

AN ORDINANCE 2008-01-10-0006

**AUTHORIZING A LEASE BETWEEN THE CITY OF SAN ANTONIO AND HOWELL-KITENDAUGH, LLC, FOR APPROXIMATELY 2,077 SQUARE FEET OF SPACE IN THE OAK RIDGE PLAZA SHOPPING CENTER FOR A 5-YEAR TERM WITH A BASE RENT OF \$171,023.52 AND AN ESTIMATED COMMON AREA RENT OF \$34,257.60 COMMENCING UPON SUBSTANTIAL COMPLETION OF THE TENANT IMPROVEMENTS BY THE LANDLORD, BUT NOT LATER THAN APRIL 1, 2008.**

\* \* \* \* \*

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

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

**SECTION 2.** Funding for this ordinance is available in Fund 11001000 General Fund, Cost Center 2101020006 Naco-Perrin, General Ledger 5206010 Rental of Facilities, as part of the FY08 Budget

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Howell-Kitendaugh, LLC, and should be encumbered with a purchase order.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance becomes effective 10 days after passage.

PASSED AND APPROVED this 10<sup>th</sup> day of January 2008.



M A Y O R

**PHIL HARDBERGER**

Attest:



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City Clerk

Approved As To Form:



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City Attorney



CMS or Ordinance Number: CN4600007006

TSLGRS File Code:1000-25

Document Title:

CONT - Lease agreement for Customer Service

11220 Perrin-Beitel, Ste # 112

**Commencement Date:**

**3/14/2008**

**Expiration Date:**

**3/31/2013**

**Lease Agreement**

**between**

**HOWELL-KITENDAUGH, LLC, as Landlord**

**and**

**CITY OF SAN ANTONIO, A TEXAS MUNICIPAL CORPORATION, as Tenant**

**dated**

\_\_\_\_\_, 2008

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**BASIC LEASE INFORMATION**

"Lease Date": The first date on which both Landlord and Tenant have executed this lease.

"Landlord": Howell-Kitendaugh, LLC

Landlord's Address: c/o Kennedy Wilson  
70 NE Loop 410, Suite 1050  
San Antonio, TX 78216

Landlord's Contact Person: John Howell  
Telephone Number: (512) 673-8646

"Tenant": City of San Antonio, a Texas Municipal Corporation

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

Tenant's Contact Person: Director, Asset Management Dept.

Telephone Number: 210-207-6509

Tenant's Trade Name: City of San Antonio, a Texas Municipal Corporation

"Premises": 11220 Perrin-Beitel, Suite 112 San Antonio, TX 78217. The Premises contains approximately 2,077 square feet, as shown and outlined on the floor plan of the building improvements situated on Center which is attached hereto as Exhibit A.

"Center": Lot 2, Block 1, New City Block 16925, Oak Ridge Subdivision, as addition to the City of San Antonio, Bexar County, Texas according to the map or plat thereof, recorded in Volume 9504, Page 51, Deed and Plat Records of Bexar County, Texas. A site plan of the Center is attached hereto as Exhibit B.

"Lease Term": The period beginning on the Commencement Date and ending Sixty (60) months thereafter, except that if the Commencement Date is not the first day of a month, the Lease Term shall be extended so as to give effect to the full term specified above in addition to the remainder of the month in which the Commencement Date occurs. The term "Lease Term," as used herein, shall include all valid renewals or extensions thereof (whether or not expressly stated) unless the context clearly indicates to the contrary.

"Renewal Term": One 5-year renewal, as provided in the Lease Agreement

"Delivery Date": The date upon which Landlord delivers the fully executed Lease to Tenant.

Commencement Date": The sooner of (A) April 1, 2007 or (B) issuance of a certificate of occupancy after substantial completion of the Tenant Improvements as detailed in Exhibit "A"

"Lease Year": The first Lease Year shall begin on the Commencement Date and end on the last day of the twelfth full calendar month thereafter. Each successive Lease Year shall consist of the twelve month period during the Lease Term which immediately follows the preceding Lease Year.

"Base Rent":

<u>Months</u>	<u>Monthly Base Rent</u>	<u>Annual Rental Rate Per Square Foot</u>
1-12	\$2,754.03	\$15.91
13-24	\$2,800.49	\$16.18
25-36	\$2,848.95	\$16.46
37-48	\$2,899.15	\$16.75

49-60

\$2,949.34

\$17.04

**Initial "Triple Net Charge:"** Tenant shall pay Tenant's Share of Taxes, Insurance and Common Area Costs, as such terms are defined in Sections 17.2, 12.5 and 5.3, respectively, of the lease, as the Triple Net Charge. The initial Triple Net Charge is based upon Landlord's estimate of such costs. Landlord estimates that the *Monthly* per square foot assessment of Taxes is \$0.1233, the monthly per square foot assessment of Insurance is \$.0158 and the monthly per square foot assessment of Common Area Costs is \$0.1358. The Initial *Monthly* Triple Net Charge payment will be \$0.2749.

"Permitted Use": General Office

"Broker": Kennedy Wilson Austin, Inc., and Providence Commercial Real Estate Services

"Tenant Share": Tenant's Share is 8.27%, calculated by dividing the number of useable square feet in the Premises by the number of useable square feet in the Center. The number useable square feet in the Premises is calculated by measuring from the exterior faces of exterior walls (or from the center of any shared or party walls) of all floors, including mezzanines, show cases, and entrances within the exterior footprint of the Center, which is 25,100 square feet. The useable square feet of the Premises shall conclusively be deemed to be the number of square footage of the Premises set forth above. The useable square feet in the Center shall be the aggregate of the useable square feet in all premises leased or available for lease in the Center. If the useable square feet in the Center changes, Tenant's Share shall be recalculated by Landlord, and all payments to be made by Tenant based on Tenant's Share shall be adjusted as of the first day of the month immediately following the month in which the change occurs. If there is any dispute as to the number of useable square feet in the Center or Premises, the certification of Landlord's architect shall be deemed conclusive.

The Initial "Monthly Payment" (as defined in Section 3.1) will equal the sum of the:

Base Rent for the first Lease Year,	
as set forth above; and	\$ <u>2,754.03</u>
Initial Triple Net Charge, as set forth above.	\$ <u>570.96</u>
Total Initial Monthly Payment:	\$ <u>3,324.99</u>

Each reference in the Lease to any information or definitions set forth in this Basic Lease Information shall mean and refer to the information and definitions set forth above and shall be used in conjunction with and limited by all references thereto in the provisions of

the Lease. If there is a conflict between any Basic Lease Information provision and the lease, the lease shall control.

**LANDLORD:**

**HOWELL-KITENDAUGH, LLC**

Date: 12/20/07

By: [Signature]

Name/Title: John Howell

**TENANT:**

**City of San Antonio,**  
a Texas municipal corporation

By: [Signature]

Printed Name: Sharon De La Garza

Title: Assistant to the City Manager

Date: 1-29-2008

**Attest:**

[Signature]  
City Clerk



**Approved As To Form:**

[Signature]  
City Attorney

Authorizing Ordinance: 2008-01-10-0006

# LEASE AGREEMENT

This Lease Agreement (this "Lease") is entered into as of the first day on which both parties hereto have executed same, by and between the Landlord and the Tenant named in the Basic Lease Information.

## 1. Definitions and Certain Basic Provisions.

The definitions and basic provisions stated in the Basic Lease Information executed by Landlord and Tenant and attached hereto (the "BLI") are incorporated herein for all purposes and shall be used in conjunction with this lease. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the BLI.

## 2. Granting Clause.

2.01. Landlord hereby leases the Premises to Tenant and Tenant hereby takes the Premises from Landlord, beginning on the Commencement Date and ending on the last day of the Lease Term unless sooner terminated as herein provided. Landlord shall endeavor to deliver the Premises as soon as possible after the Lease Date, but if the Premises are not ready for delivery to Tenant on the Lease Date for any reason whatsoever, Tenant agrees that Landlord shall not be in default hereunder, nor shall Landlord be liable or responsible for any claims, damages or liabilities as a result thereof, and Tenant shall accept possession of the Premises, and the Delivery Date shall occur, when Landlord is able to tender the same. Within ten (10) days after Landlord's request, Tenant shall execute a Confirmation of Commencement Date confirming the exact Commencement Date, Lease Term, and such other factual matters as Landlord may request.

2.02. Tenant may renew this lease for one additional 5-year term. Rent will be at the then market rent for the Premises, and all other terms of this Lease remain the same. To put the renewal into effect, Tenant must give Landlord not less than 120 days prior written notice of intent to renew. If the parties have not reached agreement on market rent by 90 days prior to the end of the original term, instead of pursuing the renewal, Tenant may elect to forgo it and leave at the end of the original term. Alternatively, the parties may seek a judicial determination of market rent.

## 3. Rent.

3.1. Tenant shall pay Landlord at Landlord's Address (or at such other address as Landlord may designate by notice in writing to Tenant), the "Monthly Payment" without demand, deduction or set-off. "Monthly Payment" means the sum of the monthly Base Rent (adjusted from time to time as provided in the BLI), and the monthly Triple Net Charge.

3.2. The first Monthly Payment shall be in the amount stated in the BLI and shall be paid by Tenant to Landlord when Tenant signs this lease. The second Monthly Payment shall be due and payable on the first day of the month after the month in which the Commencement Date occurs, unless Landlord has not previously obtained a certificate of occupancy for the Premises. Tenant need not pay the second month's rent before the first day of the month after the first full month after the certificate of occupancy is obtained. Each succeeding Monthly Payment shall be

due and payable on the first day of each succeeding month during the Lease Term. If the Commencement Date is not the first day of a month, the second Monthly Payment shall be prorated on the basis of one-thirtieth (1/30) of the initial Monthly Payment for each day of such month within the Lease Term.

3.3 If Tenant fails to pay to Landlord within ten (10) days after the date due any sum owed by Tenant under this lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the sum owed and unpaid. If Tenant's failure to pay continues more than twenty (20) days after the date a sum is due, Tenant shall pay Landlord an additional late charge equal to five percent (5%) of the sum owed and unpaid. Failure to pay any late charge upon Landlord's demand shall be an event of default hereunder without the necessity of any notice to Tenant. If any check remitted to pay any sum owed by Tenant under this lease is not honored when presented for payment, delivery of such check to Landlord shall constitute failure to pay such sum when due, and in addition to Landlord's other remedies for such failure, (i) Tenant shall reimburse Landlord for any bank fees incurred by Landlord because of such dishonor, and (ii) Landlord may require Tenant to make all further payments under this lease by certified check, wire transfer, or money order. The fees and charges in this Section are in addition to Landlord's other rights and remedies hereunder or at law or in equity, and are not liquidated damages.

