AZJ
08/06/2015
Item No. 13

AN ORDINANCE 2015-08-06-0640

AUTHORIZING A PILOT PROGRAM FOR LEASING VACANT CITY PROPERTY LOCATED AT 531 NAVARRO STREET, SAN ANTONIO, TEXAS, IN CITY COUNCIL DISTRICT 1 TO TEMPORARY RETAIL TENANTS.

* * * * *

WHEREAS, the City of San Antonio is committed to facilitating and initiating the development and redevelopment of properties within the downtown area to foster thriving neighborhoods and commercial infill for the benefit of residents, visitors and businesses.; and

WHEREAS, the leasing of city property helps eliminate community slum and blight and also meets the revitalization and redevelopment directives of the City of San Antonio; **NOW THEREFORE,**

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 instructed to administer a one year pilot program (the "Pilot Program") temporarily leasing to various tenants the city owned property currently addressed as 531 Navarro Street, San Antonio, Texas, as shown in **Attachment I** (the "Property") and according to the guidelines in **Attachment II**. The City Manager and her designee, severally, are authorized and directed to execute and deliver to chosen tenants of the Pilot Program on behalf of the city a lease, substantially in the form shown in **Attachment III**. The City Manager and her designee, severally, are authorized to take all additional actions reasonably necessary or convenient to effectuate the transaction, including executing and delivering all instruments and agreements conducive to effectuating the transaction.

SECTION 2. The Pilot Program shall expire a year after the effective date of passage of this ordinance. During that time the Center City and Downtown Operations Department, or other city departments as directed by the City Manager or her designee, shall collect information regarding costs, benefits, and other statistics of the pilot program for use by City of San Antonio departments and future city council consideration. No lease for the Property shall extend beyond a year from the date of passage of this ordinance.

SECTION 3. Funds generated by this ordinance will be deposited into Fund 53001000, Internal Order 219000000116 and General Ledger 4401120.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance becomes effective immediately upon passage.

PASSED AND APPROVED this **6th** day of **August**, **2015**.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**13**
Date:	08/06/2015
Time:	11:22:09 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a pilot program for leasing vacant City-owned space, located at 531 Navarro in City Council District 1, to temporary retail tenants. [Lori Houston, Assistant City Manager and Acting Director, Center City Development & Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				

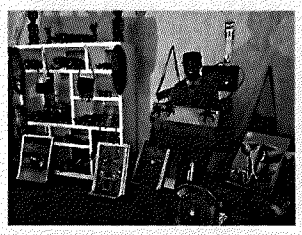
CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT

OPEN Downtown Pop Up Shop Lease
City Council Meeting
Item #13

Colleen Swain, Assistant Director
August 6, 2015

BACKGROUND

- OPEN activates vacant properties with temporary retail to serve as a catalyst for development
- Since 2013…
  - 12 vacant properties with 58 vendors
  - Houston Street and St. Paul Square
  - Only on private property



CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

BACKGROUND

- Propose a one year pilot program for retail tenants to occupy vacant space on City-owned property
- Houston Street Garage (531 Navarro)
  - Vacant since July 2013
  - Rotating retail vendors every 90 days

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

BACKGROUND

- In exchange for participating in pilot program, lease payments will be waived.
- Tenant is responsible for utilities and insurance.
- Pilot program will be discontinued if long-term tenant is secured for the space.

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

SELECTION PROCESS

- Selection committee
  - CCDO
    Centro San Antonio
  - Café Commerce
- First tenant
  - Eye Candy Boutique
  - Women's clothing and accessories
  - Participated in May 2015 OPEN program
- Accepting applications for future tenants

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

RECOMMENDATION

- One year pilot program to allow retail tenants to temporarily occupy a vacant space located at 531 Navarro
- Provides for an immediate effective date to allow temporary vendor to move in as soon as possible

