SW/vv
10/29/15
Item #11

AN ORDINANCE 2015-10-29-0918

AUTHORIZING AWARD OF TWO LEASES IN LA VILLITA TO ART ON MAIN AND TO MARISOL DELUNA NEW YORK LLC FOR FIVE YEAR TERMS.

* * * * *

WHEREAS, on July 9, 2014, a Request for Proposal (RFP) was issued to seek proposals from qualified respondents interested in operating a Gallery, Working Artist Studio Gallery, and Retail establishment in the La Villita Historic Arts Village; and

WHEREAS, a second RFP was issued on July 23, 2014 seeking proposals to operate a restaurant concept; and

WHEREAS, the goal of the RFPs was to re-structure the retail mix and enhance the visitor experience to align La Villita with best practices and continue to advance towards the objectives of the 1939 La Villita Ordinance and the 1981 La Villita Resolution; and

WHEREAS, all current tenants were eligible to respond; and the RFP issued July 9, 2014 resulted in a total of 15 leases awarded in La Villita (14 Retail & 1 Restaurant); and

WHEREAS, City Council authorized nine (9) leases with the passage of Ordinance 2015-04-02-0025 on April 2, 2015, three (3) leases with the passage of Ordinance 2015-05-07-0369 on May 7, 2015, and three (3) leases with the passage of Ordinance 2015-06-18-0557 on June 18, 2015; and

WHEREAS, in an effort to fill the remaining retail spaces, a La Villita Retail RFP was issued June 7, 2015 and six (6) proposals were received; and

WHEREAS, an evaluation team reviewed and scored the proposals on experience, background and qualifications, concept and theme development, capital improvements, proposed payment to City, SBEDA Prime Contract Program, Local Preference Program, and the Veteran Owned Small Business Preference Program; and

WHEREAS, the evaluation team recommended awarding leases to two respondents, Art on Main and Marisol Deluna New York LLC; and

WHEREAS, the Local Preference Program was applied in the evaluation; however, the highest ranked firms were not local businesses; and

WHEREAS, the Veteran-Owned Small Business Preference Program was applied in the evaluation; however, the highest ranked firms were not veteran-owned small businesses; **NOW THEREFORE:**

SW/vv
10/29/15
Item #11

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

SECTION 1. The City Manager or her designee, or the Interim Director of the Center City Development & Operations Department or his designee, is authorized to award two leases in La Villita to Art on Main and to Marisol DeLuna New York LLC for five year terms. A copy of the retail and working artist studio leases are attached hereto and incorporated herein for all purposes as **Attachment I** and **II**.

SECTION 2. Funds generated by this ordinance for rental income will be deposited into Fund 11001000, Internal Order 219000000007 and General Ledger 4407720.

SECTION 3. Funds generated by this ordinance for utility income will be deposited into Fund 11001000, Internal Order 219000000007 and General Ledger 4401111.

SECTION 4. Funds generated by this ordinance for common area maintenance income will be deposited into Fund 11001000, Internal Order 219000000007 and General Ledger 4407718.

SECTION 5. 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 6. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 29th day of October, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**11**
Date:	10/29/2015
Time:	10:53:39 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing award of two leases in La Villita to Art on Main and to Marisol DeLuna New York LLC for five year terms. [Lori Houston, Assistant City Manager; John Jacks, Interim 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				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9			x			
Michael Gallagher	District 10		x				

La Villita Retail Lease

Art on Main #17

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Laura Raffaniello)
Tenant:	Art on Main
Tenant's Address:	418 La Villita, San Antonio, Texas 78205

Premises:	Building Number 17 located at 418 Villita Street and depicted on the attached **Exhibit A**. Premises includes an Outdoor Display Area depicted on **Exhibit B** that consists of a total area of 833 square feet.
Permitted Use:	For the display and sale of hand-made arts and crafts and related products while maintaining a displayed inventory ratio of a minimum 90% jewerlry and no more than 10% handcrafts, and no other uses. Tenants initial inventory is listed in Attachment I.
Commencement Date:	November 1, 2015
Construction/Set up Phase:	The time period during which Tenant any renovations, construction or setup prior to opening for operations not to exceed 120 days after commencement
Tenant's Work:	The installation in the interior of the Premises of all necessary furniture, fixtures, lighting and equipment in accordance with Attachment II.
Initial Term:	November 1, 2015 to October 31, 2020
First Renewal Option Term:	November 1, 2020 to October 31, 2022
Second Renewal Option Term:	November 1, 2022 to October 31, 2024
Security Deposit:	None
Retail Space Rate:	$1.35 per square foot monthly
Common Area Maintenance (CAM) Fees:	$0.12 per square foot monthly
Utilities Fees:	$0.23 per square foot monthly
Address for Payment of Rent:	City of San Antonio, Treasury Division, Central Billing Station, P.O. Box 839975, San Antonio, Texas 78283-3975

Common Areas: All areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

Director: The Director of the City of San Antonio's Center City and Downtown Operations Department or such other successor department as designated by Landlord.

2. Grant, Use.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Landlord hereby agrees to permit Tenant use of above described Premises. Tenant agrees that the Premises shall be utilized for the sole purpose of arts, crafts, and skills display and retail sales.

2.02.01. Tenant agrees that it will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable. The Tenant further agrees that its lease of the Premises is conditioned on Tenant's maintaining the following breakdown of Tenant's inventory: a minimum of 90% of Tenant's displayed inventory must consist of jewelry. ("Class 1 Inventory"); and a maximum of 10% of Tenant's displayed inventory must consist of handcrafts.("Class 2 Inventory") as defined in TENANT'S response to the La Villita RFP in Attachment A, Part Three, Proposed Plan and attached to this lease agreement as ATTACHMENT I.

2.02.02. The Tenant further agrees that its lease of the Premises is conditioned on following the Merchandising Display Plan attached hereto as Attachment II adopted from Tenant's RFP response.

2.02.02. Both the inventory requirements contained in Attachment I and the Merchandising Display Plan contained in Attachment II may be changed with written approval of the Landlord, acting by and through the Director, provided however any requests for changes must be submitted in writing at least 45 days in advance of the requested change. Written request must include description and images of any new arts and or craft TENANT requests authority to sell, the proposed revised Merchandising Display Plan as well as valid goal and objective for said request. It shall be within the Director's sole discretion to determine whether a change in Tenant's inventory or Merchandising Display Plan shall be allowed.

2.02.03. TENANT understands and agrees that any violation of the above stated inventory restrictions and Merchandising Display Plan would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY. TENANT shall immediately cure matter upon receipt of this notice.
2. TENANT shall pay CITY $50.00 for each violation thereafter. Each day during which TENANT has failed to cure the violation shall be deemed a separate violation.
3. At the Landlord's option, the fifth or any succeeding violation, including a single violation for which TENANT has failed to cure for 5 days, may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2. 03. In using the Premises for the purposes described in this section, the Tenant may, with the prior written permission of the Director arrange for associates to learn, demonstrate, exhibit or practice a specific art or craft on said Leased Premises. Such associates shall be considered as invitees of the Tenant and not as sublessees.

2.04. The Tenant covenants and agrees that it will operate and conduct its business except during the Construction/Set Up Phase or while the Premises are untenantable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

2.05. The Tenant agrees to maintain the following minimum hours of operation except for during the Construction/Set Up Phase: 10:00 a.m. to 6:00 p.m. Monday through Saturday and 11:00 a.m. – 4:00 p.m. on Sundays. Tenant may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

2.05.01. The Director or a designee of the Director shall have authority to approve temporary closings in emergency situations such as a Death or medical emergency in the immediate family of Tenant or Tenant's employee. Tenant shall notify the Director within 24 hours of any such emergency closing.

2.05.02. The Director or a designee of the Director shall have authority authorize temporary closings in response to weather emergencies.

2.05.03. Tenant agrees to remain open for extended hours from 6:00 PM to 9:00 PM twice a month for special promotional days as may be designated by the Director. Landlord will give Tenant a minimum of 45 days written notice prior to these events.

2.05.04. TENANT understands and agrees that any violation of the above stated operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations

would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation during any one year period shall result in a written notice from CITY.
2. TENANT shall pay CITY $50.00 for each violation thereafter occurring during that one year period.
3. At the Landlord's option, the fifth or any succeeding violation occurring during a one year period may be deemed a material breach and default and cause for lease termination without opportunity to cure

2.06. The Tenant agrees to comply with any and all sign design guidelines, provisions, and limitations in place now or in the future, including those within the City of San Antonio Unified Development Code and any applicable Master Plans. Tenant shall not place any signs on the Premises that are not directly related to the provision of Tenant's commercial operations. Tenant shall not place any political signs.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Common Area Maintenance (CAM) Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated.

3.02. Base Rent is comprised of charges for leased retail space. Tenant shall not be charged for Outdoor Display Area depicted in Exhibit B. Base Rent, Common Area Maintenance (CAM) Charges, and Utilities payment for the first year of the Initial Term are as follows:

	Amount Per Square Foot Per Month	**Square Feet**	**Total Amount Per Month**
Base Rent	$1.35	326	$440.10
Common Area Maintenance Fees	$0.12	326	$39.12
Utilities Fees	$0.23	326	$74.98

3.03. Base Rent, Common Area Maintenance Fees, and Utilities Fees are as set forth above. Base Rent will increase 2% annually on each anniversary of the Commencement Date. Common Area Maintenance Fees payment will increase 2.5% annually on each anniversary of the Commencement Date. Utilities payment will increase 2.5% annually on each anniversary of the Commencement Date.