#### **4. Common Areas.**

4.1 "Common Area" shall mean those areas located on the Center and designated by Landlord from time to time for the common use of all tenants thereof, including among other facilities, the parking areas, sidewalks, landscaping, curbs, loading areas, private streets and alleys, lighting facilities and other areas and improvements provided by Landlord for the common use of all tenants. The Common Area is subject to Landlord's sole management and control and will be operated and maintained in a good condition. The initial Common Area is shown on Exhibit B, but Landlord may change from time to time the dimensions and location of the Common Area as so shown (including dimensions or locations of existing parking areas or buildings), may build parking garages, additional buildings, additional stories on existing buildings, or other improvements, may eliminate existing improvements, and may limit use of portions of the Common Area (such as drive-through lanes or outdoor seating areas) to use by specifically designated tenants. Tenant and its agents, employees, customers, subtenants, licensees and concessionaires (the "Permitted Users") shall have a nonexclusive right and license to use the Common Area in common with Landlord, other tenants of the Center and other persons designated by Landlord, subject to reasonable rules and regulations as Landlord from time to time may prescribe. The current rules and regulations for the Center are attached hereto as Exhibit G. No Permitted User may obstruct any portion of the Common Area. Landlord may designate specific areas within the Center (or in reasonable proximity thereto) where automobiles owned by Tenant, its employees, subtenants, contractors, licensees and concessionaires ("Tenant Vehicles") must be parked. Tenant will furnish to Landlord from time to time upon request a complete list of license numbers of all Tenant Vehicles. If any Tenant Vehicle is not parked within a designated parking area, Landlord may remove the offending Tenant Vehicle by towing or otherwise, in which event Tenant shall reimburse Landlord for the cost of such removal upon Landlord's demand. Landlord further may impose a fine (not exceeding \$100.00 per day) for each improperly parked Tenant Vehicle. Tenant shall not solicit business or display merchandise within the Common Area, distribute handbills therein, or take any action, which would interfere with the rights of other persons to use the Common Area. Landlord may close any part of the Common Area for temporary periods in order to prevent the public from obtaining prescriptive

rights to the Common Area, to make repairs or alterations, or to build improvements upon the Center.

4.2 Tenant shall pay the Triple Net Charge as additional rent hereunder. "Triple Net Charge" means a monthly amount calculated by multiplying Tenant's Share by the aggregate of (i) the Taxes (defined in Section 17.2 below), (ii) the Insurance (defined in Section 12.5 below), and (iii) the annual Common Area Cost, and dividing the amount so determined by twelve (12). The term "Common Area Cost" means the cost of operating and maintaining the Common Area, improvements within the Center which benefit generally the tenants of the Center (e.g., roofs, floors and structural elements of the buildings comprising the Center), and any improvements or easements benefiting the Center (regardless of whether located thereon), and includes, but is not limited to, the cost incurred by Landlord, in Landlord's discretion, for water; electricity (including electricity for the multi-tenant pylon sign); gardening; landscaping (including plant replacement); repair and maintenance (including paving, utility services, line painting, lighting, sanitary control, cleaning, drainage, exterior painting of buildings, graffiti removal, repair and maintenance of the multi-tenant pylon sign, and roof maintenance and repair); sewer; trash removal; depreciation on machinery and equipment used in connection with the maintenance of the Common Area; personnel to implement such services, to direct parking, and if Landlord elects, to police the Common Area; the cost of capital improvements to the Common Area if the capital improvements are required or recommended by federal, state or local law, ordinance, statute, rule or regulation (but such improvements will be amortized upon a reasonable basis selected by Landlord); directional signs and markers; janitorial services; repairs to lighting fixtures and equipment; legal services attributable to the operations of the Center; outside professional services such as security, direction of parking, landscaping or pest treatment; and an administrative charge or a management fee (which shall not exceed four percent [4%] of the gross rental generated by the Center) to cover Landlord's cost of managing the Center. The initial Triple Net Charge is set out in the BLI. Monthly payments of the Triple Net Charge will be based upon Landlord's estimate of the annual Taxes, Insurance and Common Area Cost for the year in question and shall be adjusted from time to time, based upon Landlord's most current estimate of such items. Any adjustment in the monthly amount paid hereunder shall take effect on the first day of the month after the month in which Landlord notifies Tenant of any adjustment. Amounts paid on the basis of the estimated Taxes, Insurance and Common Area Cost will be adjusted when the actual amount of such items is available. For any partial calendar year during the Lease Term, Tenant's Triple Net Charge for such year shall be calculated by multiplying the actual Taxes, Insurance and Common Area Cost incurred for such year by a fraction, the denominator of which is 365 and the numerator of which is the number of days during that year which fall within the Lease Term. Landlord shall not pay interest on Tenant's Triple Net Charge account, nor shall Landlord be required to keep the funds in such account separate from Landlord's general funds. For purposes of determining the Common Area Cost, those costs comprising the Common Area Costs which Landlord can control (e.g., exclusive of utility rate increases, changes in minimum wage, etc.) shall not be increased by more than 3% from any calendar year to the next calendar year.

4.3 Within a reasonable time after the end of each calendar year during the Lease Term, Landlord shall furnish to Tenant a statement of the Common Area Cost actually incurred during such calendar year, together with the actual Taxes and Insurance for such year. If Tenant's payments of the Triple Net Charge based on Landlord's estimated amounts for any calendar year (or portion thereof) during the Lease Term exceed the Triple Net Charge actually due for such year, then Landlord may either credit any overpayment towards the Monthly Payment next falling due under this lease, or refund any overpayment to Tenant. Likewise, within thirty (30) days after Landlord delivers such statement to Tenant, Tenant shall pay to Landlord

any amount by which the Triple Net Charge actually due for such calendar year exceeds the sum of the Triple Net Charge payments made by Tenant to Landlord based on Landlord's estimated amounts.

4.4 Provided that Tenant is not then in default under this lease, Tenant, at Tenant's option and expense, and on not less than ten (10) days' prior written notice to Landlord, may audit the Common Area Cost subject to the following: the audit must be conducted within ninety (90) days after Landlord delivers to Tenant a statement of actual Common Area Cost, and the only period subject to audit shall be the calendar year to which the statement applies; Tenant may not audit more than one time in any calendar year; the audit must be conducted at Landlord's principal place of business and during Landlord's regular business hours; and Tenant must keep confidential, and may not disclose or disseminate, any information obtained in connection with the audit.

## **5. Use and Care of Premises.**

5.1 Without Landlord's prior written consent, the Premises may be used only for the Permitted Use, and for no other purpose, and Tenant may use in transacting business from the Premises only the trade name specified in the BLI. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Lease Term conduct and carry on in the entire Premises the type of business for which the Premises are leased. Except during reasonable periods for repairs, Tenant shall keep the Premises open to the public for business with adequate and competent personnel in attendance.

5.2 Tenant shall observe, perform and comply with all laws, statutes, ordinances, rules and regulations promulgated by any governmental agency and applicable to the Premises. Tenant shall not occupy or use the Premises or allow any of the Premises to be occupied or used for any use or purpose which is unlawful in part or in whole, or deemed by Landlord to be disreputable in any manner or out of harmony with the operation of the Center, or extra hazardous on account of fire, nor keep anything within the Premises for any purpose which increases the insurance premium cost or invalidates an insurance policy carried on the Premises or the Center. In addition to Tenant's obligation to pay the Triple Net Charge, upon Landlord's demand, Tenant shall reimburse Landlord for any increase in insurance premium costs due to Tenant's use or occupation of the Premises.

5.3 Tenant shall not conduct within the Premises any fire, auction or bankruptcy sales or operate within the Premises a "wholesale" or "factory outlet" store, a cooperative store, a "second hand" store, a "surplus" store or a store commonly referred to as "discount house." Tenant shall warehouse and store in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail from the Premises. Tenant shall not advertise that it sells products or services at "discount," "cut-price," or "cut-rate" prices. Tenant shall not permit any objectionable or unpleasant odors to emanate from the Premises; nor place or permit any radio, television, loud speaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the Premises or in the Common Area; nor place an antenna or other projection on the exterior of the Premises; nor solicit business or distribute leaflets or other advertising material in the Common Area; nor take any other action which in Landlord's sole judgment would constitute a nuisance or would disturb or endanger other tenants of the Center or unreasonably interfere with their use of their respective premises; nor do anything which would tend to injure the reputation of the Center. Tenant acknowledges that Landlord has granted to other tenants the exclusive uses set forth on Exhibit C attached hereto, and agrees that Tenant

shall not violate any such exclusive use clause. Tenant expressly acknowledges that Landlord may enforce this provision by specific performance, and that Tenant will be responsible for any consequential damages suffered by Landlord by reason of such breach.

5.4 Tenant shall take good care of the Premises and keep the same free from waste at all times. Tenant shall keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, insects and pests at all times. Tenant shall place all trash and garbage within the receptacles for trash pickup and removal placed by Landlord within the Common Area. Tenant will keep such trash receptacles closed, and will flatten all boxes before placing them in the receptacles. Receipt and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas from time to time prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Center. Tenant shall place all receptacles for used grease within areas designated by Landlord. Landlord initially has designated an area adjacent to the trash receptacles in the Common Area. In no event, even temporarily, shall Tenant place used grease next to any drive-through lane.

5.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows and exterior electric signs advertising Tenant's business lit from dusk until 10:00 p.m. every day, including Sundays and holidays.

5.6 Tenant shall include the address and identity of its business activities in the Premises in all advertisements made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

5.7 Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises.

## **6. Maintenance and Repair of Premises.**

6.1 Landlord shall maintain the foundation, exterior walls (except store fronts, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or other treatment of interior walls) and roof of the Premises in good repair. Landlord shall pay the cost of such maintenance, but may include the cost of exterior painting, graffiti removal, general repairs, and roof maintenance and repair in the Common Area Cost. Further, Tenant shall reimburse Landlord for the cost of any repair resulting from the act or negligent omission of Tenant or Tenant's Permitted Users or contractors. If the Premises requires repairs which are Landlord's responsibility, Tenant immediately shall so notify Landlord, and Landlord shall have a reasonable time (not less than thirty (30) days after such notice) to make such repairs. Landlord has no obligation to repair or maintain the Premises except as specified in this Section.