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& OPERATIONS DEPARTMENT

CITY OF SAN ANTONIO

CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT

OPEN Downtown Pop Up Shop Lease
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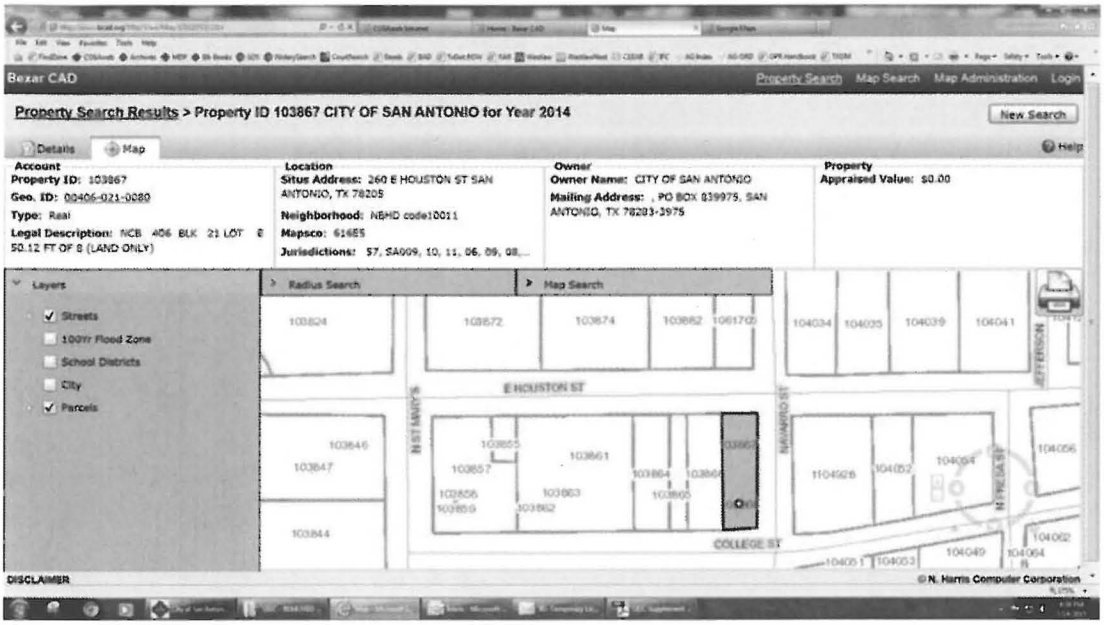
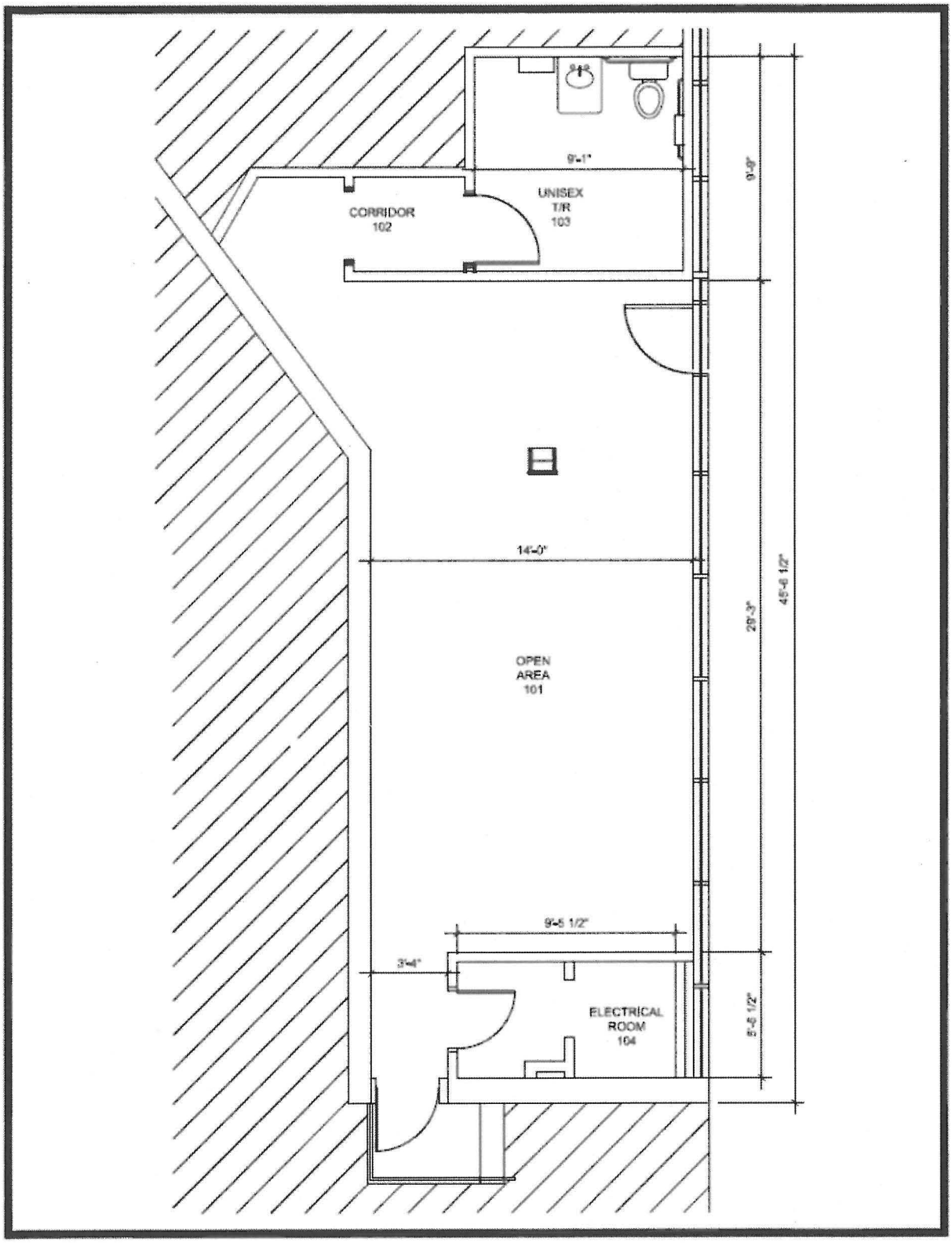
Attachment I

531 Navarro on the first floor of the Houston Street Garage in NCB 406, BLK 21 Lot E 50.12 ft of 8.





531 Navarro St.
San Antonio, TX 78205

OPEN
E Travis St
E Houston St
College St
W Crockett St
E Crockett St
Peacock Alley
Soledad St
N St Mary's St
Navarro St
N Presa St
Losoya St
Alamo Plaza
Broadway St
Jefferson
River Walk
San Antonio River
Starbucks
Majestic Theatre
Empire Theatre
Walgreens
Google

Attachment II

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

OPEN Downtown Pop Up Shop Lease Guidelines

The following process is intended to temporarily activate vacant City properties downtown for the purpose of creating a vibrant urban core and to attract potential long-term tenants.