3.0. Tenant must pay Base Rent, Common Area Maintenance Fees, and Utilities Fees payments in the amounts described in this section in advance on the first day of each month,

beginning the earlier of 60 days after lease commencement or the day that Tenant begins commercial operations selling its merchandise to the public, i.e. no rent shall be paid during the Construction Phase. If Tenant begins operations on a day other than the first day of the month Rent shall be prorated by the day for that month and shall be paid on the day on which operations commence. If Tenant is delinquent in paying any Rent, Tenant must pay to Landlord upon demand a late charge of $50.00. Tenant shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and regulations adopted by Landlord's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Landlord's other rights and remedies.

3.05. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant may not abate Rent for any reason.

4. Common Areas.

4.01. "Common Areas" mean all areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

4.02. Tenant has the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with others and subject to such reasonable rules and regulations as the Landlord may from time to time prescribe. Such use must be requested in writing a minimum of 30 days in advance.

4.03. Landlord may change the Common Areas, including, without limitation, their dimensions and location, without prior consultation with, Tenant.

4.04. Landlord will, subject to events beyond its reasonable control, manage, operate, and maintain the Common Areas, except for damage caused by Tenant or those whose presence is through Tenant.

5. Term, Termination, Renewal.

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

5.02. Either party may terminate this lease on 90 days' written notice.

5.03. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease for two additional two-year terms by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

5.04. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be renegotiated prior to the Renewal Term.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

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

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

6.03. Cooperate with the Landlord in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 that was reconfirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable.

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

6.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

6.06. After casualty loss not terminating the lease, rebuild the interior partitions/walls, ceilings, wiring, light fixtures, and plumbing.

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

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

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

6.10. Maintain a fully functioning lock system on the premises. Any changes to the lock

systems shall receive the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission; and ensure that the Landlord through Director or his/her designee will be provided a copy of keys to enter the leased premises.

6.11. Sales Reports: Tenant shall provide Landlord a copy of all written sales tax reports reported to the Texas State Comptroller ("Comptroller") contemporaneously with such report being delivered to Comptroller. If Comptroller rules do not require Tenant to make a monthly sales tax report, Tenant's quarterly or annual report to the City shall include a monthly breakdown of total sales.

6.12. Tenant agrees to work with and/or participate in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

7. Indemnity.

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

7.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

8. Tenant's Negative Promises.

Tenant promises that it will not:

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

8.02. Create a nuisance.

8.03. Interfere with any other tenant's normal business operations or Landlord's management of La Villita.

8.04. Permit waste.

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

8.06. Alter the Premises without Landlord's written consent.

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

8.08. Make repair, maintenance or cleaning requests to City personnel other than the City's On-site Facility Manager

9. Landlord's Affirmative Promises.

Landlord promises that it will:

9.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

9.02. Obey all applicable laws with respect to Landlord's operation of La Villita and its Common Areas.

9.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, and windows, and (e) HVAC serving the Premises. Landlord's On-Site Facility Manager shall maintain a form for the reporting of repairs, shall track the progress of the requested repairs and be Tenant's point of contact for all official information regarding such repairs. Landlord shall within a reasonable period of time make all necessary repairs reported to the On-site Facility Manager.

9.04 Seek input from Tenants and take Tenant's concerns into consideration during programming, operation, policy and/or budget decisions. Landlord shall be open to accepting input from Tenant which can be submitted to the Facilities Manager in writing at any time during the Lease term.

10. Landlord's Negative Promise.

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

10.02. Landlord promises that it will not communicate with any person regarding lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.

11. Construction of Premises and Alterations.

11.01. All improvements required for Tenant's Work to be made to the Premises shall be substantially as set forth in **Attachment II** and any other requirements required by the City. Tenant shall construct and install all of its improvements (including both fixtures and equipment) to the Premises so that the Premises will provide attractive, well-designed facilities that promote the marketing of merchandise, products and/or services and present a positive image to La Villita patrons.

11.02. Tenant shall immediately apply for and diligently pursue, at Tenant's expense, any and all permits required to perform Tenant's Work. Tenant, at its expense, shall construct, equip and complete the Tenant's Work at all times with due diligence and in a good and workmanlike manner in accordance with all applicable legal and code requirements, in order to complete the same and open the Premises for business to the public no later than 120 days after the Commencement Date.

11.03. All such construction shall be completed free and clear of all liens, encumbrances and security instruments. If any mechanics', materialmens' or other lien is filed against the Premises or any interest in this Agreement as a result of any work or act of Tenant, Tenant shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 days after the filing thereof.

11.04. Tenant shall deliver to the Director a copy of the Certificate of Occupancy with respect to the Premises within 20 days after Tenant's receipt thereof from the City.

11.05. Tenant shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall Tenant make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission.

11.06. Tenant shall not attach anything to the exterior of the Premises including but not limited to telecommunications or other electronic equipment.

11.07. Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11.08. The City will provide rental abatements in the amount of 80% of approved, documented, and verified capital improvements to the lease space over the first five (5) years of the lease agreement. Any and all improvements must be reviewed and approved by City.

12. Insurance.

12.01. Prior to the commencement of any work under this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the

City's Department for Culture & Creative Development, which shall be clearly labeled "*La Villita – Retail Shops, Galleries & Working Artist Galleries*" 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 have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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 Department for Culture & Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02. 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 coverage 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.

12.03. 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 Agreement, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	***AMOUNTS***
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	$500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by Tenant g. Host Liquor Liability, if alcoholic beverages are served on the Premises h. Liquor Legal Liability Insurance if alcoholic beverages	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 f. $100,000

are sold on the Premises	
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

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

12.05. 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 endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Tenant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Tenant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department – Purchasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured 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; and

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

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

12.08. In addition to any other remedies the City may have upon Tenant'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 Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

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

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

12.11. 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.

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

12.13. If Tenant makes leasehold improvements, Tenant must 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 required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover 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 maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

12.14. Tenant understands and agrees that violation of the insurance requirements of this section would be a material breach of this lease and cause for the Landlord to terminate without the opportunity to cure. Because Landlord's damages from such a breach would be difficult to estimate or quantify, Tenant accepts the amount of $50 per day in violation of this section as a reasonable, negotiated estimate of Landlord's damages.

13. Release of Claims/Subrogation.

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

14. Environmental Matters.

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

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

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

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

14.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

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

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

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

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

15. Landlord's Municipal Powers.

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

16. Prohibited Interests in Contracts.

16.01. 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.

16.02. Tenant warrants and certifies as follows:

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

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

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

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, if funding is available, at its expense, restore the roof, foundation, exterior doors, windows, Common Areas, and structural soundness of the exterior walls of the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenantable after the casualty; the Rent will be adjusted as may be deemed fair and reasonable by Landlord.

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

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

17.06 If, during any approved renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or

lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may as its sole remedy terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.07 If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

18. Condemnation/Substantial or Partial Taking.

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

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

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

19. Holdover.

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended.

20. Contractual Lien.

20.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

20.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least 10-

days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (A) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

20.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

21. Default, Remedies for Default.

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

21.01.01. Tenant fails to pay any installment of Rent when due.

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

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

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

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

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

21.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises.

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

21.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

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

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

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

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

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

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

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

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

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

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

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

21.04. *Effect of Termination*. If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

21.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

21.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

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

21.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default

is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

21.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

21.11. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

22. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

22.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

22.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

22.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

22.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

(i) violate any restriction, covenant, or requirement contained in the lease of another tenant of La Villita;

(ii) adversely affect the reputation of La Villita; or

(iii) be incompatible with other users of La Villita.

22.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

22.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

23. Tenant's Bankruptcy.

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

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

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

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

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

23.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

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

23.06. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future

performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant's receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

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

24. Warranty Disclaimer.

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

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

25. Abandoned Property.

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

26. Appropriations.

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

27. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant. Tenant shall pay to Landlord an assignment fee of $2,000.00 for any assignment.

28. Dispute Resolution.

28.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit

in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

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

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

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

28.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

28.06. Mediator fees must be borne equally.

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

29. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

29.15 **Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

30. Night in Old San Antonio (NIOSA) and Other Events.

30.01. The Landlord reserves the right to grant the San Antonio Conservation Society or its successors, assigns, or subcontractors a Lease of all or any portion of adjacent property and/or a concession to sell beverages, food, and other items on all or any portion of La Villita, other than the premises hereby expressly demised, during specified hours on those dates in each year of the duration of the lease in which the Society may sponsor all or any part of the event known as NIOSA within La Villita. The Tenant expressly recognized that any right, privilege, or leasehold interest granted to the San Antonio Conservation Society for NIOSA under a separate lease and/or concession contract controlling access to La Villita is superior to any such right, privilege or leasehold interest granted Tenant under this Lease Agreement.

30.02. Rental Fee will be abated during the 16 days annually during month which NIOSA occurs. All other Fees will not be abated.

30.03. Except in the case of NIOSA and holidays stated above, the gates to La Villita will remain open from 7:00 a.m. until 6:00 p.m. daily. However, the Tenant understands, acknowledges and agrees that the Landlord will also from time to time accommodate various functions or events. Such accommodation may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises entrance free of charge before 6:00 P.M. The Tenant expressly recognizes that any such accommodation and also any and all of the Landlord's fee simple ownership rights and interest as Landlord hereunder are superior to any right, privilege or leasehold interest granted the Tenant under this Lease Agreement and the Tenant hereby agrees to cooperate fully with the Landlord on notification of such accommodation. The Tenant further waives any and all claims for damages, including but not limited to, loss of business, which the Tenant may suffer as a result of any such accommodation by the Landlord as limited by this paragraph.