6.2 Tenant shall furnish, maintain and replace all electric light bulbs, tubes and tube casings for the Premises.

6.3 Except for repairs and replacements to be made by Landlord under Section 7.1 above, Tenant, at Tenant's sole cost and expense, shall keep the Premises in good, clean condition (including janitorial service), and shall make all repairs and replacements (including cracked or broken glass) necessary to maintain the Premises in good condition commensurate with a first class retail shopping center in Bexar County, Texas. Tenant shall keep all plumbing

units, pipes and connections within the Premises free from obstruction and protected against ice and freezing. If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice delivered to Tenant by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, and Tenant shall pay to Landlord within five (5) days after Landlord's demand the cost of such repairs plus ten percent (10%) of the amount thereof. Upon termination of this lease, Tenant shall surrender the Premises broom clean, in good condition, reasonable wear and tear and loss by fire or other casualty excepted, shall deliver all keys for the Premises to Landlord and shall inform Landlord of any combinations on locks, safes or vaults remaining in the Premises. Tenant's obligation under this Section includes the obligation to maintain at Tenant's expense all air conditioning, heating and ventilation equipment, and plumbing, electrical and sprinkler systems serving the Premises.

6.4 Tenant acknowledges that mold spores are present essentially everywhere and that mold and mildew may occur in any moist location. Tenant understands that prevention of moisture and good housekeeping and ventilation practices is essential to prevent mold and mildew from developing. Tenant expressly acknowledges the necessity of keeping the Premises clean and free of moisture (including on floors, walls and ceilings), and well ventilated, especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls in order to prevent mold and mildew from developing. Tenant has inspected the Premises and certifies that Tenant has not observed mold, mildew or moisture within the Premises. Tenant agrees to immediately notify Landlord if Tenant observes mold, mildew and/or moist conditions (from any source, including leaks), and to allow Landlord to evaluate the situation, and recommend or require Tenant to take appropriate corrective action. If Tenant finds harmful mold on the Premises, it may terminate this lease on 60 days prior notice and vacate without penalty. Notwithstanding the above, Landlord, at Landlord's cost and expense, shall have a period of thirty (30) days following such notice to take whatever action with respect to any harmful mold that it deems necessary, to cause the removal, make any necessary repairs and protect the value of the Premises following the sixty (60) days prior written notice given by Tenant to Landlord. If such removal and repairs cannot be completed within such period, then Tenant shall have the right to terminate this Lease Agreement, without penalty.

## **7. Leasehold Improvements, Alterations.**

7.1 **Exhibit D** attached hereto governs the installation of any leasehold improvements and/or the acceptance of the condition of the Premises.

7.2 After construction of Tenant's Improvements, as defined in **Exhibit D** (if any), Tenant shall not make or allow any alterations, additions or improvements to the Premises without Landlord's prior written consent, except that Tenant may install unattached, movable trade fixtures which do not require drilling, cutting or otherwise defacing the Premises. Tenant shall provide complete plans and specifications for any alteration, addition or improvement for which Tenant requests approval. All alterations, additions, improvements and fixtures (including fixtures which are attached in any way to the Premises but excluding unattached, movable trade fixtures), which may be made or installed by Tenant upon the Premises shall remain upon and be surrendered with the Premises and become Landlord's property without credit or compensation to Tenant at the termination of this lease unless Landlord requests their removal, in which event Tenant shall remove the same and restore the Premises to their original condition at Tenant's expense.

7.3 All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements and the requirements of any loan documents to which Landlord may be a party, and so as to minimize interference with other construction in progress and the transaction of business in the Center.

7.4 If Tenant proposes any activity upon or affecting the roof above the Premises, all venting, opening, sealing, waterproofing or altering of the roof must be performed by Landlord's roofing contractor at Tenant's expense. When completed, Tenant must furnish to Landlord a certificate from Landlord's roofing contractor confirming that all activities have been completed in accordance with plans and specifications approved by Landlord. Tenant holds Landlord harmless from any damage to the Premises or the Center resulting, directly or indirectly, from Tenant's venting, opening, sealing, waterproofing or in any other way altering the roof.

7.5 Tenant will not permit any mechanic's lien or liens to be placed upon the Premises or the Center caused by or resulting from any work performed, materials furnished or obligation incurred by or at Tenant's request. If any lien is filed, Tenant will immediately pay, obtain the release of, or bond around same (any bond to be in form and amount prescribed by the Texas Property Code). If any lien is not removed (or bonded around) within thirty (30) days, Landlord may pay the amounts required to remove same without inquiry as to the validity of the claim, and any amount so paid shall be additional rent hereunder due from Tenant to Landlord. Tenant shall reimburse Landlord upon demand for any amount so paid, plus interest at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law (such lesser rate, the "Past Due Rate"), from the date paid by Landlord until reimbursed by Tenant.

## **8. Landlord's Right of Access, Use of Roof.**

8.1 Landlord shall have the right to enter upon the Premises at any reasonable time for any reasonable purpose, including inspecting or repairing same, repairing, altering or adding to adjacent areas, or showing the Premises to prospective purchasers, lessees or lenders.

8.2 Use of the roof above the Premises is reserved to Landlord; provided, however, that Tenant may access the roof for purposes of maintaining any air conditioning equipment located thereon; provided, that Tenant shall hold Landlord harmless from any damage to the Premises or the Center resulting, directly or indirectly, from Tenant's access to or entry upon the roof.

## **9. Signs, Store Fronts.**

9.1 Without Landlord's prior written consent, Tenant shall not (i) make any changes to or paint the store front; (ii) install any exterior lighting, decorations or paintings; or (iii) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type in its display windows. All signs, decorations and advertising media are subject to Landlord's prior approval as to construction, method of attachment, size, shape, height, lighting, color and general appearance. If Landlord notifies Tenant that Landlord is adopting specific sign criteria for the Center, Tenant thereafter shall conform to such criteria. All signs shall be kept in good condition and in proper operating order at all times.

9.2 Tenant agrees to have all approved signs erected or installed and fully operative by the Commencement Date. Tenant shall remove all signs before this lease terminates. Any

time Tenant removes or alters its signs (including at lease termination), Tenant shall repair, paint, and/or replace the building fascia surface where signs are or were attached.

9.3 Tenant shall have the right to place a panel on Landlord's multi-tenant pylon sign in accordance with the provisions of this Section 10.3. Tenant, at Tenant's sole cost and expense, shall provide the sign panel, facing and lettering to be used in connection with Tenant's advertising on the pylon, and Tenant shall pay all cost of construction, installation and removal associated with such sign. All aspects of Tenant's sign panel, facing and lettering, including without limitation the size and appearance thereof and the maintenance and upkeep associated therewith, shall be subject to Landlord's prior approval. Tenant expressly agrees that Landlord shall not be responsible or liable in any way to Tenant or to any third party for any damage from any cause whatsoever to any of Tenant's sign on the pylon, and Tenant's Required Insurance shall be required to include coverage for such sign.

## **10. Utilities.**

10.1 Landlord shall cause to be provided and maintained to the points on the exterior wall of the Building where respective utilities enter therein, mains, conduits and other facilities necessary to supply water, electricity, telephone service and sewerage service to the Premises. Tenant shall be solely responsible for investigating the capacity of the service provided to the Premises.

10.2 Tenant shall pay promptly and before delinquency all charges for electricity, water, gas, wastewater, telephone service, and other utilities furnished to the Premises and shall pay promptly any maintenance charges there fore. Each such payment shall be made directly to the provider of the utility service if the service is separately metered. If any service is not separately metered to the Premises, Tenant shall pay to Landlord as additional rent the cost of such service, as equitably determined by Landlord based on the number and nature of other users of that service. Landlord may estimate such cost and include it within Tenant's Triple Net Charge. If Landlord reasonably determines that Tenant uses any commonly metered service in materially greater amounts than other tenants using such service, Landlord may require Tenant to separately meter that service at Tenant's expense.

10.3 Landlord shall not be liable for, and Tenant waives and releases Landlord for any claim arising out of, any interruption or failure in utility services arising from any cause whatsoever, nor shall any such interruption or failure be deemed to evict Tenant or work an abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof.

10.4 Regarding telecommunications service facilities serving the Premises, references in this Section 10.4 to "telecommunications service" or "telecommunications service facilities" shall include all communications services or facilities, as appropriate, that enable communication at a distance, including without limitation, telephone service, cable service, broadcast service and the Internet. If Tenant contracts for the provision of telecommunications service to the Premises, and such contract requires installation of telecommunications service facilities outside the Premises, Tenant first must obtain Landlord's written consent. Tenant may contract for such service only with a telecommunications service provider holding the necessary authorizations required by federal, state and local law. Alterations to the Premises for installing telecommunications service facilities must comply with Article 8 above. Upon termination of this lease for any reason whatsoever, Landlord may require Tenant to remove any telecommunications service facilities, so installed at Tenant's cost. Tenant acknowledges that

Landlord may: (i) take reasonable precautions or impose reasonable conditions on a telecommunications service provider in order to protect the safety, security, appearance and condition of the Center and the safety and convenience of persons in or on it; (ii) impose reasonable limitations on the times at which a telecommunications service provider may have access to the Center; (iii) require the telecommunications service provider to indemnify Landlord for damage caused in connection with installing, operating or removing a telecommunications service facility; (iv) limit the number of telecommunications service providers with access to the Center, if Landlord reasonably determines that space constraints justify the limitation; and (v) charge a reasonable, nondiscriminatory fee to Tenant or to the telecommunications service provider for installation of the telecommunications service facilities.

## **11. Insurance.**

11.1 Landlord shall not be liable or responsible to Tenant for any loss or damage to any property or person occasioned by theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or any similar matter. Further, Landlord shall not be liable to Tenant, or to Tenant's agents, servants, employees, customers or invitees for (a) any injury to person or damage to property caused by any act, omission or neglect of Tenant or Tenant's Permitted Users or contractors, (b) Tenant's use of the Premises or the conduct of Tenant's business or profession, (c) any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or (d) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this lease

11.2 Tenant shall pay Tenant's Share of Landlord's cost of carrying fire and extended coverage insurance, business interruption insurance and general and excess liability insurance on the Center with such policy limits as Landlord may elect (collectively, "Insurance") as a part of the Triple Net Payment.

11.3 Tenant is self-insured and will rely on such self-insurance for risks allocated to it under this lease.

11.4 Prior to the commencement of any work under this Agreement, Landlord shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Asset Management Department, which shall be clearly labeled "Oakridge 311 Lease" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Asset Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.5 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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 Agreement. In no instance will City allow modification whereupon City may incur increased risk.

11.6 Landlord's financial integrity is of interest to the City; therefore, subject to Landlord's right to maintain reasonable deductibles in such amounts as are approved by the City, Landlord shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Landlord's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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:

<u>TYPE</u>	<u>AMOUNTS</u>
Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Broad form property damage, to include fire legal liability</li> </ul>	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

11.7 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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). Landlord 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. Landlord shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Attn: Asset Management Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

11.8 Landlord 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;

- Provide thirty (30) calendar days 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.

