

AN ORDINANCE 2013 - 01 - 31 - 0070

**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH
SHERRY M. CHAUDHRY FOR THE CITY-OWNED DULLNIG HOUSE
LOCATED AT 204 NOLAN STREET ADJACENT TO HEALY MURPHY
PARK FOR A PERIOD OF TWENTY YEARS COMMENCING ON
MARCH 1, 2013, LOCATED IN COUNCIL DISTRICT 2.**

* * * * *

WHEREAS, the Dullnig House, located at 204 Nolan Street at the intersection of Live Oak and adjacent to Healy Murphy Park, is a 2,000 square foot building on a ½ acre site; and

WHEREAS, it was occupied for over 20 years by Centro del Barrio until they relocated their program to Haven for Hope in 2009; and

WHEREAS, the Healy Murphy Center, Inc. occupied the building for administrative offices during the renovation of their campus for a one year period ending in the spring of 2012; and

WHEREAS, Sherry M. Chaudhry, a principle in the partnership that owns the Comfort Suites Riverwalk located one block to the south, will lease the building to support operations of the hotel. Permitted uses include administrative offices, gift shop or other uses as approved by the Director of Parks and Recreation; and

WHEREAS, the term of the lease is 20 years commencing March 1, 2013; and

WHEREAS, annual rent for the first five years is \$6,600.00, \$7,200.00 for the second five years, \$7,800.00 for the third five years, and \$8,400.00 for the final five years, with the rent abated in year one in consideration of costs associated with make ready and occupancy; and

WHEREAS, rent credits will be available to the Tenant for completed, approved and documented improvements to the property; and

WHEREAS, the Tenant is responsible for the operation and maintenance of the property; and

WHEREAS, this property has not undergone any significant upgrades since the City acquired it 35 years ago and Ms. Chaudhry intends to make improvements to the property, which will be subject to the approval of the City including the Historic Design Review Commission; and

WHEREAS, the Lease Agreement was endorsed by the Parks and Recreation Board at its September 24, 2012, meeting; **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 Parks and Recreation Department or his designee, is hereby authorized to execute a Lease Agreement with Sherry M. Chaudhry for the City-owned Dullnig House located at 204 Nolan Street adjacent to Healy Murphy Park for a period of twenty years commencing on March 1, 2013, located in Council District 2. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 226000000000 and General Ledger 4407720.

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.

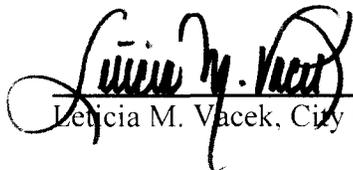
SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 31st day of January, 2013.



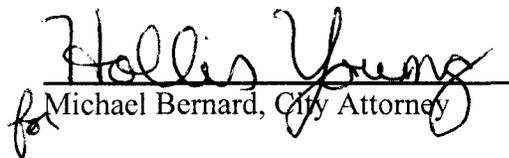
M A Y O R
Julián Castro

ATTEST:

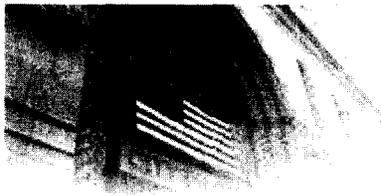


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

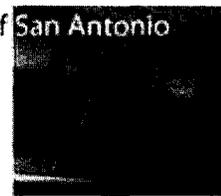


for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 12

Name:	6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19A, 19B, 19C, 19D, 19E						
Date:	01/31/2013						
Time:	10:29:14 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a Lease Agreement with Sherry M. Chaudhry for the City-owned Dullnig House located at 204 Nolan Street adjacent to Healy Murphy Park for a period of twenty years commencing on March 1, 2013, located in Council District 2. [Gloria Hurtado , 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				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Lease Agreement
204 Nolan

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord’s Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Parks and Recreation Department)

Tenant: Sherry M. Chaudhry

Tenant’s Address: 103 S. Winston Lane, San Antonio TX 78213

Premises: Land and structures located at 204 Nolan, San Antonio, Texas 78202 and more specifically identified as Lots 1 and 2, Block 40, NCB 557 in the city of San Antonio according to the Deed Records of Bexar County, Texas.

Permitted Use: Office ; administrative space; and gift shop selling prepackaged food/beverages, apparel, personal care products, gifts and other items typically offered in a hotel gift shop; and other uses as may be approved by City through its Director of Parks and Recreation

Occupancy Commencement Date: March 1, 2013

Commencement Date: March 1, 2013

Initial Term: 20 years

Base Rent: See Section 3 below

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises, as shown on the attached Exhibit A, from Landlord on the terms and conditions of this Lease.

2.02. Tenant's right of occupancy begins at the Occupancy Commencement Date.

3. Rent.

3.01.