31. Public Information.

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

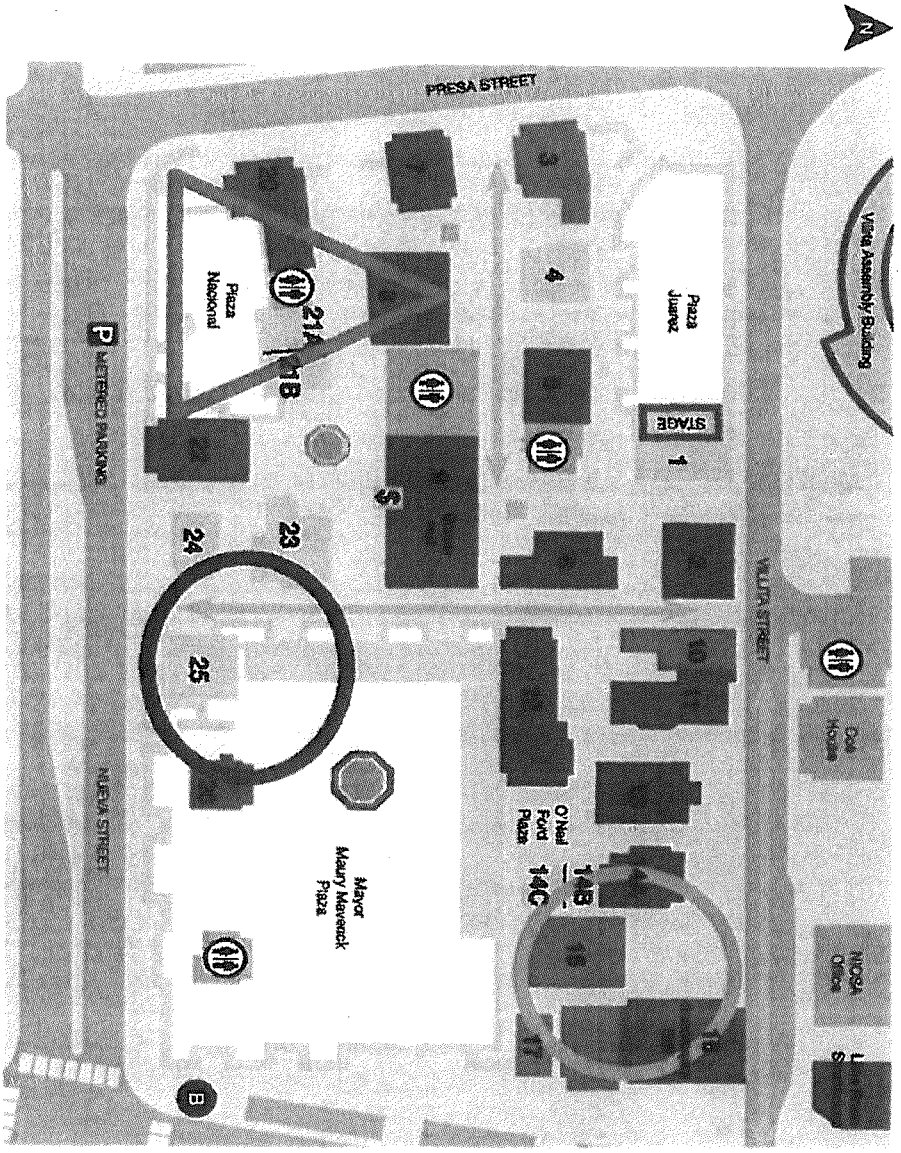
In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:	**Tenant:**
City of San Antonio, a Texas municipal corporation	**Ana Salas, Owner** Art on Main
Signature	Signature
Name	Name
Title	Title
Date	Date

Approved as to Form:

City Attorney

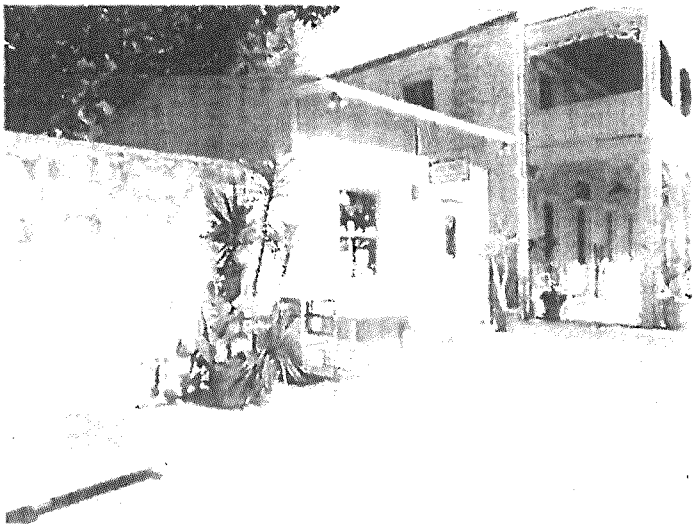
Exhibit A: La Villita Building Map

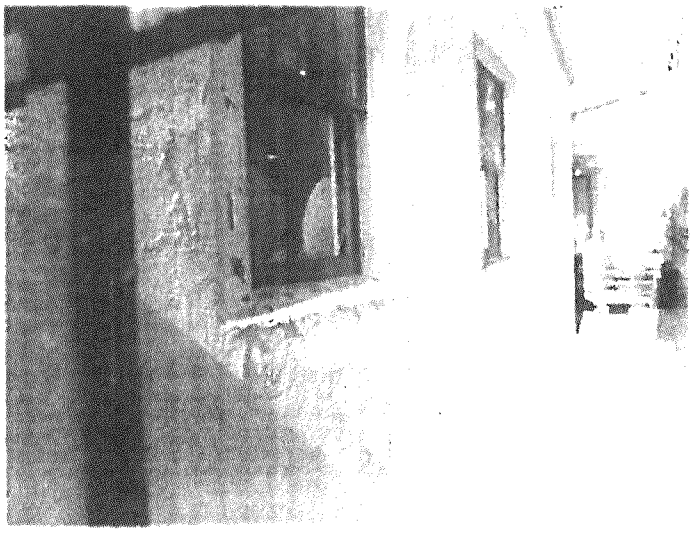


RECOMMENDED USES

- Retail
- Gallery
- Working Artist Studio
- Food/Restaurant
- Event Space/Historic Church
- Nodes of Activity
- Retail Corridors

Exhibit B: Photo of Building 16B





BUILDING 17
326 sq ft
Use: Retail

Not Named, c. 1950

GENERAL ASSESSMENT RATING: 3-Fair

EXTERIOR FEATURES
Walls. Walls are in good condition.
Roof. Metal roof appears to be in good condition.
Windows and doors. Wooden window frames and sash in good condition.

INTERIOR FEATURES

Floors. Finished concrete floor, partially covered with rugs. Appears to be in good condition.
Ceilings. Gypsum board ceilings, minor cracking, but in good condition.
Walls. Painted gypsum wallboard in satisfactory condition.

COMMENTS: Building not accessible because of raised floor level at retail level.

MECHANICAL, ELECTRICAL, AND PLUMBING REPORT
Air-conditioning and heating. A 1980s chilled water heating/electric heating fan-coil unit services the building. Tenant says cooling and heating capacity is adequate. However, condensation appears to have very badly damaged the wood platform/plenum the unit sits on. The chilled water coil has clogged in the past and hose bibs are installed in the lines to flush them. Hose bibs sometimes leak and ductwork in the room needs repair.
Plumbing. The private restroom has a toilet and cold-water-only sink. The sink is said to leak at times and should be replaced. Sometimes the toilet leaks at the wax ring when floor bolts come loose.
Electrical. Panel board appears to be modern and in good working order but front access is blocked by built-in cabinets.

Attachment I

Refer to Proposed Plan for description of goods, products, and items to be sold and images of examples.

RFP ATTACHMENT A, PART THREE

PROPOSED PLAN

1. **Vision Statement:**
   To be an innovative contemporary retail shop that will invoke, encourage and inspire an appreciation of San Antonio's visual arts and American made fine craft.

   - To advocate and promote the artistic and cultural aspects of La Villita and the City of San Antonio
   - To provide access to fine craft, artists, workshops, and opportunities for visitors to San Antonio and local residents alike.
   - To offer a variety of art experiences and collaborations and serve as an ambassador for the City of San Antonio.
   - To provide local youth with an outlet for their creativity and a venue in which to exhibit their work through student exhibits.

2. **Operational Plan:**

I plan to create an environment fostering artistic vision and insights for the viewer/customer and the artists. The retail shop will be an advocate and ambassador for the City of San Antonio and will represent artisans who are passionate about their work as well as this beautiful and diverse city and culture. Choice of artistic work will align with the cultural and artistic diversity of San Antonio and will serve to enhance the visitors' authentic San Antonio experience. Examples of this work are provided with this proposal.

The retail shop will be based around a group of "house" artisans and a bimonthly rotating exhibit of selected local artists. Fine crafts, artisan handmade, American made products, the sales of these items to visitors who want something to take in their suitcase, and locals looking for a unique piece of jewelry or home décor will provide a revenue stream in addition to the sale of art prints and art cards. The fine crafts will be high quality art by national and local artists. Artists will display their work and be available to the gallery for special events and exhibits and workshops and demonstrations.