11.9 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Landlord shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Landlord'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 Agreement.

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

11.11 It is agreed that Landlord'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 Agreement.

11.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

## **12. Indemnification.**

12.01 LANDLORD covenants and agrees to FULLY IDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or 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 CITY directly or indirectly arising out of, resulting from or related to LANDLORD'S activities under this CONTRACT, including any acts or omissions of LANDLORD, any agent, officer, director, representative, employee, consultant or subcontractor of LANDLORD, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LANDLORD AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

12.02 The provisions of this INDEMNIFICATION 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.

12.03 LANDLORD shall promptly advise the CITY in writing of any claim or demand against the CITY or LANDLORD known to LANDLORD related to or arising out of LANDLORD'S activities under this CONTRACT.

### **13. Damage by Casualty.**

13.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty.

13.2 If the Premises is damaged or destroyed by fire or other casualty and this lease does not terminate as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises, and this lease shall continue in full force and effect. If the Premises or the Center (i) shall be destroyed or materially damaged by a casualty not covered by Landlord's insurance; or (ii) shall be destroyed or damaged by a casualty to such an extent that in Landlord's opinion the Premises or the Center cannot economically be repaired or restored, then Landlord may either terminate this lease as hereinafter provided or proceed to rebuild and repair the Premises. If Landlord terminates this lease it shall so notify Tenant within ninety (90) days after the date the casualty occurs (the "Casualty Date"), and this lease shall terminate as of the date of such notice. If Landlord does not terminate this lease, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises, but if any Holder of an Encumbrance (as such terms are defined below) requires that the insurance proceeds be applied under the Encumbrance, Landlord shall have no obligation to rebuild and this lease shall terminate upon notice to Tenant.

13.3 Landlord's obligation to rebuild and repair under this Article shall be limited to restoring the Premises to substantially the condition same were in at the Commencement Date, excluding Tenant's Improvements, Tenant's signs, fixtures, equipment or furniture, and any alterations, additions or improvements to the Premises made by Tenant after the Commencement Date. Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore Tenant's Improvements, Tenant's signs, fixtures, furniture and equipment and any alterations, additions or improvements to the Premises made by Tenant.

13.4 Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent practicable. If the casualty did not occur by reason of any act or neglect of Tenant or Tenant's agents, employees or contractors, during the period from the Casualty Date until Landlord's repairs are completed, the Base Rent shall be reduced to such extent as may be fair and reasonable under the circumstances, but there shall be no abatement of the Percentage Rent, Triple Net Charge or other charges provided for herein.

### **14. Eminent Domain.**

14.1 If any portion of the Premises should be taken for any public or quasi-public use under any government law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this lease shall terminate and the rent shall abate during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

14.2 If any part of the Common Area shall be taken for any public or quasi-public use under any government law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this lease shall not terminate, nor shall the rent payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the parking areas of the Common Area remaining following such taking plus any additional parking areas provided by Landlord in reasonable proximity to the Center shall be less than sixty percent (60%) of the parking areas of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

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

## **15. Assignment and Subletting.**

15.1 Except as provided in Section 16.3, Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises without Landlord's prior written consent. Landlord shall not unreasonably withhold or delay consent to subleases of the Premises, however, Tenant agrees that it shall be reasonable under this lease for Landlord to withhold consent to any proposed sublease where one or more of the following applies: (i) the sublessee requests material modifications of this lease, (ii) the sublessee then is or has been an occupant of the Center during the six (6) months immediately preceding the sublease request, (iii) the sublessee will engage in a business which Landlord reasonably deems inconsistent with the quality of the Center, is substantially the same as any other tenant of the Center, or violates any provision of another tenant's lease, (iv) the sublessee's business practices will adversely affect the Center (for example, uses which overload the parking for the Center), or (v) the sublet space does not comply with all applicable codes and ordinances or is of a size and proposed re-configuration unsuited for a "stand alone" premises. Any sublessee shall be required to comply with all applicable provisions of this lease. Further, Tenant agrees that it shall be reasonable under this lease for Landlord to withhold consent to any proposed assignment where, in addition to the factors stated above, the assignee's financial strength and business experience are not consistent with Landlord's underwriting standards for the Center.

15.2 For purposes of this Article 16, if Tenant is a corporation, a merger or consolidation of Tenant with any other entity, or a "Change in Control" of Tenant shall constitute an assignment of this lease. A "Change in Control" of Tenant shall occur when any person who does not now own more than fifty percent (50%) of Tenant's outstanding voting securities or more than fifty percent (50%) of Tenant's outstanding equity securities becomes the owner of more than fifty percent (50%) of such voting securities or more than fifty percent (50%) of such equity securities. If Tenant is a general or limited partnership, any transfer or assignment by a general partner of Tenant of any portion of his general partnership interest in such partnership shall be deemed an assignment of this lease in violation of the terms hereof.

15.3 If Tenant is a corporation, Tenant may at any time during the Lease Term (with Landlord's prior consent, which will not be unreasonably withheld), assign this Lease or sublet the Premises:

- a. to any parent, subsidiary or affiliate corporation of Tenant; or
- b. to the surviving corporation if Tenant merges or consolidates (or to any subsidiary or parent of such surviving corporation); or
- c. to the purchaser of Tenant's capital stock if a Change of Control of Tenant;

provided, however, that in any case under either (a), (b) or (c) above:

- i. if an assignment, the net assets of a proposed assignee and its guarantor, if any, shall not be less than the net assets of Tenant and the Guarantor named in the BLI as of the date of this lease;
- ii. the assignee or subtenant shall continue to operate the Permitted Use in the Premises in the same manner as Tenant and pursuant to all of the provisions of this lease;
- iii. if an assignment, one or more of the principals of Tenant shall remain with the operation or persons with similar competence, expertise, experience and reputation shall be in control of such assignee; and
- iv. the Tenant and Guarantor named in the BLI shall continue to remain liable under this lease for the performance of the tenant's obligations.

15.4 Landlord's consent to any assignment or sublease shall not waive Landlord's rights as to any subsequent assignment or sublease. After an assignment or sublease, Tenant and Guarantor shall remain fully responsible and liable for the payment of all rent and for compliance with all other obligations of the tenant under this lease.

15.5 If Landlord consents to any sublease or assignment by Tenant, and if any rent or expenses received by Tenant under that sublease exceeds the rent or expenses payable to Landlord under this lease, or any additional consideration is paid to Tenant by the assignee under any such assignment (but excluding consideration paid to Tenant for the sale of Tenant's business), Landlord may, at its option, declare such excess rent or expenses under any sublease or such additional consideration for any assignment to be due and payable by Tenant to Landlord as additional rent hereunder. For purposes of this Section 15.5, the term "assignment" refers to the transfer by a tenant of the tenant's entire leasehold estate interest. Consideration received by Tenant based upon the value of Tenant's business operations shall not be deemed consideration for an assignment.

15.6 Landlord may at any time transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Center and/or the Premises.

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

15.8 Tenant shall (i) pay Landlord \$500.00 as a review fee in connection with any request for assignment or sublease, and (ii) reimburse Landlord for all reasonable attorney's fees incurred by Landlord in connection with any such request. Acceptance of such fee or reimbursement shall not be deemed Landlord's consent to any such action.

15.9 Regardless of Landlord's consent, if Tenant assigns this lease or sublets the Premises, any option then held by Tenant (such as an option to renew this lease or to expand the size of the Premises) shall terminate upon execution of the assignment or sublease.

15.10 Neither Tenant's interest in this lease nor any estate of Tenant created in this lease will pass to any trustee, receiver, or assignee for the benefit of creditors, or any other person or entity, or otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Tenant, unless Landlord consents in writing to this transfer. Landlord's acceptance of rent or any other payments from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the need to obtain Landlord's consent or Landlord's right to terminate this lease for any transfer of Tenant's interest under this lease without that consent.

15.11 By accepting an assignment, or by taking actual or constructive possession of the Premises, any assignee of an interest in and to this lease shall be deemed to have assumed all obligations of Tenant set forth in or arising under this lease, such assumption being effective as of the earlier of the date of such assignment or the date on which the assignee obtains possession of the Premises. Any sublessee of an interest in and to this lease takes such interest subject to all the terms, conditions and obligations set forth in or arising under this lease.

## **16. Property Taxes.**

16.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Premises. If any such taxes are levied against Landlord or the Center and if Landlord elects to pay the same or if the assessed value of the Center is increased by inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

16.2 Tenant shall pay as a part of the Triple Net Charge, Tenant's Share of all taxes, assessments and governmental charges of any kind and nature whatsoever (collectively referred to as the "Taxes"), levied or assessed against the Center, or against the rent or other sums payable by Tenant to Landlord hereunder, whether presently being charged or subsequently created. Landlord may contest the Taxes or the value of the Center as assessed by any taxing authority, and in such event the costs incurred by Landlord in connection with such contest shall be included within the term "Taxes" for purposes of this Section .

16.3 If Tenant fails to pay any taxes, assessments, or governmental charges required to be paid by Tenant hereunder (including as a part of Tenant's Triple Net Charge), in addition to any remedies provided herein, Landlord may, if Landlord so elects, pay such taxes, assessments, and governmental charges. Any sums so paid by Landlord shall be deemed to be so much

additional rent owing by Tenant to Landlord and due and payable upon demand as additional rent plus interest at the Past Due Rate from the date of payment by Landlord until repaid by Tenant.

16.4 If, during the Lease Term, the present method of taxation is changed so that in lieu of or in addition to all or any portion of the Taxes, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents from the Center and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents or the present or any future building or buildings on the Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof.

16.5 TENANT HEREBY WAIVES ALL RIGHTS TO PROTEST THE APPRAISED VALUE OF THE CENTER OR TO APPEAL THE SAME AND ALL RIGHTS TO RECEIVE NOTICES OF REAPPRAISALS AS SET FORTH IN SECTIONS 41.413 AND 42.015 OF THE TEXAS TAX CODE. IF SUCH RIGHTS CANNOT BE WAIVED, TENANT AGREES TO GIVE LANDLORD AT LEAST TEN (10) DAYS PRIOR NOTICE BEFORE TENANT FILES ANY SUCH PROTEST WITH APPROPRIATE GOVERNMENTAL AUTHORITIES, DURING WHICH TEN-DAY PERIOD LANDLORD MAY EXERCISE ITS RIGHT TO FILE SUCH A PROTEST.

## **17. Default and Remedies.**

17.1 Except as expressly stated to the contrary in this Section 18.1, the following events shall be deemed to be "events of default" by Tenant under this lease without any notice or demand whatsoever:

(a) Tenant shall fail to pay when due within five (5) days after the due date any installment of rent or any amount payable by Tenant under this lease.