The Process

1. **Choose a Tenant:** The City will send out a Call for Proposals to identify a temporary retail tenant. A committee will review all proposals and select one tenant per vacant City property to activate the space for 90 days. All interested tenants are required to attend an orientation prior to applying for the program.

2. **Tenant Signs Lease Agreement:** The tenant must sign the lease agreement which includes the following requirements:
   a. Tenant to pay utilities. Until electricity is sub-metered, the City will pay utilities and then be reimbursed by the tenant.
   b. Tenant to cross-promote the OPEN Downtown Pop Up Shop Program and Downtown Tuesday Program with posts on social media and special in-store events
   c. Tenant to meet at least the minimum hours of operation which are Monday 10am-6pm, Tuesday 10am-8pm, and Wednesday-Saturday 10am-6pm
   d. Tenant to report sales and foot traffic to the City on a monthly basis
   e. Tenant to make a monthly donation to a local non-profit organization
   f. Tenant to meet minimum insurance requirements as determined by City
   g. Tenant to submit signage plan to City and get Office of Historic Preservation approval for all signage installed
   h. Tenant must attend two educational seminars hosted by Café Commerce or UTSA Small Business Development Center prior to the opening of their pop up shop

   The lease will not include an option to renew and if the tenant desires to stay in the space, he/she will have the option to sign a multi-year lease at market rent.

3. **Tenant Occupies the Space:** The tenant will be provided a 5 day grace period to move into the space. Tenant will be provided a 3 day grace period to move out of the space.

Implementation of the program

The City will acquire the certificate of occupancy for the space. The City will also coordinate signage with tenant signage during move-in. An opening event will be held to announce the program to the public. The City will guide the vendor with a marketing plan and store layout to ensure that he/she is prepared for the program. The tenant will activate the space for 90 days or until a market-rate tenant is identified.

Attachment III: Form of Lease

Lease Agreement
(Vacant Property Temp Lease)

This Lease Agreement ("Lease") is by and between the City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Landlord) and the Tenant identified below and pertaining to the identified Premises.

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Authorizing Ordinance:

Tenant

Tenant's Address:

Premises: A facility containing approximately 720 square feet of gross leasable floor area located in a structure commonly known as the City of San Antonio Houston Street Garage ("Building"), at 531 Navarro, San Antonio, Texas, such Premises being further described and shown on the map, reference documents and photograph on **Exhibit A** attached hereto and incorporated herein for all purposes.

Permitted Use:

Commencement Date:

Term: 90 days

1. Demise of Premises

1.01. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, under the terms and conditions of this Lease. Tenant may take possession on the Commencement Date.

1.02. Landlord may from time to time to install, maintain, repair, and replace utility lines, pipes, ducts, wires, and similar items passing through the Premises to serve other parts of, or premises within, the Building. No such work will be the basis for an abatement of rent or any other thing owed to Landlord.

2. Use

2.01. Tenant may use the Premises for the Permitted Use only unless Landlord consents in writing, evidenced by the passage of a future ordinance by the City Council.

2.02. Before occupancy, Tenant must secure all necessary permits, licenses, and other evidences of authority to operate in the Premises, as required by all City, County, State, and Federal authorities in accordance with all applicable statutes, laws, ordinances, rules, and regulations.

3. Term of Lease/Renewal

3.01. The Term of this Lease is as stated above, unless terminated earlier according to the terms of this Lease.

3.02. During the Term, Landlord can: (1) post a "**For Lease**" sign in the Premises window(s) and (2) show the Premises to potential tenants during normal business hours.

3.03. Unless approved by a subsequent City Ordinance there shall be no option to renew under this Lease.

4. Acceptance and Condition of Premises

4.01. Tenant has had ample opportunity to examine the Premises before the Commencement Date. Tenant acknowledges that no condition hazardous to life, limb, or health exists on the Premises. Tenant will neither create such a condition nor permit one created by others to exist. Tenant hereby waives all claims, whether for personal or property damage, arising out of the condition of the Premises as of the Commencement Date. Tenant accepts the Premises "**As Is, Where Is, and With All Faults.**"

4.02. Landlord has made no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, except as expressly set forth in this Lease. Landlord **Specifically Disclaims Any And All Warranties Of Habitability or Suitability Of The Premises For Tenant's Intended Commercial Purposes And Uses.**

4.03. The provisions of § 6-293 of the City Code of the City of San Antonio, Texas, related to an asbestos survey have been satisfied.

5. In Kind Rent

5.01. Tenant is activating an otherwise vacant City of San Antonio space and helping with the Landlord's initiative to bring retail back to the downtown area. Tenants will cross promote City of San Antonio programs as directed by Landlord through the City Manager or her designee. In addition, tenant must provide monthly sales figures and customer counts to Landlord by the fifth day of each month to assist Landlord with marketing the space to potential long-term tenants. Failure to provide such figures shall be considered a default under the Lease. These obligations of Tenant together shall constitute "Rent" to Landlord under this Lease.