If proposal is accepted, the Gallery will be located in building #17, hours of operation will be seven days a week from 10a.m. till 6p.m., Mon. - Sat. and Sun. 12p.m.-4p.m. Gallery will be manned by me, my husband, in-house artisans. All retail shop representatives will be aware of customer service/return polices and general knowledge of the downtown, tourist attractions and Missions. All work will be inventoried. Artists Bio/Statements will be in binder available for review.

The planning of exterior improvements will consist of painting building, fascia, and trim. I would like to add mosaic panels to the front of the building with the approval and insight of the City. The inside will be updated with lighting.

3. **Describe how you will enhance visitor experience by both local residents and tourists.**

The visitor experience will be enhanced with bi-monthly "meet and greet" type opening receptions and gallery talks by "house" and "rotating" artists. These events will feature light refreshments, music such as Spanish/Jazz guitar from local musician Adam Zuniga, demonstrations and /or live painting. A Free Family Art Sunday each month will provide tourists and residents alike the opportunity to create a mixed-media work of art with their family.

4. **Define how the Retail Shop will embrace the authentic nature of San Antonio, her**

history and culture.

The shop will embrace the culture and heritage of San Antonio by 1) offering works that depict the people, landscape and architecture of San Antonio and 2) featuring artisan work that though not depicting a San Antonio feature or landmark, expresses the vibrant contemporary art scene in San Antonio. This is especially important in attracting locals to the area who are in search of artistic unique finds for their homes or offices, and not looking for "traditional" works. These would encompass and showcase the wide range of artistic styles, mediums and approaches by San Antonio artisans and all American made.

Another way the shop will embrace the San Antonio culture is by developing photography/art series and workshops, as well as working with La Villita Tenants Association and the City to collaborate on special holidays and events that make La Villita the vibrant heart of downtown.

5. **Identify through marketing and other techniques how you will build sales, awareness, and the image of the Retail Shop as part of La Villita. Provide copies of ads used.**

Marketing for the retail shop would take a multi-faceted approach using local media outlets such as newspapers, magazines, and television and radio outlets. Tourists would be reached through these local outlets as well as the San Antonio Convention & Visitors Bureau events calendar and other programs directed to the tourism industry. Flyer and announcement of events will also be provided to Hotel Concierges for distribution to tourists interested in art and any art events taking place during their visit to San Antonio.

a. Marketing will also utilize social media such as Facebook, Instagram and Twitter with the announcement of an invitation to the bi-monthly events and shows as well as reminders of these events. Weekly Tweets, pictures, posts, sponsored Facebook local demographic marketing. A Facebook page will be created for the gallery and posts about the art, artists and upcoming events and workshops will be displayed. Articles about art, artists and techniques will be "shared."
   Apps that allow social media tracking will be utilized.
b. Advertising tools will consist of but are not limited to:
   Rio Magazine, San Antonio Tourist, Glass Tire, SA Current, Express-News Weekender, direct mail campaigns.

6. **Proposed Physical Changes to Building.**

The proposed changes for the interior of the building include paint and refinishing/restaining of floors and trim, new track lighting, slatboard. Exterior paint of trim, doors and windows, replace outdoor light fixtures. I propose to place mosaic panels to the front of the building. Adding a table and set of chairs or colorful mosaic bench. Adding a small 2X4 grid to attract customers in shop.

a. The proposed physical changes will support my vision for the shop, by creating a clean upscale, updated canvas with sufficient lighting in which to display and exhibit all work. And allowing all the space to be utilized including the outside front.

b. The proposed physical changes would impact or enhance the visitor experience by showcasing the inventory in a professional aesthetical manner, and allow the visitor/tourist to partake in workshops on the front outside area in a cool fall setting, as well as allowing visitors to have an area they can enjoy sketching, creating or experiencing the busy Alamo St.

7. **Describe how you plan to display your products within the space.**

Inventory will be displayed in a gallery-retail fashion allowing ample space for the viewer to enjoy and evaluate each piece. It will be illuminated with overhead lighting. Fine

crafts will be exhibited in and on glass shelving, pedestals and antique marble furniture throughout the shop.

a. *Images to follow of previous exhibits curated, gallery and display pictures.
b. Art related products will be displayed in glass shelving and artist prints will be displayed in a professional manner using appropriate displays.

8. Provide a detailed budget for your organization in order to operate and maintain.

a. Describe the business plan for start-up and marketing.
b. How will you pay for ongoing maintenance and operational costs?

1. Start-Up
   I will use my disposable monthly income to operate the start-up costs at the shop while the marketing plan/strategy is set into play. The business will have a large inventory of art with a roster of established and local emerging artists that have a professional network within the community to draw existing and new clientele. The primary channel for sales is the shop's location in La Villita.
2. Marketing Development
   - Position the retail locally, regionally, nationally, as an energetic, innovative, and vital contemporary handmade, American made artisan retail shop that attracts a growing audience.
   - Position the shop as a destination for the entire community, where people of all ages, backgrounds, and culturally diverse groups feel welcome.
   - Position and align the shop's events and marketing strategy to coincide with that of La Villita and the City of San Antonio's downtown events and PR.

3. Economic Outlook
   With the City's initiatives for 2015 including Maverick Plaza Lighting, Arneson Repairs, Signage and Way-finding signs, Marketing, welcoming visible entrance on La Villita St, and the new World Heritage Site designation at the Missions, will attract more visitors, the future is very positive and bright!

9. Eager to work with La Villita Tenants Association and the City of San Antonio to plan and implement monthly programming that will enhance the innovative gallery experience.

10. Define the types of products sold in Gallery, including images of the types of work to be sold. This information will be used by the rating committee to assess this area. In your response, please utilize RFP Exhibit 10 which provides definitions of various types of art and craft. *(pics)

The inventory sold in the gallery will be original creations by established and emerging artisans/aritists consisting of local, regional and national. A variety of mediums will be inventoried including: watercolors, oils, pastels, photography, mixed-media, mosaic, sculpture, glass, jewelry, wooden carving, silk fiber art-shibori. Fine craft, functional, wearable, decorative pieces of fine craft will be exhibited and sold by shop.

11. Describe how the products to be exhibited and sold reflects and celebrates the authentic nature of San Antonio's history and culture.

The inventory to be sold will reflect and celebrate the authentic nature of San Antonio's

history and culture though diversified mediums inventoried and sold in the shop. It will celebrate the authentic nature by the quality and workmanship that is San Antonio.

Under the *La Villita Ordinance* Article VII., the authentic early Texan objects encompassed: metal smith, ironwork, pottery, glass, jewelry, tin design, furniture, bookbinding, fine prints, etching, block prints, lithography, woodcarving, leather work, sculpture, all items made by hand. The inventory in the shop will celebrate the authentic nature of San Antonio's history and culture by being specifically geared towards the people, landscape and architecture of San Antonio and the vibrant arrays of colors. The art related items will allow anyone with any means to take a "little piece" of San Antonio/La Villita, home. Whether the visitor is a retiree on a fixed-income or a five year-old child that must have a colorful art book, the goal is for everyone to experience the City's history/culture, and leave inspired.

12. **Please list the building for which you are submitting your proposal: Building # 17**

a. If your proposal is not the highest rated for the above listed building, are you willing to negotiate for another building?

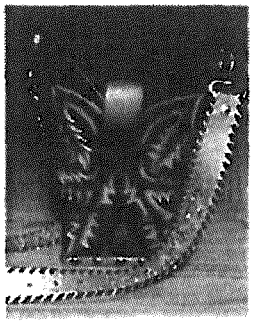
Yes_____X_____ No_____

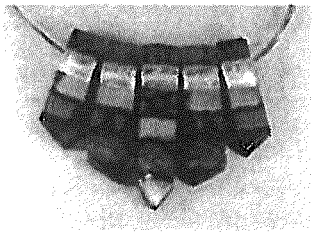
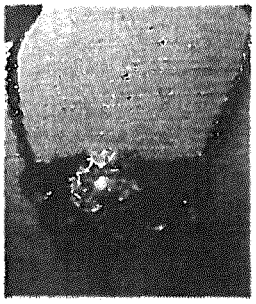
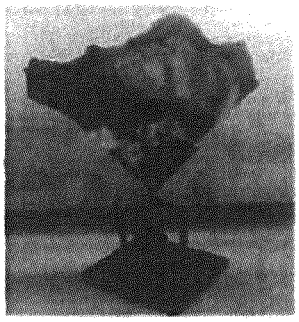
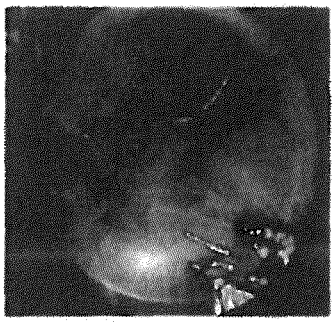
i. If yes, please list your 2nd Choice building: Building # 7

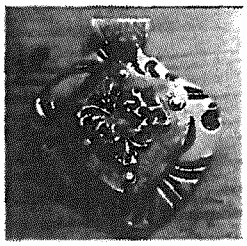
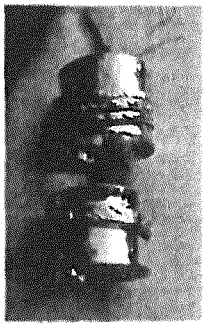
b. If your proposal is not the highest rated for your 3rd choice, are you willing to negotiate for another building? Yes, Building #

I would, however, I can't afford anything over 759 sq.ft.