<u>Year 1:</u>	\$0
<u>Years 2 – 5:</u>	\$550 per month
<u>Years 6 – 10:</u>	\$600 per month
<u>Years 11 – 15:</u>	\$650 per month
<u>Years 16 – 20:</u>	\$700 per month

3.02. Tenant will be eligible for an abatement of Rent during the Initial Term of the Lease as outlined below. No more than twice each year during the term of this Lease, Tenant may provide documentation to Landlord evidencing amounts paid by Tenant for completed improvements to the Premises ("Completed Improvements"). Completed Improvements are renovation, replacement, repairs or

construction to the existing building and Premises to include foundation; structure; roof mechanical, electrical and plumbing systems; interior walls, floors, ceilings, windows and finishes; interior fixtures and appliances; site improvements including fencing, sidewalks, ramps/decks, parking areas and other permanent exterior improvements; demolition necessary to facilitate the Completed Improvements; and other substantive improvements approved by City. Design, approval and permit expenses and costs associated with routine maintenance are not eligible expenses for abatement of Rent. To be eligible for consideration for abatement of Rent, the Completed Improvements must have been approved in advance by City and all necessary permissions and permits obtained by Tenant. Tenant agrees to provide supporting documentation as requested by Landlord. Tenant will receive a dollar for dollar abatement of Rent for all Completed Improvements up to the total amount of Rent due for the Initial Term.

- 3.03. Rent payable to Landlord shall be due on or before the first day of each month and mailed to:

City of San Antonio
Parks and Recreation Department
114 W Commerce, 11th Floor
San Antonio TX 78205
Attn: Contract Services Division

- 3.04. Rent includes all sums due to Landlord under this Lease, whether Base Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

4. Term, Renewal.

4.01. The term of this Lease is twenty (20) years, commencing on the Commencement Date shown above, unless sooner terminated as provided in this Lease.

4.02. If Tenant is not in default under the Lease and Tenant provides documentation of Completed Improvements to the Premises during the Initial Term at a cost to Tenant of at least \$150,000, Tenant may request a renewal of this Lease by giving Landlord one hundred twenty (120) days prior written notice before expiration of the previous term. Landlord and Tenant will work cooperatively to negotiate the business points, including Rent, for the renewal term and execute a renewal Lease, which is subject to the approval of City Council through the passage

of an Ordinance. In the event Landlord and Tenant do not agree upon the business points of a renewal term, Tenant may continue its occupancy through the year following the expiration of the Initial Term (Holdover Year) to allow Tenant an opportunity to find and relocate to alternate space. Rent during the Holdover Year will be \$750 per month.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. 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 surrounding land as adopted by Landlord.

5.03. Within 30 days of the Commencement Date, Tenant will transfer Landlord's CPS and SAWS accounts into Tenant's name and Tenant will be solely responsible for all utility usage. At the end of this lease, Tenant will work cooperatively with Landlord to facilitate the transfer of all utility accounts back into Landlord's name.

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

5.05 Allow Landlord, CPS, SAWS and Landlord's tenant for Healy Murphy Park to enter the Premises to access utility meters serving Healy Murphy Park but located within the Premises.

5.06. Repair, replace, and maintain in good condition all parts of the Premises.

5.07. After casualty loss not terminating the Lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

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

5.09. On request, execute an estoppel certificate that states the Rent Commencement Date, the Occupancy Commencement Date, and Termination Date of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

5.10 Tenant acknowledges that Landlord has entered into a Lease Agreement with the Salvation Army for Healy Murphy Park, located adjacent to the Premises at 210 Nolan. Under the terms of that Lease Agreement, The Salvation Army has the non-exclusive right to park vehicles in the parking area of Tenant's Premises, subject to the prior written approval of Landlord. Tenant will work cooperatively with Landlord and Salvation Army and allow and facilitate this non-exclusive parking right.

6. Indemnity.

Tenant covenants and agrees to **FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS**, Landlord and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Landlord directly or indirectly arising out of, resulting from or related to Tenant's activities under this Agreement, including any acts or omissions of Tenant, any agent, officer, director, representative, employee, consultant or subcontractor of Tenant, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Landlord, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT TENANT AND LANDLORD ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Tenant shall advise Landlord in writing within 24 hours of any claim or demand against the Landlord or Tenant known to Tenant related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's cost. Landlord shall have the right, at its option and at its own expense, to participate in such defense without relieving Tenant of any of its obligations under this paragraph.

7. Tenant's Negative Promises.

Tenant promises that it will not:

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

7.02. Create a nuisance.

7.03. Permit waste.

7.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.05. Allow a lien to be placed on the Premises.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Occupancy Commencement Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and surrounding land.

9. Landlord's Negative Promise.

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

10. Alterations and Improvement.

10.01. Tenant may not, without the prior written approval of City, construct, or allow to be constructed, any permanent improvements to the Premises or make or allow to be made any permanent alterations to the structures within the Premises without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. No new structures shall be constructed within the Premises; however, Tenant may propose to the City's Parks and Recreation Department for its review and approval plans reflecting an expansion of the back of the existing building that does not significantly add to the square footage of the building. If approved by the City's Parks and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined in 10.01 b) and c) outlined above.