5.02. Tenant shall provide Rent to Landlord without deduction or set-off of any kind (and without notice or demand).

5.03. All Rent must be delivered to Landlord prior to commencement of Lease or as directed by Landlord's City Manager or her designee. Monetary payments, if any, may be made in person or mailed for receipt to the City of San Antonio Finance Department, Revenue and Taxation Division, 506 Dolorosa Street, San Antonio, Texas 78205.

5.04. If Tenant holds over past the Term, whether negotiating a new term or otherwise, monthly rent for the hold-over period is the same as during the Term. Holding over is a tenancy at sufferance. Failure to evict or acceptance of hold-over rent is not Landlord's approval of the tenancy and does not create a month-to-month tenancy.

5.06. Tenant's obligation to pay Rent is an independent covenant, and no act or circumstance, whether or not a breach by Landlord, releases Tenant of the obligation to pay Rent or other sums due hereunder.

6. Security Deposit

6.01. There is no security deposit associated with this Lease.

7. Construction and Alterations

7.01. Tenant must not make any improvements or alterations without first obtaining the written approval of Landlord.

7.02. Landlord may at any time make alterations or additions to, and build additional stories on, or remove adjoining portions of, the Building in which the Premises is contained. Landlord may further build adjoining the same, so long as such alterations, additions or construction thereof do not materially alter Tenant's egress and ingress for an unreasonable time.

8. Fixtures and Personal Property

8.01. Tenant may, upon the expiration or earlier termination of this Lease, if Tenant is not in default, remove its trade fixtures and other personal property. Tenant, at its sole cost and expense, must immediately repair any damage occasioned to the Premises by reason of the removal. Tenant must leave the Premises in good order and condition, normal wear and tear excepted, free of debris and broom clean. Any trade fixtures or other personal property of Tenant, whether or not installed or attached, if not removed by Tenant from the Premises on or before 30 days after the termination of this Lease, are deemed to be permanently affixed and become the property of Landlord without any further notice to Tenant or to its creditors, and without any liability whatsoever of Landlord.

8.02. Any covering affixed to the floor of the Premises is and becomes the property of Landlord absolutely.

9. Tenant's Signs

All signs must conform to all applicable laws, including the City's historic and/or sign ordinance. Tenant must not install any sign without Landlord's written permission. No sign may cause structural damage or injury to the Building or injury to any persons on or about the Premises.

10. Taxes and Fees

Tenant must pay before delinquency all current and future taxes, including but not limited to, personal property taxes and real property taxes levied against Tenant's leasehold interest. Tenant must further pay before delinquency all assessments, license and permit fees, and governmental impositions imposed on to the Premises, including but not limited to taxes on leasehold improvements, business operations, trade fixtures, and merchandise. If the fee interest of Landlord is taxed, Tenant must pay a ratable share of the tax to Landlord as additional rent. If Landlord ever pays any sums allocated to Tenant in this Lease, Tenant must promptly on request reimburse Landlord with interest at 18% per annum from the date of Landlord's request. Such reimbursement is additional rent, except no late fee applies to the reimbursement.

11. Liens

11.01. Tenant must pay promptly for any work done by Tenant (or materials furnished therefor) in or about the Premises.

11.02. Tenant will not bind, or attempt to bind, Landlord for payment of any money in connection with leasehold improvements. Tenant must not permit any liens against the Premises or improvements thereon, or any equipment, machinery and/or fixtures therein belonging to Landlord. **Tenant must indemnify Landlord and the Premises and hold them harmless of and from any and all loss, cost, liability, or expense arising from or related to Tenant's failure to pay sums owing in respect of work done at the behest of Tenant.** If any contractor and/or subcontractor employed by Tenant is bonded, Tenant must use every reasonable effort to have Landlord named in any contractor or subcontractor bond as an additional insured party.

11.03. If any mechanic's or other lien or order for payment is filed against the Premises or improvements thereon, or City (Landlord)-owned property located therein, Tenant must, within 30 days after the date of filing, cause it to be canceled and discharged of record by bond or otherwise. Defense against the claim is encompassed within the indemnity of the preceding subparagraph.

11.04. Failure of Tenant to comply with any requirement of this article is an event of default.

12. Maintenance and Repairs

12.01. Tenant must, at its own expense, keep the Premises in good order and repair, and in clean, safe, and sanitary condition. For the purposes of this obligation, the term "Premises" includes the interior paint, interior walls, the interior plumbing system and interior sewer system including fixtures, the interior utility and interior sewer lines and connections, the interior electrical system, including interior and exterior fixtures, if any, exterior electrical lights and fixtures are installed by Tenant, lamps, bulbs, wiring and connections, all interior utility lines and connections within and to the Premises, and interior walls, flooring, doors, and other interior improvements. Tenant must further comply with any/all local, state, or federal building or health requirements.

12.02. Tenant must keep the Premises clean and free of debris.

12.03. If Tenant fails to maintain or repair the Premises, Landlord may demand in writing that Tenant do so promptly. If Tenant refuses or fails to begin promptly, Landlord may, but is not required to, make or cause such maintenance or repairs to be made. If Landlord does so, it is not responsible to the Tenant for any loss or damage to Tenant's stock or business by reason thereof. If the Landlord makes or causes such maintenance or repairs to be made, the Tenant will promptly, on demand, pay Landlord the cost thereof as additional rent. If Tenant fails to do so, it is an event of default.