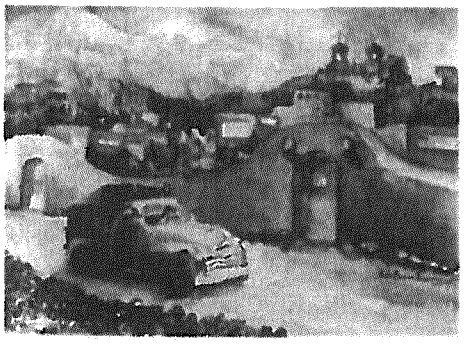
Mesquite, glass sculpture, repurposed leather



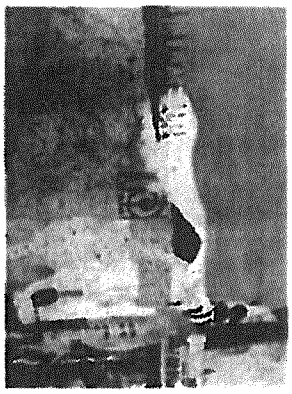





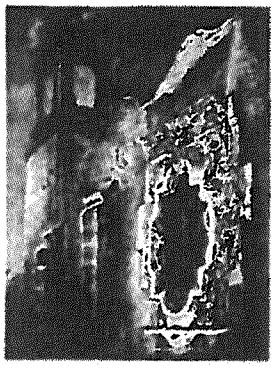
Watercolors,



Collage



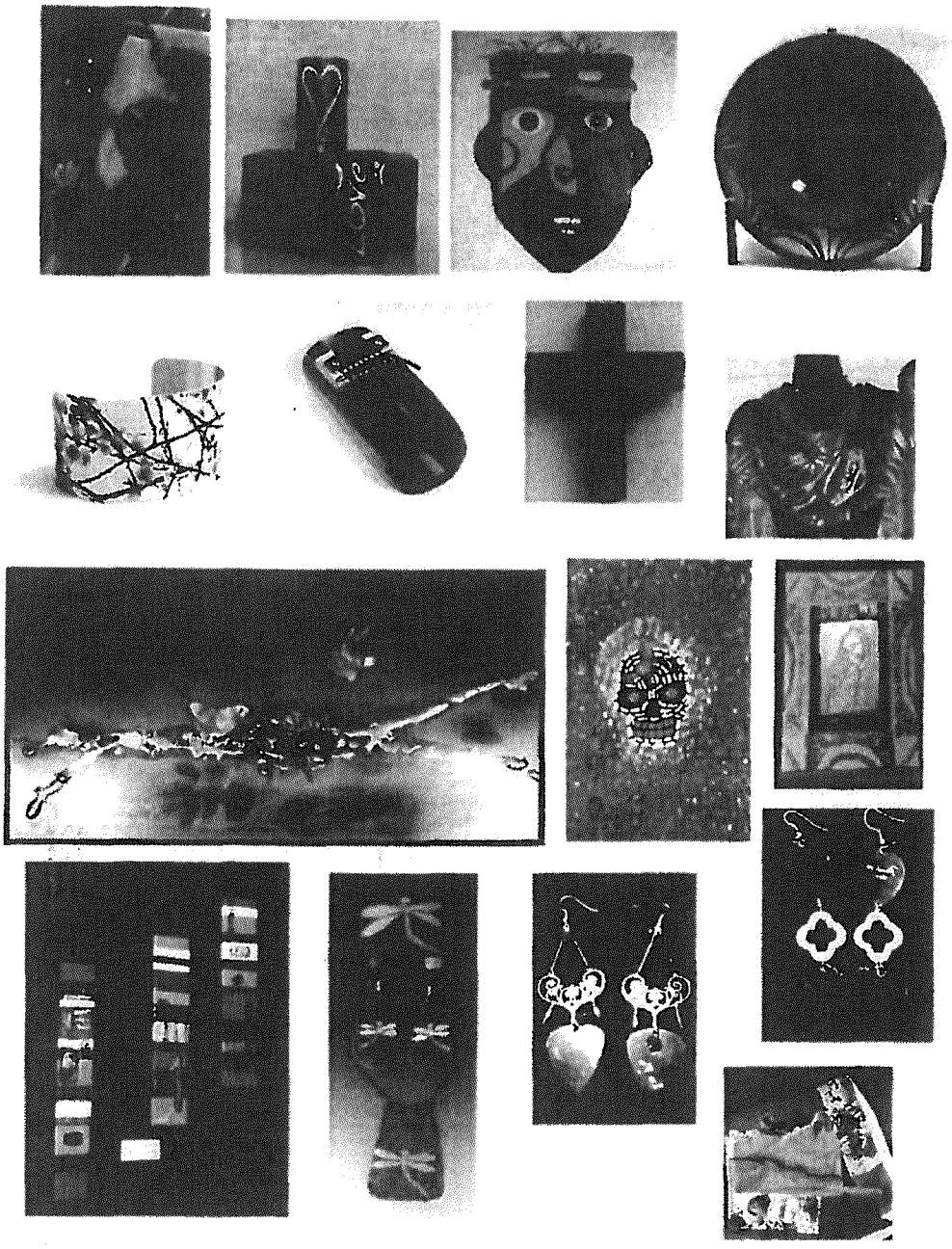
Acrylics



photography

Pastels

Examples Fine Craft Sold



Attachment II

Merchandising Plan
Inventory will be displayed in a gallery-retain fashion allowing ample space for the viewer to enjoy and evaluate each piece. It will be illuminated with overhead lighting. Fine crafts will be exhibited in and on glass shelving, pedestals and antique marble furniture throughout the shop. Art related products will be displayed in glass shelving and artist prints will be displayed in a professional manner using appropriate displays.

Proposed Tenant Improvements
Estimated costs - $5,000.00
The proposed changes for the interior of the building include paint and refinishing/retaining of floors and trim, new track lighting, and slatboards. Exterior paint of trim, doors and windows, replace outdoor light fixtures and adding a small 2x4 grid to attract customers into the shop. Also includes placing of mosaic panels to front of building along with an outdoor table set or bench to provide resting spot for customers.

La Villita Working Artist Studio Lease

Marisol Deluna New York, LLC #22

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Laura Raffaniello)
Tenant:	Marisol Deluna New York, LLC
Tenant's Address:	481 La Villita, San Antonio, Texas 78205

Premises:	Building Number 22 located at 418 Villita Street and depicted on the attached **Exhibit A**. Premises includes an Outdoor Display Area depicted on **Exhibit B** that consists of a total area of 1235 square feet.
Permitted Use:	A retail business managed and operated by working artist, artisan, or craft person that exhibits and sells works of art of craft that are produced by hand. A minimum of 50% of art or craft exhibited and available for purchase must be created/produced within the gallery by hand by the artist, artisan, craft person or artist collaborative operating and managing the gallery. An additional 40% of the art or craft exhibited and available for purchase must be created/produced by hand by an artist, artisan, or craft person, either off premises or on the premises.
Commencement Date:	November 1, 2015
Construction/Set up Phase:	The time period during renovations, construction or setup prior to opening for operations is not to exceed 120 days after commencement
Tenant's Work:	The installation in the interior of the Premises of all necessary furniture, fixtures, lighting and equipment in accordance with Attachment II.
Initial Term:	November 1, 2015 to October 31, 2020
First Renewal Option Term:	November 1, 2020 to October 31, 2022
Second Renewal Option Term:	November 1, 2022 to October 31, 2024
Security Deposit:	None
Retail Space Rate:	$1.00 per square foot monthly
Common Area Maintenance (CAM) Fees:	$0.12 per square foot monthly
Utilities Fees:	$0.23 per square foot monthly
Address for Payment of Rent:	City of San Antonio, Treasury Division, Central Billing Station, P.O. Box 839975, San Antonio, Texas 78283-3975
Common Areas:	All areas, space, equipment, facilities, and services

provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

Director: The Director of the City of San Antonio's Center City and Downtown Operations Department or such other successor department as designated by Landlord.

2. Grant, Use.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Landlord hereby agrees to permit Tenant use of above described Premises. Tenant agrees that the Premises shall be utilized for the sole purpose of arts, crafts, and skills display and retail sales.

2.02.01. Tenant agrees that it will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable. The Tenant further agrees that its lease of the Premises is conditioned on Tenant's maintaining the following breakdown of Tenant's inventory: a retail business that exhibits and sells works of art or craft that are produced by hand off premises. A minimum of 50% of art or craft exhibited and available for purchase must be created/produced within the gallery by hand by the artist, artisan, craft person or artist collaborative operating and managing the gallery. An additional 40% of the art or craft exhibited and available for purchase must be created/produced by hand by an artist, artisan, or craft person, either off premises or on the premises as defined in TENANT'S response to the La Villita RFP in Attachment A, Part Three, Proposed Plan and attached to this lease agreement as ATTACHMENT I.

2.02.02. The Tenant further agrees that its lease of the Premises is conditioned on following the Merchandising Display Plan attached hereto as Attachment II adopted from Tenant's RFP response.

2.02.02. Both the inventory requirements contained in Attachment I and the Merchandising Display Plan contained in Attachment II may be changed with written approval of the Landlord, acting by and through the Director, provided however any requests for changes must be submitted in writing at least 45 days in advance of the requested change. Written request must include description and images of any new arts and or craft TENANT requests authority to sell, the proposed revised Merchandising Display Plan as well as valid goal and objective for said request. It shall be within the

Director's sole discretion to determine whether a change in Tenant's inventory or Merchandising Display Plan shall be allowed.