(b) Tenant shall fail to comply with any other term, provision or covenant of this lease, and shall not cure such failure within ten (10) days after written notice thereof to Tenant. If Tenant's obligation is of such a nature that it cannot reasonably be cured within said ten-day period, however, Tenant shall not be in default if Tenant begins curing such failure within said ten-day period and diligently prosecutes same to completion. If any other provision of this lease specifies a different time frame within which Tenant must perform an obligation following a notice, the notice requirement of such other provision shall be in lieu of, and not in addition to, the terms of this Section 18.1(b).

(c) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Tenant shall file a petition under any applicable federal or state bankruptcy or insolvency law; or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant ; or Tenant shall admit that it cannot meet its financial obligations as they become due.

(e) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant .

(f) Tenant shall abandon any portion of the Premises. For purposes of this lease, Tenant shall be deemed to have abandoned the Premises if Tenant fails to utilize the Premises for the Permitted Use for at least five (5) consecutive days.

(g) Tenant shall create or permit the creation of a lien upon the Premises.

(h) Tenant's business shall be closed for failure to pay any state or local sales tax as required or for any other reason.

17.2 If Landlord is required to notify Tenant of any default under the provisions of this lease, such obligation shall terminate upon Landlord's delivery of the second notice of the same default within any twelve (12) month period during the Lease Term.

17.3 Landlord shall not be in default under this lease unless Landlord fails to perform an obligation hereunder within thirty (30) days after written notice by Tenant to Landlord specifying the obligation which Landlord has failed to perform. If Landlord's obligation is such that it cannot reasonably be performed within said thirty-day period, then Landlord shall not be in default if Landlord begins performance within such thirty-day period and diligently prosecutes same to completion. Unless and until Landlord so fails to cure any default, Tenant shall not have any remedy or cause of action by reason thereof. To the extent permitted by applicable law, Tenant hereby waives the provisions of §91.004(b) of the Texas Property Code (or any successor thereto), and any other law which may grant to Tenant a lien upon any of Landlord's property or upon any rent due to Landlord). The term "Landlord" shall mean only the owner, at the particular point in time, of the Center, and upon the transfer by such an owner of its interest in the Center, that owner automatically shall be released and discharged from all covenants and obligations of Landlord which accrue after the transfer (but such covenants and obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership). Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages; and all liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Shopping Center existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review. The term "Landlord" shall mean only the owner, for the time being of the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership

17.4 Upon the occurrence of an event of default by Tenant, in addition to any specific remedy given Landlord in another section of this lease, Landlord may pursue any and all remedies which Landlord then may have under this lease, at law or in equity, including, without limitation, any one or more of the following, in each case, without any notice or demand whatsoever:

(a) Terminate this lease, in which event, Tenant agrees to pay to Landlord on demand all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, including the amounts described in (b)(i) to (b)(vi) below.

(b) Enter upon and take possession of the Premises, in which event Landlord shall use objectively reasonable efforts to relet all or any part of the Premises and receive the rent

therefor. Any new lease may include such concessions and free rent as Landlord deems necessary or desirable, and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting for the remainder of the Lease Term. Tenant shall not be entitled to any rent or other payments received by Landlord in connection with such reletting even if such rents and other payments exceed the amounts that otherwise would be payable to Landlord under this lease. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in repossessing and reletting the Premises, including, without limitation, brokers' commissions, reasonable attorney's fees incurred in connection with the reletting and in connection with Tenant's default hereunder, expenses of repairing, altering and remodeling the Premises required by the reletting, and like costs. Alternatively, Landlord may repossess the Premises and sue to recover the following amounts:

- (i) the worth at the time of award of unpaid rent earned at the time of termination (of possession or of this lease, as applicable); plus
- (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned from the date of such termination until the time of award exceeds the amount of such rent loss which Tenant proves could have been reasonably avoided; plus
- (iii) the worth at the time of award of the amount by which the unpaid rent for the portion of the Lease Term after the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; plus
- (iv) any other amount, including court costs, expenses of repossessing the Premises and expenses of restoring the Premises to a good condition of repair, necessary to compensate Landlord for all detriment proximately caused by Tenant's default under this lease or which in the ordinary course of things would be likely to result therefrom; plus
- (v) at Landlord's election, any additional or alternative amounts as may be permitted from time to time by applicable law; and
- (vi) all reasonable attorneys' fees incurred by Landlord relating to the default and any reletting plus interest on all sums due Landlord by Tenant at the Past Due Rate.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is to be computed by allowing interest at the Past Due Rate.

As used in subparagraph (iii) above, the "worth at the time of award" is to be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of the award plus one percent (1%).

The term "rent" as used herein shall be deemed to be and to mean the Base Rent, the Triple Net Charge and all other sums required to be paid by Tenant pursuant to the terms of this lease.

(c) Make such payments or enter upon the Premises and perform whatever Tenant is obligated to do under the terms of this lease; and Tenant agrees to reimburse Landlord on

demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease (including reasonable attorney's fees), and Tenant further agrees that Landlord shall not be liable for, and expressly releases Landlord from, any damages resulting from such actions, **expressly including damages arising from Landlord's negligent acts or omissions.**"

17.5 If Landlord terminates this lease or Tenant's right of possession hereunder, Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Premises, and lock out, expel or remove Tenant and any other person who may be occupying the Premises or any part thereof without being liable for prosecution or any claim for damages therefor. Landlord may alter and/or change all locks or other security devices at the Premises in connection with any such entry. If Landlord alters or changes any lock or other security device, Landlord shall not be required to provide to Tenant a new key, combination or means of access unless and until Tenant has cured all defaults hereunder and only during Landlord's regular business hours. The provisions of this Section 18.4 supersede all provisions of §93.002 of the Texas Property Code (or any successor thereto). No re-entry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such reletting or re-entry or taking possession, Landlord may at any time thereafter terminate this Lease for a previous default.

17.6 Landlord may collect, from time to time, by suit or otherwise, each installment of rent (or portion thereof as represents any deficiency after a reletting) as it becomes due hereunder. Pursuit of any remedy set forth herein shall not preclude pursuit of any other remedy herein provided or available by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of Tenant's default. Landlord's acceptance of rent after an event of default shall not waive such event of default. No waiver by Landlord of any breach of any provisions of this lease shall constitute a waiver of any other breach. No payment by Tenant or receipt by Landlord of any amount less than the amounts due by Tenant hereunder shall be deemed to be other than on account of the amounts due by Tenant hereunder, nor shall any endorsement or statement on any check or document accompanying any payment be deemed an accord and satisfaction.

17.7 Tenant agrees that (1) Landlord, as owner of a retail shopping center, considers many factors in the selection of tenants, including without limitation, exclusivity provisions in existing leases and restrictive covenants, the balance of retail uses within the Center, the reputation and local, regional, or national name recognition of prospective tenants, the credit of prospective tenants, and the location within the Center of the various retail uses; and (2) Landlord, at any given point in time, may have space in the Center available for lease to tenants which will compete with the Premises. **TENANT EXPRESSLY AGREES THAT SO LONG AS LANDLORD MARKETS THE PREMISES AFTER TENANT'S DEFAULT IN A MANNER CONSISTENT WITH LANDLORD'S MARKETING PLAN FOR THE CENTER, AS SUCH PLAN MAY BE REVISED FROM TIME TO TIME, LANDLORD SHALL BE CONCLUSIVELY DEEMED TO HAVE MADE OBJECTIVELY REASONABLE EFFORTS TO RE-LET THE PREMISES AND TO HAVE FULFILLED ANY OBLIGATION TO MITIGATE DAMAGES BY REASON OF TENANT'S DEFAULT, REGARDLESS OF WHEN AND IF THE PREMISES IN FACT ARE RE-LET; REGARDLESS OF WHETHER THERE ARE TENANTS WHO REQUEST TO LEASE THE PREMISES (BUT WHO DO NOT MEET LANDLORD'S SPECIFIC**

**CRITERIA FOR THE PREMISES); AND REGARDLESS OF WHETHER LANDLORD LEASES OTHER SPACE IN THE CENTER PRIOR TO LEASING THE PREMISES. TENANT FURTHER AGREES THAT LANDLORD MAY LEASE ALL OR ANY PART OF THE PREMISES TO SUCH TENANT OR TENANTS AS LANDLORD MAY DEEM APPROPRIATE AND THAT TO THE EXTENT LANDLORD LOCATES TENANTS WHICH MEET LANDLORD'S MARKETING CRITERIA, LANDLORD MAY LEASE VACANT SPACE IN THE CENTER OTHER THAN THE PREMISES BEFORE LANDLORD LEASES THE PREMISES.**

17.8 If Landlord takes possession of the Premises as provided in this Article 18, then Landlord may either (a) keep in place and use all of the furniture, fixtures and equipment at the Premises ("Tenant's Property"), including that which is owned by or leased to Tenant at all times before Landlord forecloses on same or before such property is repossessed by a lessor thereof or third party having a lien thereon, or (b) remove all or any portion of Tenant's Property from the Premises (without needing a distress warrant, writ of sequestration or other legal process) and place same in storage at any location within Bexar County, Texas. If Landlord stores Tenant's Property, Tenant shall reimburse Landlord for costs incurred by Landlord in connection with such removal and storage. If Landlord notifies Tenant that Tenant may retrieve Tenant's Property, but Tenant fails so to retrieve Tenant's Property within fifteen (15) days after such notice, Landlord may treat Tenant's Property (or the portion thereof to which such notice pertained), as abandoned by Tenant. Landlord may relinquish possession of all or any portion of Tenant's Property to a person (a "Claimant") who claims to be entitled to possession thereof, and who gives Landlord a copy of an instrument which the Claimant represents to have been executed by Tenant (or any predecessor of Tenant) and which grants Claimant the right under various circumstances to take possession of such portion of Tenant's Property. Landlord shall have no obligation to inquire into the authenticity of Tenant's or Tenant's predecessor's signature on any such instrument or to investigate or inquire as to the validity of the factual or legal basis upon which Claimant purports to act. Landlord's rights herein stated are in addition to any and all other rights which Landlord has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

## **18. Holding Over.**

If Tenant remains in possession of the Premises after the expiration of this lease, without Landlord's written agreement, Tenant shall be deemed to be occupying the Premises as a tenant from month to month at a rent equal to the rent (including any Percentage Rent) herein provided plus fifty percent (50%) of such amount and otherwise subject to all the conditions, provisions and obligations of this lease insofar as the same are applicable to a month to month tenancy.