13. Laws and Ordinances

13.01. Tenant must comply promptly with all laws, ordinances, orders, and regulations affecting the Premises, and all Tenant's activities in the Premises must be clean and safe and must specifically comply with all regulations of the local Board of Fire Underwriters.

13.02. Tenant must comply with the regulations or requirements of any insurance underwriter, inspection bureau, or similar agency, with respect to the Premises. Tenant must, at its own expense, comply with the requirements of the City of San Antonio Development Services Department.

13.03. Hazardous Materials. As used in this lease, the term "Hazardous Materials" has the meaning ascribed to it in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, "CERCLA"). Tenant must not introduce any Hazardous Materials to the Premises without the prior written consent of Landlord. Tenant must reimburse Landlord as additional rent for any increase in Landlord's insurance costs arising from or related to Tenant's activities on or about the Premises. **Cumulatively With Indemnities Provided For Elsewhere In This Lease, Tenant Must Indemnify Landlord And Hold It Harmless From And Against All Loss, Cost, Liability, And Expense (Including Reasonable Attorneys' Fees) Arising From Or Related To The Presence Of Hazardous Materials In Or About The Building Or The Premises Introduced By Tenant or Its Agents, Employees, or Invitees.**

13.04. Landlord disclaims any warranty as to the presence of mold on the Premises.

14. Subordination to Scheduled Events

Landlord may from time to time accommodate or hold events requiring temporary street closures, controlled or limited access to the Premises, and temporary closures of access to, or temporary closure of, the Premises. Any such activity is superior to any right, privilege, or leasehold interest under this Lease, and Tenant must cooperate fully with Landlord. Tenant waives all claims for damages, including, but not limited to, loss of business.

15. Utilities

15.01. Tenant must obtain its own telecommunications services, insurance and electricity independently and must pay all monthly charges therefor as they become due. Failure to do is a default hereunder. If Tenant cannot obtain electricity independently, Landlord may obtain electricity for the Premises and Tenant will reimburse Landlord for all costs within 5 days of notice from Landlord of total cost amount. Failure to do is a default hereunder.

15.02. Tenant must furnish all electric light bulbs and tubes. Tenant must not install any electrical or other equipment that overloads electric lines serving the Premises or adjacent premises. Landlord is not liable to Tenant for interruption of utilities. As an exclusive remedy for interruption of utilities, Tenant can terminate this Lease if gas, water, sewer, or electric utilities are, due to no fault of Tenant, interrupted for 30 consecutive calendar days.

16. Access to Premises

Landlord, its agents, employees, and servants may enter the Premises for: (a) inspecting the their condition; (b) making such repairs, additions, alterations, or improvements thereto, or to the Building including, but not limited to, cleaning sewer drains and pipes, (c) exhibiting the Premises to prospective purchasers or future tenants of the Building; and (d) placing notices. Neither Tenant nor any person within Tenant's control will interfere with such activities or notices.

17. Insurance

17.01. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation of Tenant.

17.02. Tenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts: A) Prior to the commencement of any work or tenancy under this Lease, Lessee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City and Downtown Operations Department, which shall be clearly labeled "_____" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Center City and Downtown Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) 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 whereby City may incur increased risk.

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
****Please consult w/ RM to amend the insurance table to suit the scope of your contract****	
*if applicable	

D) Should a sublease be allowed Lessee agrees to require, by written contract, that all sub lessees hereunder obtain the same categories of insurance coverage required of Lessee

herein, and provide a certificate of insurance and endorsement that names the Lesee and the City as additional insureds. Policy limits of the coverages carried by sub lessees will be determined as a business decision of Lessee. Lessee shall provide the City with said certificate and endorsement prior to the commencement of any occupancy by the sublesee. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Lessee shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Lessee shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Center City and Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

H) In addition to any other remedies the City may have upon Lessee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein

required, the City shall have the right to order Lessee to stop work hereunder, and/or withhold any payment(s) which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.

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

J) It is agreed that Lessee'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.

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

L) Lessee and any subcontractors are responsible for all damage to their own equipment and/or property.

17.03. Landlord may modify the insurance coverage and limits when deemed necessary and prudent by Landlord's Risk Manager, based upon changes in statutory law, court decisions, or circumstances surrounding this Lease, but in no instance will Landlord allow modification increasing Landlord's risk.

17.04. Each insurance policy required by this Lease must contain the following clauses:

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

(a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Center City and Downtown Operations Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director"

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

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

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

17.05. Tenant must require its insurance carrier(s) to deliver to Landlord's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Landlord. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will provide 30 days' prior notice to Tenant and an opportunity to discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof.

17.06. If Tenant makes leasehold improvements, Tenant must further provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Landlord's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase. Also, payment and performance bonds naming Landlord as indemnitee must be provided by Tenant or its contractors or subcontractors. If the construction is minor, Tenant may send a written request to the City's Director of Asset Management to waive the requirements in this Section, but a waiver may be granted only by Landlord's Risk Manager, whose decision is final.

17.07. Within 30 days after the Commencement Date, Tenant must deliver certificates to Landlord's Risk Manager and the Center City and Downtown Operations Department from Tenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

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

17.09. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees under this Lease.