2.02.03. TENANT understands and agrees that any violation of the above stated inventory restrictions and Merchandising Display Plan would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY. TENANT shall immediately cure matter upon receipt of this notice.
2. TENANT shall pay CITY $50.00 for each violation thereafter. Each day during which TENANT has failed to cure the violation shall be deemed a separate violation.
3. At the Landlord's option, the fifth or any succeeding violation, including a single violation for which TENANT has failed to cure for 5 days, may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2. 03. In using the Premises for the purposes described in this section, the Tenant may, with the prior written permission of the Director arrange for associates to learn, demonstrate, exhibit or practice a specific art or craft on said Leased Premises. Such associates shall be considered as invitees of the Tenant and not as sublessees.

2.04. The Tenant covenants and agrees that it will operate and conduct its business except during the Construction/Set Up Phase or while the Premises are untenantable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

2.05. The Tenant agrees to maintain the following minimum hours of operation except for during the Construction/Set Up Phase: 10:00 a.m. to 6:00 p.m. Monday through Saturday and 11:00 a.m. – 4:00 p.m. on Sundays. Tenant may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

2.05.01. The Director or a designee of the Director shall have authority to approve temporary closings in emergency situations such as a Death or medical emergency in the immediate family of Tenant or Tenant's employee. Tenant shall notify the Director within 24 hours of any such emergency closing.

2.05.02. The Director or a designee of the Director shall have authority authorize temporary closings in response to weather emergencies.

2.05.03. Tenant agrees to remain open for extended hours from 6:00 PM to 9:00 PM twice a month for special promotional days as may be designated by the Director. Landlord will give Tenant a minimum of 45 days written notice prior to these events.

2.05.04. TENANT understands and agrees that any violation of the above stated operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation during any one year period shall result in a written notice from CITY.
2. TENANT shall pay CITY $50.00 for each violation thereafter occurring during that one year period.
3. At the Landlord's option, the fifth or any succeeding violation occurring during a one year period may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.06. The Tenant agrees to comply with any and all sign design guidelines, provisions, and limitations in place now or in the future, including those within the City of San Antonio Unified Development Code and any applicable Master Plans. Tenant shall not place any signs on the Premises that are not directly related to the provision of Tenant's commercial operations. Tenant shall not place any political signs.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Common Area Maintenance (CAM) Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated.

3.02. Base Rent is comprised of charges for leased retail space. Tenant shall not be charged for Outdoor Display Area depicted in Exhibit B. Base Rent, Common Area Maintenance (CAM) Charges, and Utilities payment for the first year of the Initial Term are as follows:

	Amount Per Square Foot Per Month	**Square Feet**	**Total Amount Per Month**
Base Rent	$1.00	1235	$1235.00
Common Area Maintenance Fees	$0.12	1235	$148.20
Utilities Fees	$0.23	1235	$284.05

3.03. Base Rent, Common Area Maintenance Fees, and Utilities Fees are as set forth above. Base Rent will increase 2% annually on each anniversary of the Commencement Date. Common Area Maintenance Fees payment will increase 2.5% annually on each anniversary of

the Commencement Date. Utilities payment will increase 2.5% annually on each anniversary of the Commencement Date.

3.0. Tenant must pay Base Rent, Common Area Maintenance Fees, and Utilities Fees payments in the amounts described in this section in advance on the first day of each month, beginning the earlier of 60 days after lease commencement or the day that Tenant begins commercial operations selling its merchandise to the public, i.e. no rent shall be paid during the Construction Phase. If Tenant begins operations on a day other than the first day of the month Rent shall be prorated by the day for that month and shall be paid on the day on which operations commence. If Tenant is delinquent in paying any Rent, Tenant must pay to Landlord upon demand a late charge of $50.00. Tenant shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and regulations adopted by Landlord's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Landlord's other rights and remedies.

3.05. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant may not abate Rent for any reason.

4. Common Areas.

4.01. "Common Areas" mean all areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

4.02. Tenant has the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with others and subject to such reasonable rules and regulations as the Landlord may from time to time prescribe. Such use must be requested in writing a minimum of 30 days in advance.

4.03. Landlord may change the Common Areas, including, without limitation, their dimensions and location, without prior consultation with, Tenant.

4.04. Landlord will, subject to events beyond its reasonable control, manage, operate, and maintain the Common Areas, except for damage caused by Tenant or those whose presence is through Tenant.

5. Term, Termination, Renewal.

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

5.02. Either party may terminate this lease on 90 days' written notice.

5.03. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease for two additional two-year terms by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not

acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

5.04. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be renegotiated prior to the Renewal Term.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

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

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

6.03. Cooperate with the Landlord in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 that was reconfirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable.

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

6.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

6.06. After casualty loss not terminating the lease, rebuild the interior partitions/walls, ceilings, wiring, light fixtures, and plumbing.

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

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

6.09. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement

reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

6.10. Maintain a fully functioning lock system on the premises. Any changes to the lock systems shall receive the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission; and ensure that the Landlord through Director or his/her designee will be provided a copy of keys to enter the leased premises.

6.11. Sales Reports: Tenant shall provide Landlord a copy of all written sales tax reports reported to the Texas State Comptroller ("Comptroller") contemporaneously with such report being delivered to Comptroller. If Comptroller rules do not require Tenant to make a monthly sales tax report, Tenant's quarterly or annual report to the City shall include a monthly breakdown of total sales.

6.12. Tenant agrees to work with and/or participate in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

7. Indemnity.

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

7.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising

out of TENANT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

8. Tenant's Negative Promises.
Tenant promises that it will not:

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

8.02. Create a nuisance.

8.03. Interfere with any other tenant's normal business operations or Landlord's management of La Villita.

8.04. Permit waste.

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

8.06. Alter the Premises without Landlord's written consent.

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

8.08. Make repair, maintenance or cleaning requests to City personnel other than the City's On-site Facility Manager.

9. Landlord's Affirmative Promises.
Landlord promises that it will:

9.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

9.02. Obey all applicable laws with respect to Landlord's operation of La Villita and its Common Areas.

9.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, and windows, and (e) HVAC serving the Premises. Landlord's On-Site Facility Manager shall maintain a form for the reporting of repairs, shall track the progress of the requested repairs and be Tenant's point of contact for all official information regarding such repairs. Landlord shall within a reasonable period of time make all necessary repairs reported to the On-site Facility Manager.

9.04 Seek input from Tenants and take Tenant's concerns into consideration during programming, operation, policy and/or budget decisions. Landlord shall be open to accepting input from Tenant which can be submitted to the Facilities Manager in writing at any time during the Lease term.

10. Landlord's Negative Promise.

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

10.02. Landlord promises that it will not communicate with any person regarding lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.

11. Construction of Premises and Alterations.

11.01. All improvements required for Tenant's Work to be made to the Premises shall be substantially as set forth in **Attachment II** and any other requirements required by the City. Tenant shall construct and install all of its improvements (including both fixtures and equipment) to the Premises so that the Premises will provide attractive, well-designed facilities that promote the marketing of merchandise, products and/or services and present a positive image to La Villita patrons.

11.02. Tenant shall immediately apply for and diligently pursue, at Tenant's expense, any and all permits required to perform Tenant's Work. Tenant, at its expense, shall construct, equip and complete the Tenant's Work at all times with due diligence and in a good and workmanlike manner in accordance with all applicable legal and code requirements, in order to complete the same and open the Premises for business to the public no later than 120 days after the Commencement Date.

11.03. All such construction shall be completed free and clear of all liens, encumbrances and security instruments. If any mechanics', materialmens' or other lien is filed against the Premises or any interest in this Agreement as a result of any work or act of Tenant, Tenant shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 days after the filing thereof.

11.04. Tenant shall deliver to the Director a copy of the Certificate of Occupancy with respect to the Premises within 20 days after Tenant's receipt thereof from the City.

11.05. Tenant shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall Tenant make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission.

11.06. Tenant shall not attach anything to the exterior of the Premises including but not limited to telecommunications or other electronic equipment.

11.07. Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at

Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11.08. The City will provide rental abatements in the amount of 80% of approved, documented, and verified capital improvements to the lease space over the first five (5) years of the lease agreement. Any and all improvements must be reviewed and approved by City. *A capital improvement is defined as a permanent structural and/or physical improvement to the restoration of some aspect of a property that will either enhance the property's overall value or increase its useful life.*

12. Insurance.

12.01. Prior to the commencement of any work under this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department for Culture & Creative Development, which shall be clearly labeled "*La Villita – Retail Shops, Galleries & Working Artist Galleries*" 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 have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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 Department for Culture & Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02. 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 coverage 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.

12.03. 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 Agreement, and any extension hereof, at Tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	*AMOUNTS*
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	$500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for	For Bodily Injury and Property Damage of $1,000,000 per occurrence;

the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by Tenant g. Host Liquor Liability, if alcoholic beverages are served on the Premises h. Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
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

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

12.05. 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 endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Tenant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Tenant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department – Purchasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured 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; and
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

12.08. In addition to any other remedies the City may have upon Tenant'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 Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

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

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

12.11. 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.

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

12.13. If Tenant makes leasehold improvements, Tenant must 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 required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover 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 maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be

granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

12.14. Tenant understands and agrees that violation of the insurance requirements of this section would be a material breach of this lease and cause for the Landlord to terminate without the opportunity to cure. Because Landlord's damages from such a breach would be difficult to estimate or quantify, Tenant accepts the amount of $50 per day in violation of this section as a reasonable, negotiated estimate of Landlord's damages.