10.02 All required permits until all necessary and required permits and approvals have been secured.

10.03 The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

10.04 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by Tenant and at any time placed or maintained by Tenant on any part of the Premises shall be and remain the property of the Tenant; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Premises shall become the property of the Landlord from and after the time that such improvements are made and shall remain the property of the Landlord after the termination of this Lease.

10.05 Landlord shall not be responsible or liable for, and Tenant covenants that will not bind or attempt to bind, Landlord for payment of any money in connection with any Improvements to the Premises.

10.06 During any periods of time that Improvements are occurring within the Leased Premises, Tenant's contractors will be required to secure Builder's Risk

insurance, if requested by Landlord, and provide Landlord with a certificate of insurance evidencing such coverage.

10.07 Landlord shall not have any responsibility for making any capital repairs or capital improvements to the Premises.

11. Insurance.

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

11.02 Landlord reserves the right to review the insurance requirements of this Article during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Lease. In no instance will Landlord allow modification whereby Landlord may incur increased risk.

11.03 Tenant's financial integrity is of interest to Landlord; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by Landlord, Tenant shall obtain and maintain in full force and effect for the duration of this Lease, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000

<p>3. Broad form Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> <p>f. \$100,000</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence</p>
<p>5. Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased Premises, if applicable</p>	<p>Coverage for a minimum of eighty percent (80%) of the replacement cost of Lessee's property.</p>

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

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

City of San Antonio
Attn: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

11.08 In addition to any other remedies Landlord may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Landlord shall have the right to order Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

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

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

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

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

12. Release of Claims/Subrogation.

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

13. Environmental Matters.

13.01. "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.

13.02. "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.

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

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

13.04. 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.

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

13.06. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

13.07. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

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

14. Landlord's Municipal Powers.

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

15. Prohibited Interests in Contracts.

15.01. 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.

15.02. Tenant warrants and certifies as follows:

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

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

16. Casualty/Total or Partial Destruction.

16.01. If the Premises are damaged by casualty, Landlord has an option to, at its expense, restore the roof, foundation, and structural soundness of the exterior walls of the Premises. If Landlord chooses not to restore, this Lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this Lease by notifying Landlord within ten days. Notwithstanding Landlord's decision to restore the Premises, the commencement of any work by Landlord shall be subject to confirmation of Landlord's receipt of insurance proceeds to be paid by Tenant's insurance carrier as a result of the casualty or loss. If Tenant does not terminate this Lease, the Lease will continue, and Landlord will restore the Premises as provided in this Lease.

16.02. To the extent the Premises are untenable after the casualty, either Tenant or Landlord may terminate this lease on written notice to the other.

16.03. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

16.04. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

17. Condemnation/Substantial or Partial Taking.

17.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate.

17.02. If there is a condemnation or purchase in lieu of condemnation and this Lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

17.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

18. Default, Remedies for Default.

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

18.01.02. Tenant fails to comply with any term, provision or covenant of this Lease and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is false or misleading in any material respect when given to Landlord.

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

18.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

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

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

18.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

18.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

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

18.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

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

18.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

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

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

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

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

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

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

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

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

18.05. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is termination of this lease effective on written notice to Landlord (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Landlord's has no further liability to Tenant for an act of default. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

18.06. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision

of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

19. Tenant's Bankruptcy.

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

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

- (i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;
- (ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;
- (iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

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

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

19.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly

denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

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

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

19.07. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

20. Warranty Disclaimer.

20.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

20.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

21. Abandoned Property.

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

22. Appropriations.

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

23. Sublease, Assignment.

Tenant cannot assign or sublease this Lease without the prior written approval of Landlord. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant. The above notwithstanding, Tenant may establish a separate entity in which she holds a majority ownership interest and sublease or assign the right to operate a gift shop within the Premises without further approval of City.

24. Dispute Resolution.

24.01. 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.

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

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

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

24.05. 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.

24.06. Mediator fees must be borne equally.

24.07. 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.

25. Miscellaneous.

25.01. *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.

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

25.03. *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.

25.04. *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.**

25.05. *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. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

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

25.07. *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. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

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

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

25.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement.

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

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

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

25.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this Lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

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

26. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

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

Landlord:

Tenant:

City of San Antonio, a Texas
municipal corporation

Sherry M. Chaudhry, an individual

Signature: _____

Signature: *Sherry M. Chaudhry*

Printed
Name: _____

Date: 12-12-2012

Title: _____

Date: _____

Approved as to Form:

City Attorney

Exhibit A



	Exhibit A - 204 Nolan
	Powered by ArcGIS Server
	Printed: Aug 21, 2012

The City of San Antonio does not guarantee the accuracy, adequacy, completeness or usefulness of any information. The City does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. Information shown on these maps is derived from public records that are constantly undergoing revision. Under no circumstances should GIS-derived products be used for final design purposes. The City provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.