMENCING: At a found ½ inch iron rod on the northwest right-of-way line of Broadway Avenue, a 100-foot right-of-way, for the southeast corner of Lot 36, New City Block A-49, Boardwalk Subdivision recorded in Volume 7900, Page 74 of the Deed and Plat Records of Bexar County, Texas;

THENCE: South 30°10'35" West, with the northwest right-of-way line of said Broadway Avenue, a distance of 490.29 feet to a point;

THENCE: North 59°49'25" West, departing the northwest right-of-way line of said Broadway Avenue, a distance of 111.38 feet, over and across the above referenced tract described in Volume 284, Page 635 of the Deed Records of Bexar County, Texas, to a set mag nail with washer for the POINT OF BEGINNING;

THENCE: Continuing over and across said tract described in Volume 284, Page 635 and also crossing the above referenced tract described in Volume 185, Pages 183-188, the following bearings and distances:

South 32°33'38" West a distance of 104.23 feet to a set mag nail with washer,

North 59°16'51" West a distance of 342.59 feet to a set "X" on a rock wall on the south bank of the San Antonio River;

THENCE: Along the rock wall on the south bank of the San Antonio River the following bearings and distances:
North 57°40'16" East a distance of 96.50 feet to a point on said wall, and

North 64°09'49" East a distance of 21.77 feet to a set "X",

THENCE: South 59°16'50" East, departing said wall, a distance of 290.21 feet to the POINT OF BEGINNING, and containing 0.760 of an acre in the City of San Antonio, Bexar County, Texas, Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc. under job number 9222-12.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: August 6, 2012
JOB NO. 9222-12
DOC. ID. N:\Survey12\12-9200\9222-12\WORD\0.760 AC.doc