13. Release of Claims/Subrogation.

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

14. Environmental Matters.

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

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

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

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

14.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

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

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

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

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

15. Landlord's Municipal Powers.

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

16. Prohibited Interests in Contracts.

16.01. 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.

16.02. Tenant warrants and certifies as follows:

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

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

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

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, if funding is available, at its expense, restore the roof, foundation, exterior doors, windows, Common Areas, and structural soundness of the exterior walls of the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenantable after the casualty; the Rent will be adjusted as may be deemed fair and reasonable by Landlord.

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

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

17.06 If, during any approved renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may as its sole remedy terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.07 If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

18. Condemnation/Substantial or Partial Taking.

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

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

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

19. Holdover.

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended.

20. Contractual Lien.

20.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to

any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

20.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (A) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

20.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

21. Default, Remedies for Default.

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

21.01.01. Tenant fails to pay any installment of Rent when due.

21.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not

cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

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

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

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

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

21.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises.

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

21.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

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

21.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to

Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

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

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

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

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

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

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

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

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

21.03. *Repossession and Alteration of Locks*. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings

or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

21.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

21.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

21.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such

purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

21.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

21.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

21.11. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable

law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

22. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

22.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

22.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

22.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

22.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

(i) violate any restriction, covenant, or requirement contained in the lease of another tenant of La Villita;

(ii) adversely affect the reputation of La Villita; or

(iii) be incompatible with other users of La Villita.

22.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

22.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any

damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

23. Tenant's Bankruptcy.

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

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

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

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

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

23.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

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

delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

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

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

24. Warranty Disclaimer.

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

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

25. Abandoned Property.

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

26. Appropriations.

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

27. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding,

or controlling the power to vote of 50% of the equity interest in Tenant. Tenant shall pay to Landlord an assignment fee of $2,000.00 for any assignment.

28. Dispute Resolution.

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

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

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

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

28.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

28.06. Mediator fees must be borne equally.

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

29. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

29.12. *Administrative Actions and Agreements*. The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents,

certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

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

29.15 **Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

30. Night in Old San Antonio (NIOSA) and Other Events.

30.01. The Landlord reserves the right to grant the San Antonio Conservation Society or its successors, assigns, or subcontractors a Lease of all or any portion of adjacent property and/or a concession to sell beverages, food, and other items on all or any portion of La Villita, other than the premises hereby expressly demised, during specified hours on those dates in each year of the duration of the lease in which the Society may sponsor all or any part of the event known as NIOSA within La Villita. The Tenant expressly recognized that any right, privilege, or leasehold interest granted to the San Antonio Conservation Society for NIOSA under a separate lease and/or concession contract controlling access to La Villita is superior to any such right, privilege or leasehold interest granted Tenant under this Lease Agreement.

30.02. Rental Fee will be abated during the 16 days annually during month which NIOSA occurs. All other Fees will not be abated.

30.03. Except in the case of NIOSA and holidays stated above, the gates to La Villita will remain open from 7:00 a.m. until 6:00 p.m. daily. However, the Tenant understands, acknowledges and agrees that the Landlord will also from time to time accommodate various functions or events. Such accommodation may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises entrance free of charge before 6:00 P.M. The Tenant expressly recognizes that any such accommodation and also any and all of the Landlord's fee simple ownership rights and interest as Landlord hereunder are superior to any right, privilege or leasehold interest granted the Tenant under this Lease Agreement and the Tenant hereby agrees to cooperate fully with the Landlord on notification of such accommodation. The Tenant further waives any and all claims for damages, including but not limited to, loss of business, which the Tenant may suffer as a result of any such accommodation by the Landlord as limited by this paragraph.

31. Public Information.

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

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

Landlord:	**Tenant:**
City of San Antonio, a Texas municipal corporation	**Marisol P. Deluna,** Sole Managing Member and Chief Executive Officer
_____	Marisol Deluna
Signature	Signature
_____	MARISOL DELUNA
Name	Name
_____	CEO
Title	Title
_____	OCTOBER 19, 2015
Date	Date

Approved as to Form:

_____

City Attorney

Exhibit A: La Villita Building Map

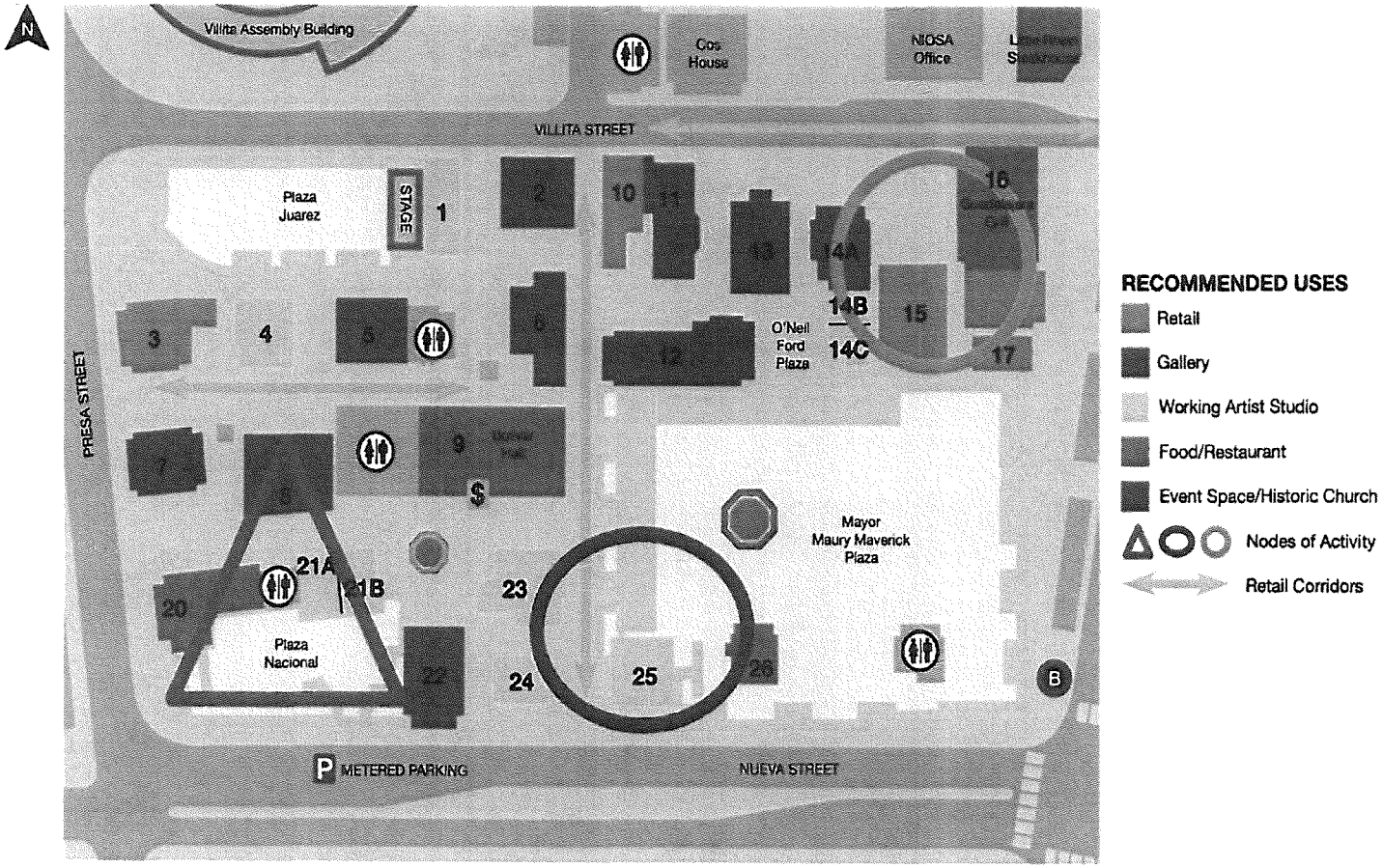
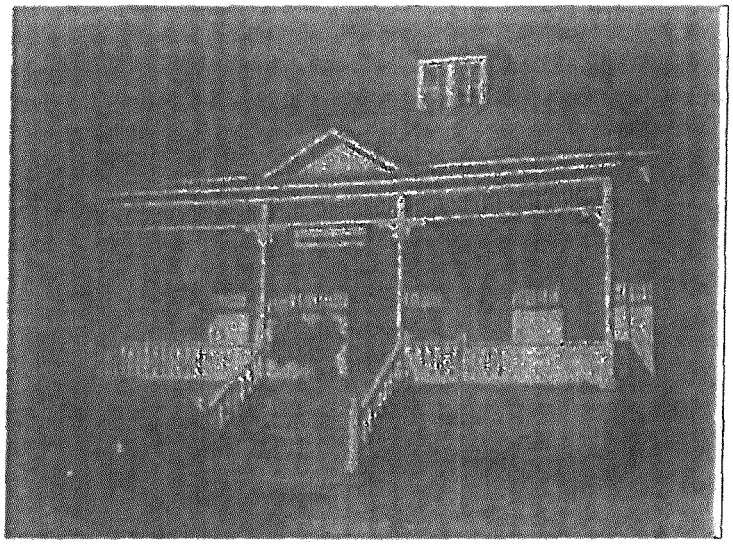