## **19. Subordination.**

19.1 Landlord may cause this lease and leasehold estate created hereby to be subject, subordinate and inferior to any deed of trust, mortgage or other instrument of security, or any ground lease, master lease or primary lease (collectively, "Encumbrances"), that now or hereafter cover all or any part of the Premises, the Center, or any interest of Landlord therein, and to any and all advances made on the security thereof, and to any and all increases, renewals, modifications, extensions and replacements thereof. Landlord expressly reserves the right to place Encumbrances on and against all or any part of the Premises, the Center, and/or any interest of Landlord therein, which are superior in effect to this lease and the estate created hereby. To further assure the foregoing subordination, upon Landlord's request or upon the request of any

mortgagee or beneficiary under any such deed of trust or mortgage, or of any lessor under any such ground lease, master lease or primary lease (collectively, a "Holder"), Tenant shall execute and deliver any instrument (including without limitation an amendment to this lease that does not materially and adversely affect Tenant's rights or duties under this lease) or instruments intended to subordinate this lease or to evidence the subordination of this lease to any such Encumbrance. Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such instrument for and on behalf of Tenant. At Tenant's request, Landlord shall request from any Holder a nondisturbance agreement benefiting Tenant.

19.2 If any Holder enforces its rights under any Encumbrance, upon the request of such Holder or any other person or party succeeding to Landlord's interest as a result of such enforcement (a "Successor"), Tenant shall attorn to and automatically become the tenant of the Successor without change in the terms or other provisions of this lease, and this lease shall continue in full force and effect; provided, however, that the Successor shall not be bound by (i) any payment of rent or additional rent for more than one month in advance or (ii) any amendment or modification of this lease made without the written consent of the Holder or Successor. Upon request by a Successor, Tenant shall execute and deliver an instrument confirming such attornment.

19.3 Within ten (10) days after a request from Landlord, a current or prospective Holder or a prospective purchaser of the Center, Tenant shall deliver a certificate signed by Tenant confirming and containing such factual certifications and representations regarding this lease as the requesting party deems appropriate. Tenant's failure to return a fully executed copy of such certificate to Landlord within the foregoing ten-day period, shall constitute an event of default under this lease.

## **20. Notices**

20.1 Wherever any notice or other communication (a "Communication") is required or permitted hereunder, such Communication shall be in writing. Any Communication required or allowed to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in the BLI, or at such other addresses as they may have hereafter specified by written notice. In all events, Landlord may give notice to Tenant at the Premises. Rent due under this lease is not a Communication and is not considered "delivered" until received by Landlord.

20.2 If and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, a Communication delivered to the address for Tenant specified in the BLI (or such subsequent address as may be designated in a Communication to Landlord executed by all such persons, firms or corporations) shall be deemed delivery of such Communication to Tenant, and all parties included within term "Tenant" shall be bound by Communications given in accordance with the provisions of this Article to the same effect as if each had received such Communication.

## **21. Miscellaneous.**

21.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of

computation of rent, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include the other gender.

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

21.3 Either party's consent to or approval of any act by the other party which requires consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

21.4 If a period of time is herein prescribed for a party to take an action, there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond such party's reasonable control. If Tenant has been given notice of an Encumbrance, including the address of the Holder, Tenant may not exercise any remedy for Landlord's default unless and until the Holder shall have received written notice of the default and a reasonable time for curing such default shall thereafter have elapsed.

21.5 Tenant shall peaceably and quietly hold and enjoy the Premises for the Lease Term, without hindrance from Landlord subject to (i) the terms and conditions of this lease, including Tenant's performance of all of the terms and conditions of this lease to be performed by Tenant, and (ii) actions and claims of any person or entity holding superior title to that of Landlord, including, but not by way of limitation, a Holder.

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

21.7 Tenant warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this lease other than Broker (if any). If any agent or broker other than Broker shall make a claim for a commission or fee, Tenant shall be responsible for payment thereof.

21.8 If any clause or provision of this lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then and in that event, the parties intend that the remainder of this lease shall not be affected thereby, and that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable, there be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

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

21.10 In order to induce Landlord to execute this lease, Tenant agrees that Landlord may at any time during the Lease Term, require Guarantor to guaranty Tenant obligations hereunder. The guaranty shall be in the form attached hereto as **Exhibit E**.

21.11 Notwithstanding anything contained in this lease to the contrary, Landlord does not warrant or represent that the Premises contains any particular number of square feet, and the Base Rent specified in this lease shall not vary based upon the actual number of square feet contained in the Premises.

21.12 Landlord reserves the right to change the name of the Center.

21.13 The submission of this lease to Tenant for examination does not constitute an offer, reservation or option in favor of Tenant, and Tenant shall have no rights with respect to this lease or the Premises unless and until Landlord shall execute a copy of this lease and deliver the same to Tenant.

21.14 This lease is subject to any and all easements, rights-of-way, covenants, liens, conditions, restrictions, outstanding mineral interest and royalty interests relating to the Premises, to the extent same are in force and effect and either shown of record in the Office of the County Clerk of Bexar County, Texas or apparent on the Premises.

21.15 This lease has been executed in the State of Texas and shall be governed in all respects by the laws of the State of Texas. Landlord and Tenant intend to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency whatsoever shall any amount contracted for, charged or received by Landlord for the use, forbearance or detention of money hereunder exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under applicable state or federal law. If fulfillment of any provision hereof when due shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be automatically reduced to the limit of such validity, and if from any such circumstance, Landlord shall ever receive as interest or otherwise an amount in excess of the maximum that can be legally collected, then such amount which would be excessive interest shall be applied to reduce the rent due hereunder. If any such amount exceeds the rent due hereunder, then such additional amount shall be refunded to Tenant.

21.16 Neither Tenant nor any agent, employee, contractor, licensee, subtenant or invitee of Tenant shall bring on the Premises any asbestos, petroleum or petroleum products, explosives, toxic materials, or substances defined as hazardous wastes, hazardous materials, or hazardous substances under any federal, state, or local law or regulation ("Hazardous Materials"), except ordinary products commonly used in connection with the Permitted Use. Any Hazardous Materials allowed by the prior sentence must be used and stored in accordance with all applicable laws. Any violation of this Section shall constitute a material breach and default hereunder. Tenant shall clean up, remove, remediate and repair, in conformance with the requirements of applicable law, any soil or ground water contamination and damage caused by a violation of this Section in, on, under, or about the Premises or Center during the Lease Term. Tenant immediately shall notify Landlord of any suspected breach of this Section, upon learning of the presence or any release of any Hazardous Materials and upon receiving any notice from governmental agencies pertaining to Hazardous Materials which may affect the Premises. Tenant's obligations hereunder shall survive the termination of this lease. Landlord may enter upon the Premises from time to time to inspect same and to conduct thereon any environmental audit or assessment or perform any testing to confirm Tenant's compliance with the provisions of this Section, and if any such audit, assessment or test reflects that Tenant is in violation of this Section, in addition to Tenant's other obligations contained herein, Tenant shall reimburse Landlord for the cost of such audit, assessment or test.

**21.17 TENANT WAIVES TENANT'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. THIS WAIVER IS MADE AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION AND TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.** Tenant hereby represents and warrants to Landlord that (i) Tenant is not in a significantly disparate bargaining position in relation to Landlord, (ii) Tenant is represented by legal counsel of Tenant's own choice and designation in connection with this lease, and (iii) Tenant is leasing the premises for business and commercial purposes and not for use as a residence.

21.18 Tenant shall not file this lease, or any memorandum hereof, in Bexar County real property records.

21.19 During the term of this lease, the Americans With Disabilities Act, 42 U.S.C.A. §12101 et seq. (the "Act"), may require modifications to the Premises and to the Common Area. With respect to the Act, Landlord and Tenant agree as follows:

(a) If the Act requires any alterations or modifications to the Premises (whether in order to accommodate an employee of Tenant or an applicant for employment with Tenant, or by reason of any proposed alteration of the Premises or otherwise), Tenant shall pay (or reimburse Landlord) for the cost of any such alteration or modification. Any alteration to the Premises shall be done in a good and workmanlike manner and in accordance with the provisions of Article above.

(b) Landlord shall make any modifications to the Common Area required in order to bring said Common Area in compliance with the Act, as same may be modified from time to time. The cost of such modifications shall be amortized upon such reasonable basis as Landlord may elect, and Tenant shall pay Tenant's Share of such cost as a portion of the Triple Net Charge.

21.20 For purposes of this lease, the term "business day" shall mean any calendar day other than Saturday's, Sunday's or holidays. A "holiday" shall be a day upon which national banks in San Antonio, Texas are closed for business.

21.21 Landlord and Tenant agree that each provision of this lease for determining charges, fines, fees, or additional rent payable by Tenant (including, without limitation, the Triple Net Charge.), is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.004 of the Texas Property Code, as in effect or as may be amended or succeeded.

## **22. Appropriation of Funds.**

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 with 90 days prior written notice and have no further liability. If

Tenant fails to provide Landlord with the 90 day prior written notice, then Tenant shall pay to Landlord, at the time of notice, \$3,324.99 with 60 days prior written notice, \$6,649.98 with 30 days prior written notice, or \$9,974.97 without notice, but only if the City Council appropriates the requisite funds.

### **23. Prohibited Interests in Contracts.**

23.01 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.

23.02 Landlord warrants and certifies as follows:

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

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

### **24. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

## **25. Asbestos.**

Landlord must deliver to Tenant an Asbestos Survey of the Premises and the Building not later than the Commencement Date, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

## **26. Exhibits and Attachments.**

All exhibits and attachments, riders and addenda referred to in this lease or in the BLI and the exhibits listed herein below and attached hereto are incorporated into this lease and made a part hereof for all intents and purposes as if fully set out herein. All capitalized terms used in such documents shall, unless otherwise defined therein, have the same meanings as are set forth herein.

Exhibit A - Floor Plan of Center

Exhibit B - Site Plan of Center showing location Tenant's Premises

Exhibit C - Exclusive Use Restrictions

Exhibit D - Leasehold Improvements

Exhibit E - Lease Guaranty

Exhibit F - Special Provisions

Exhibit G - Rules and Regulations

Exhibit H - Tenant Criteria, Design Parameters, Construction Parameters

Exhibit I - Sign Criteria

Executed on the dates set forth below.