17.10. Tenant waives all claims against Landlord for injury to persons or property on or about the Premises, whether or not caused by Landlord's negligence.

18. Indemnification

18.01. Tenant must indemnify Landlord and its agents, officials, and employees and hold them harmless of and from any and all loss, cost, liability, or expense arising from or related to either Tenant's or Landlord's activities on or regarding the Premises or the building. Tenant's indemnity of Landlord includes the acts or omissions of those whose presence is through Tenant.

18.02. Nothing in this lease waives any governmental immunity available to Landlord under Texas Law, and nothing in this lease waives any defenses of the parties to claims by third parties under applicable law.

18.03. This indemnification is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

18.04. Tenant must promptly deliver written notice to Landlord of any claim or demand subject to this indemnity. Tenant must investigate and defend such claim or demand at its sole cost. Notwithstanding any condition imposed by an insurance policy in which Tenant and Landlord are named, Landlord retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Tenant without relieving Tenant of any of its indemnity.

18.05. This indemnity expressly covers the consequences of Landlord's own negligence.

19. Assignment and Subletting

19.01. Any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent, is void and terminates the Lease. Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Landlord's notice to Tenant.

19.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

19.03. Tenant must remain fully and primarily liable under this Lease, notwithstanding any assignment or sublease, and each assignee or sublessee is required to attorn to Landlord (by instrument reasonably satisfactory to Landlord).

19.04. Landlord's Director of Asset Management may approve an assignment of Tenant's interest in this Lease if the assignment otherwise conforms to the requirements of this section. Any assignment deviating from the requirements of this section must be approved by council.

20. Damage or Destruction of Premises

If the Premises or more than 25% thereof are destroyed by fire or other casualty, either Landlord or Tenant may terminate this Lease by delivering 30 days prior written notice to the other party. After any such termination is effective, neither party will have any liability to the other under this agreement relating to the period after termination.

21. Eminent Domain

If the Premises or more than 25% thereof are taken by power of eminent domain, either Landlord or Tenant may terminate this Lease by delivering 30 days prior written notice to the other party. After any such termination is effective, neither party will have any liability to the other under this agreement relating to the period after termination.

22. Default and Remedies

22.01. Each of the following, independently of any other of the following, is an event of default:

A. Tenant's failure to pay any sums due under this lease ("monetary default") and the failure is not cured within 10 days after notice thereof.

B. Tenant's failure to perform or observe any of other term, provision, condition, or covenant of this lease and the failure is not cured within 10 days after notice thereof, except if more than 10 days is reasonably required to cure a non-monetary default, it is an event of default of Tenant fails to begin cure within 10 days of notice or if Tenant fails to diligently pursue cure once begun. No cure may take more than 30 days from notice.

C. The leasehold estate being taken by execution or by other process of law.

D. Tenant becoming subject to an order for relief under the United States Bankruptcy Code, becoming subject to a receivership, or entering into a composition of creditors.

E. Entry by any court of an order modifying the rights of Tenant's creditors.

F. Tenant's becoming defunct or merging or joining with another entity without the prior written approval of the Landlord.

G. Any other event denominated as an event of default elsewhere in this lease.

22.02. In accordance with the § 137 of the City Charter, Landlord may further terminate this Lease for any of the following:

A. This Lease is deemed by the City Council to be inconsistent with the public use of the property.

B. Tenant's use of the Premises is finally adjudicated to be a nuisance by a court of competent jurisdiction.

23. Remedies-Termination and Other Options

23.01. If Tenant defaults, Landlord may after the notice and cure periods set forth above, at its option, declare this Lease and all rights and interests created by it to be terminated. This Lease then ceases as if it had expired. Landlord, its agents or attorney, may resume possession of the Premises and re-let the same for the remainder of the original term at the best rent Landlord, its agents or attorney may obtain for the account of Tenant, who must make good any deficiency.

23.02. To the full extent permitted by law, Landlord's duty to relet the Premises or otherwise to mitigate damages under this Lease is limited to the minimum requirements of Texas law. To the full extent permitted by law, Landlord is deemed to have used objectively reasonable efforts to relet the Premises and mitigate damages by: (1) posting a "For Lease" sign on Premises; (2) advising Landlord's lease agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises.

23.03. In connection with any such reletting, Landlord may make or cause to be made such repairs to the Premises as Landlord, in good faith, deems advisable. Making such repairs does not release Tenant from liability hereunder. Landlord is in not liable, and Tenant's liability is not affected or diminished, for Landlord's inability to relet the Premises, or if the Premises are relet, its inability to collect rental under such reletting.

23.04. Termination of this Lease for Tenant's default does not relieve Tenant from liability for any sum owing for the period before termination.

23.05 In addition to the remedies explicitly set forth, Landlord has all remedies for Tenant's default otherwise provided by Texas law. All rights, options, and remedies of Landlord contained in this Lease are cumulative of the other, and Landlord may pursue any one or all of such remedies or any other remedy or relief available at law or in equity. No waiver by Landlord of a breach of any of the covenants, conditions, or restrictions of this Lease waives earlier or later breach of the same or any other covenant, condition, or restriction herein contained.