**Landlord:**

**Howell-Kitendaugh, LLC**, a Texas limited liability company

By: *John Howell*  
John Howell, Manager

Dated: 12/20/07

**Tenant:**

**City of San Antonio**, a Texas municipal corporation

By: *Sharon De La Garza*

Printed Name: Sharon De La Garza

Title: Assistant to the City Manager

Date: 1-29-2008



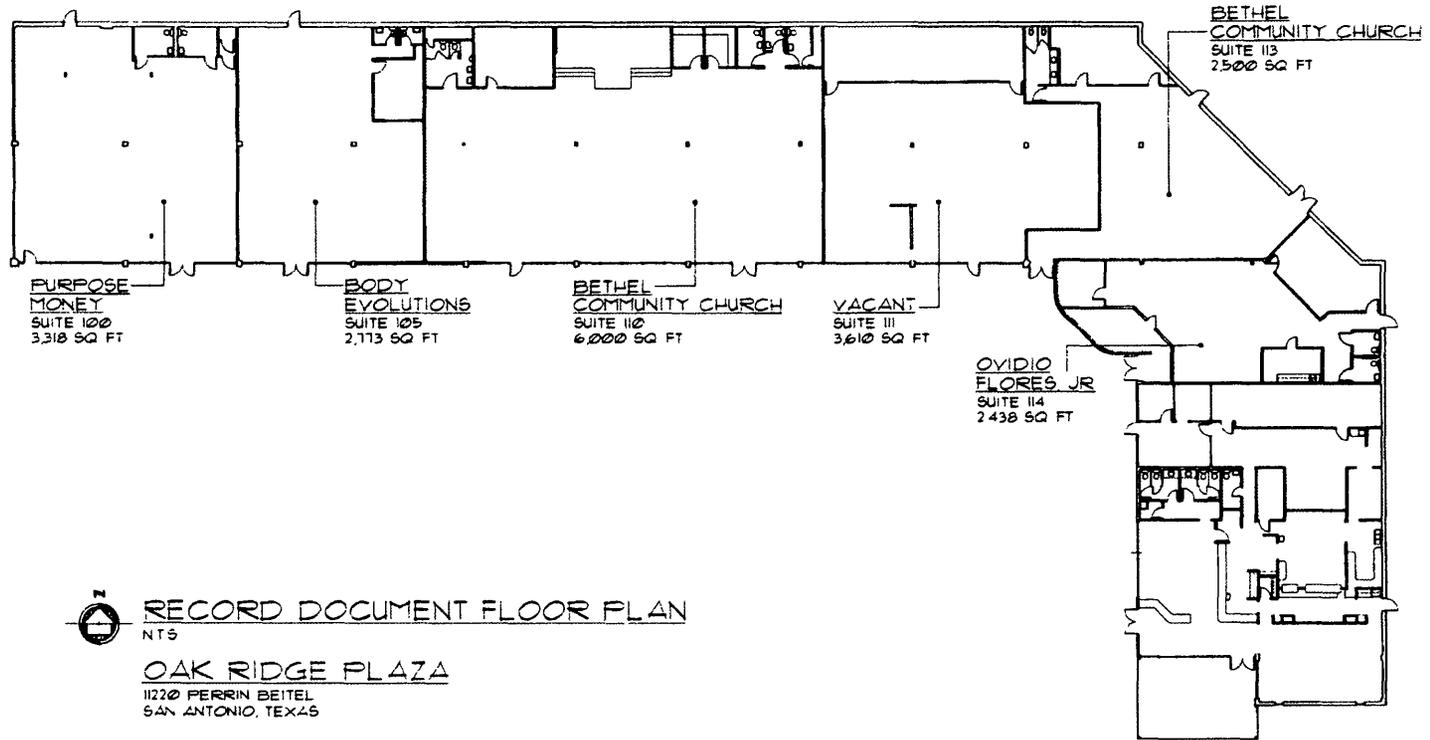
Attest: *Leticia M. Pineda*  
City Clerk

Approved As To Form: *[Signature]*  
City Attorney

Authorizing Ordinance:  
2008-01-10-0006



**EXHIBIT B**



 **RECORD DOCUMENT FLOOR PLAN**  
NTS  
**OAK RIDGE PLAZA**  
11220 FERRIN BEITEL  
SAN ANTONIO, TEXAS

**MORKOVSKY • ASSOCIATES, INC.**  
ARCHITECT • PLANNER • CONSULTANT  
07-087      JKR      06-05-07

**EXHIBIT C**

(List of Existing Exclusive Use Restrictions)

1. None.

## EXHIBIT D

(Leasehold Improvements)

1. EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (EXPRESSLY INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE CONDITION OF THE PREMISES OR THE CENTER OR WITH RESPECT TO THE SUITABILITY OF EITHER FOR THE PURPOSE HEREIN INTENDED. BY ACCEPTING DELIVERY OF THE PREMISES TENANT SHALL BE DEEMED TO HAVE ACCEPTED SAME IN THEIR PRESENT "AS IS" CONDITION AND AS SUITABLE FOR THE PURPOSE HEREIN INTENDED. IN THIS REGARD, TENANT EXPRESSLY ACKNOWLEDGES THAT TENANT HAS BEEN PROVIDED AN ADEQUATE OPPORTUNITY TO INSPECT THE PREMISES AND THE CENTER, AND THAT TENANT HAS INSPECTED THE PREMISES AND THE CENTER TO TENANT'S SATISFACTION.

### WORK LETTER

1. Notwithstanding the above, Landlord shall provide Tenant, at Landlord's sole cost and expense in an amount not to exceed \$103,879.34, the improvements ("Tenant Improvements") to the Premises as per EXHIBIT A, and subject to the mutual approval by both parties of the forthcoming Construction Drawings ("Final Plans") by Morkovsky + Associates, which costs include architectural, permitting and construction management fees. Landlord and Tenant have both approved EXHIBIT A. To the extent specifications are not included in the EXHIBIT A, Landlord shall use building standard materials and in building standard quantities. The term "building standard" means materials and quantities that are customary and usually used by Landlord in the construction of improvements in the Building. Landlord may not use more than \$47,575 of the \$103,879.34 to bring the Premises to "vanilla box" status.

2. Upon no less than three (3) business days prior written notice to Landlord, and provided such early entry will not interfere with Landlord's completion of the Tenant Improvements, Landlord shall permit Tenant and Tenant's agents and contractors to enter said Premises prior to the Commencement Date in order that Tenant may do such other work as may be required by Tenant to make said Premises ready for Tenant's use and occupancy thereof ("Fit-Up Work"). Any such entry into and occupation of the Premises by Tenant shall be deemed to be under all of the terms, covenants, conditions and provisions of the Lease except as to the covenant to pay Rent, and Landlord shall not be liable in any way for any injury, loss or damage to any Fit-up Work prior to the Commencement Date, unless directly caused by an act or omission of Landlord, its agents, employees or contractors. Landlord shall provide reasonable security to protect the Fit-up Work.

3. If the substantial completion of the Tenant Improvements shall be delayed due to any act or omission of Tenant or Tenant's Agents (a "Tenant Delay Day" for each day of such

delay) (including, but not limited to, (i) any delays due to Change Orders, or (ii) any delays by Tenant in the submission of plans, drawings, specifications or other information or in approving any working drawings or estimates or in giving any authorizations or approvals, or (iii) Tenant's interference with the progress of the Tenant Improvements during any time that Tenant is given access to the Premises), then the Premises shall be deemed substantially completed in accordance with the Final Plans on the date when they would have been ready but for such delay. The term "substantial completion" shall mean (i) the Tenant Improvements have been constructed substantially in accordance with the Final Plans and (ii) the receipt of a certificate of occupancy, temporary or final. Tenant shall cooperate with Landlord in Landlord's performance of its obligations under this Work Letter, including, without limitation, Landlord's obtaining a certificate of occupancy. Each day of any failure or delay in cooperation by Tenant shall be a Tenant Delay Day.

4. If, prior to the Commencement Date, Tenant shall require improvements or changes (individually or collectively, "Change Orders") to the Premises in addition to, revision of, or substitution for the Tenant Improvements set forth in the Final Plans, Tenant shall deliver to Landlord for Landlord's approval plans and specifications for such Change Orders. If Landlord does not approve of the plans for Change Orders, Landlord shall advise Tenant of the revisions required. In addition to any other items reasonably required by Landlord, Landlord's revisions may be based upon whether the plans and specifications: (i) affect or are not consistent with the base structural components or systems of the Building, (ii) are visible from outside the Premises, (iii) affect safety, (iv) have or could have the effect of increasing Operating Expenses, or (v) in Landlord's judgment, are not consistent with quality and character of the Project. Tenant shall revise and redeliver the plans and specifications to Landlord within five (5) business days of Landlord's advice or Tenant shall be deemed to have abandoned its request for such Change Orders. Tenant shall pay for all preparations and revisions of plans and specifications, and the net costs of the construction of all Change Orders.

5. The Premises shall be conclusively presumed to be in satisfactory condition on the Commencement Date except for any minor or insubstantial details of construction, mechanical adjustment or decoration which remain to be performed, the non-performance of which do not materially interfere with Tenant's use of the Premises and of which Tenant gives Landlord notice within thirty (30) days after the Commencement Date specifying such details with reasonable particularity which details Landlord shall repair within forty-five (45) days of receipt of such notice.

**EXHIBIT E**

**Intentionally Omitted**

**EXHIBIT F**

(Special Provisions)

None.

## EXHIBIT G

### (Rules and Regulations)

1. Tenant will not cause, commit or permit to remain any waste or damage beyond normal wear and tear to the Premises, Common Area or the Center. Without Landlord's prior consent, Tenant shall not place, install, or operate on the Premises or in any part of the Center any engine, refrigerating, heating, or air conditioning apparatus, stove, or machinery, or conduct mechanical operations, or place or use in or about the Premises any flammable, explosive, hazardous, or odorous solvents or materials.
2. The Premises shall not at any time be used for sleeping or lodging quarters.
3. Tenant shall not commit any nuisance or other act or thing against public policy or which violates any law or governmental regulation or which is disreputable or which may impact the quiet enjoyment of any other tenant of the Center or which may be dangerous to life or property or may be a public or private nuisance.
4. Tenant will refer all contractors and installation technicians who are to perform any work within the Center to Landlord for Landlord's supervision, approval, and control before the performance of any such work. This provision shall apply to all work performed in the Center or Premises after construction of Tenant's Improvements (which construction shall be governed by the provisions of Exhibit D), including but not limited to installations of telephones, electrical devices and attachments, any and all installations of every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment and any other physical portions of the Center. Tenant shall not install or permit to remain any improvements to the Premises or the Center (other than improvements which have first been approved by Landlord) which are visible from the outside of the Premises or the Center, or exceed the structural loads of floors or walls of the Center, or adversely affect the mechanical, plumbing or electrical systems of the Center or affect the structural integrity thereof in any way.
5. Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises, except as expressly authorized in the lease or except with Landlord's prior written consent and as Landlord may direct.
6. Landlord may restrict the movement of furniture or office equipment in or out of the Center, or the dispatch or receipt by Tenant of any heavy equipment, bulky material, or merchandise, to designated time periods during normal business hours. All such movement shall be in a manner specified by Landlord in advance. Such prior arrangements shall be initiated by Tenant. Any hand trucks, carryalls, or appliances used for the delivery or receipt of such merchandise or equipment shall be equipped with rubber tires, side guards, and such other safeguards as Landlord shall require. Although Landlord or its personnel may participate in or assist in the supervision of such movement, from the time of entering the Center to completion of work Tenant assumes final responsibility for all damage to property and injury to persons, including damage to Landlord's equipment and other property if damaged or injured in connection with providing this service for Tenant. Landlord shall not be liable for the acts of any person engaged in, or any damage or loss to any of said property or persons resulting from, or related to such movement performed by Tenant.
7. No signs of any kind or nature, symbol, or identifying mark shall be put in the halls, staircases, entrances, or parking areas of the Center, or upon the doors or walls, whether plate glass or otherwise, of the Premises nor within the Premises so as to be visible from the public

areas or exterior of the Center without Landlord prior approval. All permitted signs or lettering shall conform in all respects to the sign and/or lettering established by Landlord. Landlord shall permit Tenant to install Tenant identification next to the entry door to the Premises in letters and numerals which are the standard graphics that are used throughout the Center.