23.06. Upon any expiration or termination of this Lease, Tenant must quit and peacefully surrender the Premises to Landlord. Upon termination or at any time thereafter, Landlord may, without further notice, enter the Premises and possess them, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property therefrom.

23.07. Landlord's repossession of the Premises is not an election to terminate this Lease and does not cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination by Landlord because of any default by Tenant, Landlord may, at any time after such reletting, terminate this Lease for any such default.

23.08. If Landlord relets, then rentals received by Landlord from such reletting are applied:

1. to payment of any cost of reletting;

2. to payment of any cost of repairs to the Premises;

3. to payment of any indebtedness due hereunder from Tenant to Landlord;

The residue, if any, belongs to Landlord. Tenant must also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such repairs not covered by the rentals received from such reletting of the Premises.

23.09. If Tenant fails to timely remove its goods and effects when required to do so, Landlord may, without liability to Tenant, remove the goods and effects and store them for the account of Tenant at any place selected by Landlord, with all costs for the removal and storage to be borne by Tenant.

23.10. In addition to any other lien Landlord may have under applicable law, Tenant hereby gives Landlord a contractual lien against all its goods and effects to secure payment of any money owing to Landlord under this lease. At Landlord's request, Tenant must execute and deliver to Landlord a UCC financing statement evidencing Landlord's lien rights. Landlord may files financing statements as allowed by law to protect its interests. In exercising its lien rights, Landlord may, without limiting other rights granted by applicable law:

a. Take the goods and effects in lieu of the remaining indebtedness relating to the period before termination of the lease, and Tenant must execute and deliver any instruments necessary to document Landlord's ownership.

b. Dispose of Tenant's goods and effects, without notice, at a private or public sale and without liability to Tenant and while retaining the right to seek a deficiency from Tenant.

23.11. All amounts expended by Landlord for the account of Tenant are additional rent, and Landlord may add them to any other sums then due or thereafter falling due hereunder.

24. Release from Liability/Notice of Sale.

24.01. If Landlord sells or exchanges the Premises, Landlord is freed of all liability under this lease for all periods. Upon written request of Landlord or any transferee of Landlord, including a ground lessor or a mortgagee, beneficiary, or assignee of Landlord, Tenant will, in writing

(1) subordinate its rights hereunder to the interest of any transferee of the Premises and to the lien of any mortgage or deed of trust, now or hereafter in force against the land and Building of which the Premises are a part ("Land"), and upon any building hereafter placed upon the Land and to all advances made or hereafter to be made upon the security thereof.

(2) attorn to any assignee of Landlord and

(3) if Tenant is not in default hereunder, execute a Certificate of Estoppel if requested, in a form reasonably acceptable to Tenant, provided in each instance that the transferee agrees not to disturb Tenant's possession of the Premises if Tenant does not default.

24.02. Landlord and Tenant will execute any legal instrument purporting to be a Subordination, Non-Disturbance, and Attornment Agreement and an Estoppel Certificate requested by transferee, if it does not impair the rights or enlarge the obligations of the signing party. The Director of the City of San Antonio Department of Asset Management or successor, as designee of the City Manager of the City of San Antonio, and upon review by the City Attorney, is authorized to execute the instrument, without the prior passage an ordinance by the San Antonio City Council.

25. Miscellaneous Provisions

25.01. Joint and Several. If there is more than one tenant, the covenants of Tenant are joint and several. If Tenant is a partnership, the covenants of Tenant are the joint and several obligations of the firm and each of the partners.

25.02. Yielding Up. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

25.03. Applicable Law. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

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

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

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

25.07. Modification. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

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

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

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

25.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

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

26. Prohibited Interests in Contracts

(a) 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.

(b) Tenant warrants and certifies as follows:

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

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

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

27. Public Information.

Buyer 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.

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

Landlord:

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Tenant:

Signature:_____

Printed Name:

Title:

Date:_____

Attest:

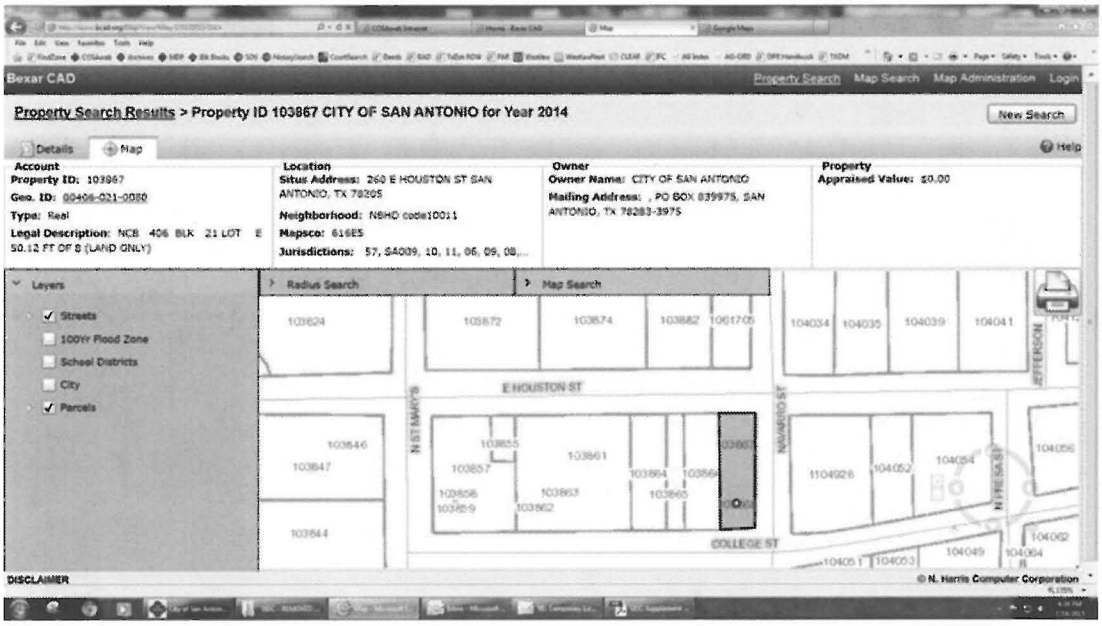
_____
City Clerk

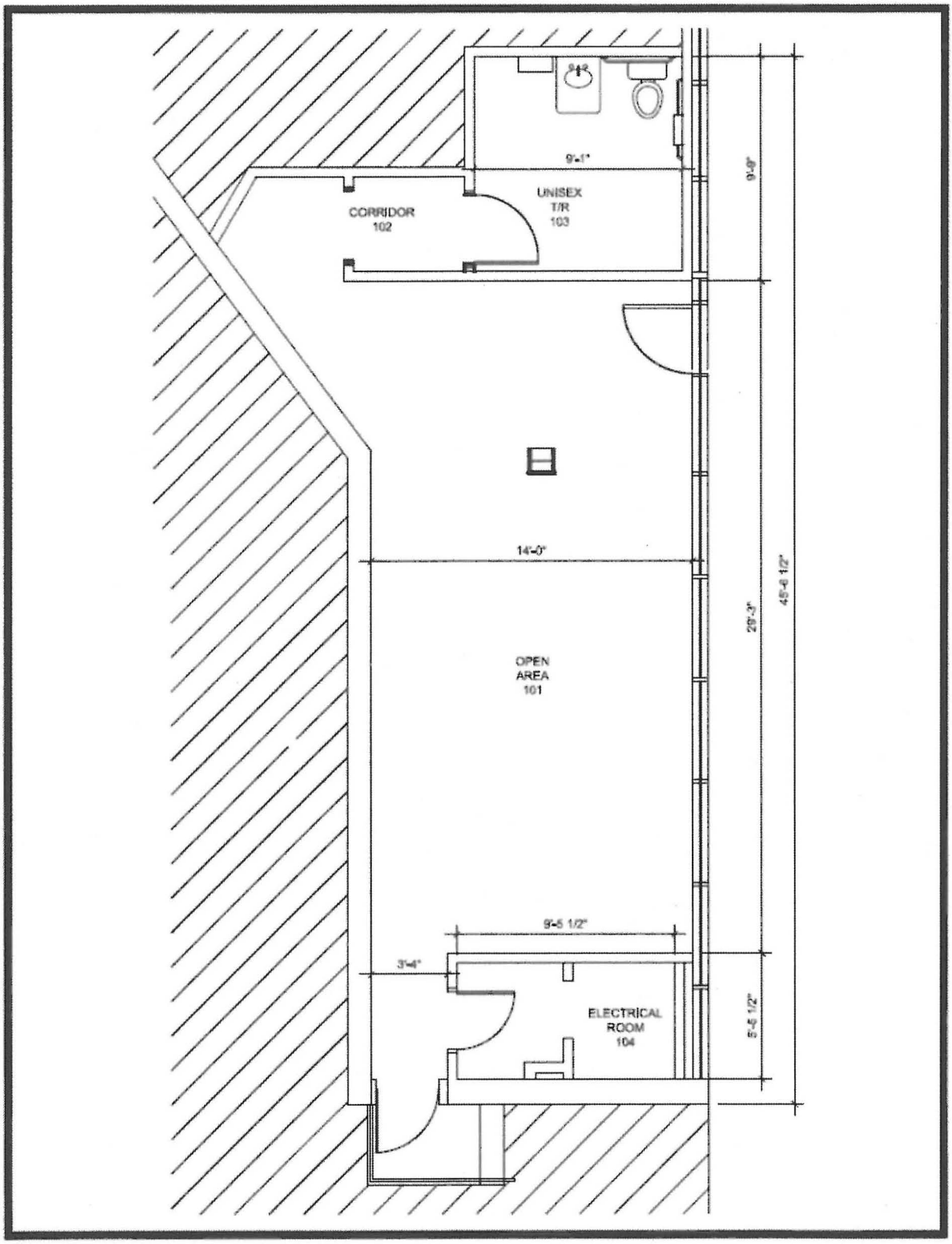
Approved as to Form:

_____
City Attorney

Exhibit A

531 Navarro on the first floor of the Houston Street Garage in NCB 406, BLK 21 Lot E 50.12 ft of 8.





531 Navarro St.
San Antonio, TX 78205

OPEN
E Travis St
Soledad St
Jefferson
Broadway St
Peacock Alley
E Houston St
College St
N St Mary's St
Navarro St
N Presa St
Losoya St
E Crockett St
W Crockett St
River Walk
San Antonio River
Alamo Plaza
Google