8. Tenant shall not make or permit any loud or improper noises in the Center or otherwise interfere in any way with other tenants.

9. Landlord will not be responsible for lost or stolen property or equipment from the Premises or Common Areas, regardless of whether such loss occurs when area is locked against entry.

10. Tenant, or Tenant's Permitted Users shall never leave or discard rubbish, paper, articles, or other objects outside the Premises. No animals (unless assisting handicapped persons) or vehicles of any description shall be kept in or about the Center. Tenant shall not block or obstruct any entry, passage, door, hallway, or stairway in the Center.

11. Landlord may determine and prescribe the weight and proper position of any unusually heavy equipment, including computers, safes, large files, etc., that is to be placed in the Premises, and only items which in Landlord's exclusive judgment will not damage the floors and structure may be moved into the Center. Any damage caused by installing, moving or removing such aforementioned articles in the Center shall be paid by Tenant.

12. All Christmas and other decorations must be constructed of flame retardant materials.

13. If, at Tenant's request, Landlord elects to provide any service to Tenant which the lease does not require Landlord to perform, Tenant shall pay Landlord, upon demand, Landlord's cost of performing such service plus an additional charge of fifteen percent (15%) thereof.

14. Canvassing, soliciting, or peddling in the Center is prohibited and Tenant shall cooperate to prevent the same.

15. Tenant shall notify Landlord immediately of any accident in the Premises or in the Center or any defect therein or in any fixtures or equipment, or any known emergency in the Center.

16. Tenant's requirements will be addressed only after notice from Tenant. Landlord's employees shall not perform any work or do anything outside of their regular duties, without special instructions from Landlord.

17. Tenant shall not allow to pass into any sewer, drain, or toilet serving the Premises or located in the Center any oil, grease, or any other deleterious effluent or substance which may cause an obstruction in or damage to such sewer, drain, or toilet.

18. Landlord may rescind any of these Rules and Regulations, and may make such other and further reasonable rules and regulations as in its judgment shall from time to time be appropriate for the safety, protection, care and cleanliness of the Center, the Premises, the operation thereof, the preservation of good order therein, and the protection and comfort of the other tenants in the Center and their agents, employees, and invitees, which rules and regulations, when made and written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed.

## **Exhibit H**

### **Tenant Sign Criteria**

Tenant shall be required to identify its premises by erecting one (1) channel letter sign, which shall be attached to the building fascia as described hereinafter.

#### **Type of Sign**

Internally illuminated plex type faced, individual front-lit channel letters shop mounted to 1/8" thick, 30" tall (maximum) aluminum background on 7" x 7" raceway, both painted to match pack panel and building fascia.

Sign assemblies shall be bolted directly to exterior masonry, stone, stucco, brick veneer, and/or concrete tilt-wall with non-corrosive galvanized bolts or to structural steel elements (including beams, steel canopies and gratings). Anchors **must** be installed in mortar joints of masonry (if applicable). Drilling of masonry units is strictly prohibited. Tenants replacing a previously installed sign with a new sign must utilize the same drilled flange holes created by the previously installed sign and not make any more new holes. Refer to installation paragraph.

#### **Channel letters attached to building fascia band**

Sign assemblies shall be bolted directly to wall, located directly overhead the respective tenant's lease space. Channel letters are mounted to an 1/8" thick, 2" contour shaped, aluminum back panel, attached to the raceway, which is in-turn, mounted directly to the wall fascia. Back panel is to be mounted flush to raceway.

- Depth – 5", height – not to exceed 24". Multiple rows will **not** be allowed. Minimum letter size – 8".
- The overall letter background plate length will be 75% of storefront lineal footage for all tenants. Corner tenants with limited lineal frontage for their storefront shall be allowed 10'-0" overall length. Wall signage for corner tenants allowed 10% of the total allowable square footage.
- Tenant Signage shall be maximum size allowable by above criteria and shall comply with City of San Antonio, TX requirements.

#### **Type of Copy**

- Any style (block or script) may be used. Upper and lower case letters are allowed. Landlord will have final review over height increases for script letters.
- Logos in addition to signage must be approved. They must be proportionate to height of fascia and sign. If used, a color rendering must be provided for review and approval.
- All lines of lettering shall run horizontally.
- Box type signs will **not** be permitted.

#### **Color of Sign**

- Face is to be Rohm & Haas Plexiglas. Colors permitted are: Ivory # 2146
- Background plate color to be painted to match fascia (SW 6372 Inviting Ivory).
- Returns to be SW 6943 Intense Teal.
- Trim Cap Jewelite 1: - color to be Orange
- Raceway painted to match background plate
- Interior to be painted white.

## Construction of Letters

- Individual channel letters 24" or less will have 1/8" Plexiglass faces.
- Returns and Backs, use aluminum backs and sides.
- No armor plate or wood in the manufactured returns may be used.
- Background plate shall be 1/8" thick, 2" contour aluminum construction; attached to aluminum raceway and channel letters.

## Illumination and Wiring

- All illumination shall be with 15mm neon tubing and shall be uniform. Neon colors as follows: 6,500 white neon
- Secondary Wiring – All transformers secondary wiring shall be concealed in wiring channel.
- Provide U.L. approved transformer box.
- Electrical power shall be brought to required location at Tenant's expense. Routing and location of conduit and other required items shall not be visible on front of fascia. Only one wall penetration per sign will be permitted for electrical wiring. Penetrations for wiring shall be sealed watertight. Signs shall be pre-wired in the shop.
- A licensed electrician approved by City of San Antonio, TX and the Landlord will perform final electrical connection of sign.

## Placement and Installation

### General Notes:

1. Letters are to be located on signage area of the building as determined by Landlord. The assigned position for each Tenant shall be as close to a center-of-frontage location as possible, subject to allowance for positioning corner store signs and suitable space between adjacent Tenant signs, as determined by the Landlord.
2. For steel beam mounted signs, mount sign assembly to steel beams using 3/8" galvanized or stainless steel bolts. See detail for proper placement of bolts. Indicate number and location on shop drawings. Locate mounting holes on the bottom flange only. Provide 6" tall by 6" deep raceway box on bottom of flange per drawings. Letters and background plate are to be pre-assembled. Attachment of signage to meet U.L. Standards. **No exposed wiring or conduit is permitted.** All signs shall be U.L. labeled.
3. Tenant will be responsible for all damage to the building incurred during sign installation or removal.

## Submitted for Approval

1. Prior to awarding a contract for fabrication and installation, Tenant shall submit one (1) color drawing/rendering for final review and written approval to the party listed below:

Kennedy Wilson  
Attn: Terese Sigler, Property Manager  
70 NE Loop 410, Ste 1050  
San Antonio, TX 78216  
210.340.7888 office  
210.340.6551 fax  
[tsigler@kennedywilson.com](mailto:tsigler@kennedywilson.com)

2. Elevation of building fascia and sign shall be drawn. Please indicate specifications: type, color and thickness of all sign components, type of illumination and mounting method. Tenant's sign contractor shall first visit the site to verify existing conditions prior to preparation of shop drawings.
3. Drawings must include fascia cross-section showing electrical components.

## **PERMITS**

All City of San Antonio permits and written approval from Kennedy Wilson, are required **prior** to sign fabrication.

## **Window Signs**

All signage must be submitted and approved by Landlord prior to installation.

## **Rear Entry Signs**

Tenant shall apply maximum of 2" high vinyl die-cut letters on its rear door with name and suite number only. Tenant shall not post any additional signs in the service area. Prior approval required prior to installation.

## **Variations**

Notwithstanding anything contained herein to the contrary, Landlord shall have the right but not an obligation to modify the foregoing as a whole or in part for any Tenant. Landlord will consider review requests for variations subject to Tenant meeting all the following criteria:

1. Tenant must furnish Landlord in writing a formal request for variance for review and approval.
2. This request must contain a colored elevation drawing indicating type, color, and thickness of all sign components, Type of illumination and mounting method.
3. Drawings must also include a fascia cross-section showing electrical connections.
4. Drawings must indicate by highlighting those items requiring a variance.
5. ***Tenant must verify that variance complies with all local City and County sign laws, ordinance, codes, rules or regulations of any governing authority.***

*pm*



CMS or Ordinance Number: OR00000200801100006

TSLGRS File Code: 1000-05

Document Title:

ORD - Lease agreement for Customer Service

11220 Perrin-Beitel, Ste # 112

**Ordinance Date:**

**1/10/2008**

<b>Agenda Item:</b>	11 ( in consent vote: 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 21, 23, 24A, 24B, 24C, 24D, 24E, 24F )						
<b>Date:</b>	01/10/2008						
<b>Time:</b>	09:22:24 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a lease between the City of San Antonio and Howell-Kitendaugh, LLC, for approximately 2,077 square feet of space in the Oak Ridge Plaza Shopping Center for a 5-year term with a base rent of \$171,023.52 and an estimated Common Area Rent of \$34,257.60 commencing upon substantial completion of the Tenant improvements by the Landlord, but not later than April 1, 2008. [Sharon De La Garza, Assistant to the City Manager; Mark Gretchen, Interim Director, Asset Management]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Roland Gutierrez	District 3	x					
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x			x	
Diane G. Cibrian	District 8		x				
Kevin A. Wolff	District 9	x					
John G. Clamp	District 10		x				