Exhibit A: La Villita Building Map

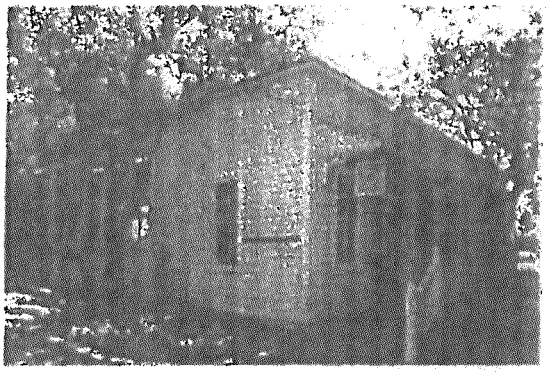


BUILDING 22
1235 sq ft
Use: Gallery

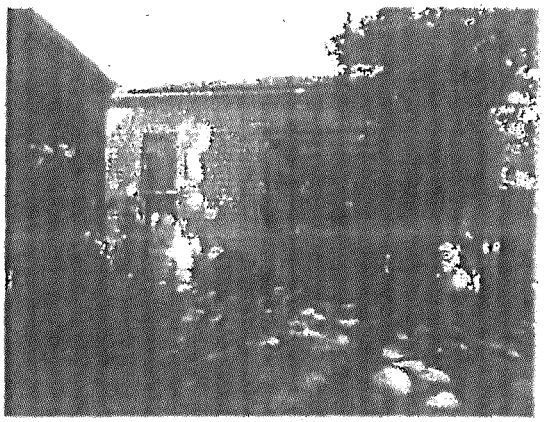
Shafer House, c. 1888
This house was built by A.H. Shafer after he purchased the property in 1888. It was advertised in the early 1900's as a "nicely furnished apartment with hot and cold running water, electric lights and gas."

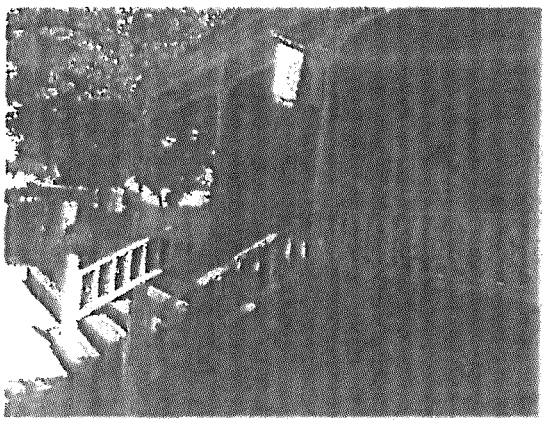
GENERAL ASSESSMENT RATING: 5 – Excellent

EXTERIOR FEATURES



Walls. Framed walls with wooden siding are in good condition.
Roof. Metal roof appears to be in good condition, with some rust. Should be painted.
Windows and doors. Wooden window frames and sash in good condition.





INTERIOR FEATURES

Floors. Wooden floors in satisfactory condition may need refinishing. Partially covered by carpet.

Ceilings. Combination wood boards, beaded board, and gypsum wallboard. Slight water damage visible at gypsum wallboard, but otherwise in good condition.

Walls. Walls are a combination of exposed gypsum wallboard and wooden boards. Good condition. Storage room has evidence of moisture damage at wooden boards.

Attachment I

Refer to Proposed Plan for description of goods, products, and items to be sold and images of examples.

PROPOSED PLAN

Introduction

Marisol Deluna has launched an initiative to promote the fashion arts in San Antonio. Her Working Artist Studio and Gallery at La Villita will be at the center of this initiative and function as a design studio, apparel cutting and sewing operation, retail outlet and education center for fashion design and related trades. The multipurpose use of the studio will draw both local residents and tourists to La Villita.

The respondent to the solicitation, Marisol Deluna New York LLC, is a newly formed, Texas limited liability company that is wholly owned by Ms. Deluna ("MDNY"). MDNY will produce and offer for sale *Marisol Deluna New York* brand clothing and accessories. Ms. Deluna will design textile prints as well as apparel and fashion accessories at the studio and with local seamstresses producing garments at the studio. The studio will also function as a storefront retail space for visitors to La Villita where they may purchase items produced at the studio. A majority of the items exhibited and sold will be created in the studio, although some aspects of the production will necessarily occur outside the studio.

MDNY will share the studio with the Marisol Deluna Foundation, Inc. (the "Foundation") on a rent- and fee-free basis. The Foundation is a 501(c)(3) Texas nonprofit corporation that supports the education and mentoring of students and designers in fashion and design arts. The Foundation works in partnership with civic, corporate and government entities to promote educational initiatives and community benefits within the State of Texas. The Foundation will offer educational programs at the studio that will draw local residents to La Villita.

The Studio

MDNY currently occupies the premises of Building 22 of La Villita under a short-term license agreement with the City of San Antonio. Ms. Deluna envisions an open studio environment without barriers between the design, fabrication and sale of the clothing. She believes that the studio will connect consumers with the fashion design and art trades that produce the items for purchase.

Building 22 consists of a large room, three smaller rooms, a kitchen and a bathroom. Of the 1,235 square feet of floor space, the majority of the space will be used for design and fabrication operations. The remaining space will be utilized for a retail shop in addition to an operational office, a dressing room and storage for raw materials and finished goods inventory. The Foundation will also use the large room for educational programs.

The Products Created and Offered for Sale

Ms. Deluna will design prints for textiles, apparel and fashion accessories at the studio and most of the apparel and fashion accessories offered for sale at the studio will be produced within the studio as well as seamstresses located in San Antonio and across the State of Texas.

Retail MDNY lifestyle items include apparel, accessories and fashion for the home. Additional items created exclusively for those visiting La Villita include custom designs that showcase San Antonio and Texas pride on T-shirts, pillows, ceramics and jewelry to name a few. Please refer to the images immediately following this section.

Marketing Plan and Authentic Spirit of San Antonio

MDNY will generate interest in its La Villita location through social media, educational events hosted by the Foundation and fashion presentations of Ms. Deluna's work on the premises. Ms. Deluna has used social media to build awareness of the *Marisol Deluna New York* label. The Marisol Deluna New York Facebook page currently has 5,900 followers. Ms. Deluna successfully has built her brand without the use of traditional advertising. Ms. Deluna will have at least four fashion presentations each year at the studio that will be publicized through traditional press as well as social media. MDNY has budgeted close to $20,000 for such events. The Foundation currently offers educational programs at the studio for students interested in the fashion arts. The fashion presentations and educational programs will create interest in the studio and draw visitors to La Villita.

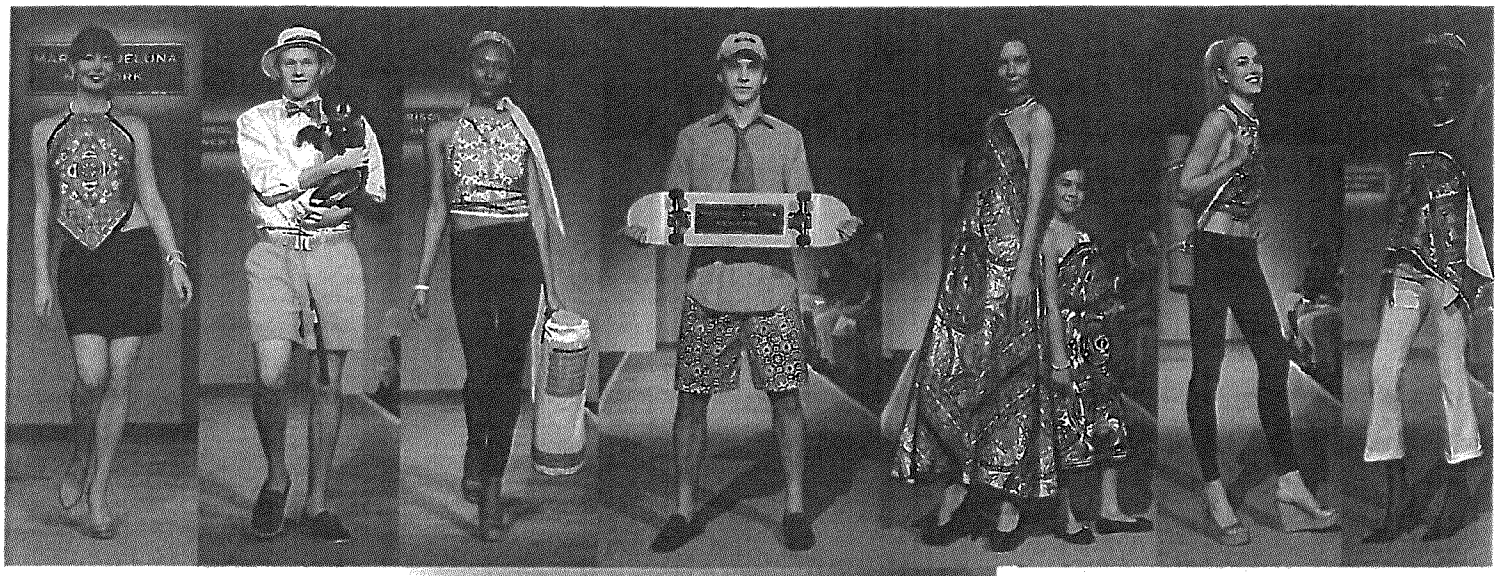
Marisol Deluna is a native of San Antonio, and her designs draw on the rich heritage of the City as exhibited by the sample of designs included in this proposal. The retail space will celebrate the City's heritage with wrought iron fixtures, local folk art and antique and repurposed furniture. While Ms. Deluna draws inspiration from this heritage, the studio embodies an ambitious vision for fashion in the City. By creating and producing apparel and fashion accessories under the *Marisol Deluna New York* label here in San Antonio, the studio will provoke visitors to see the true potential of the City.

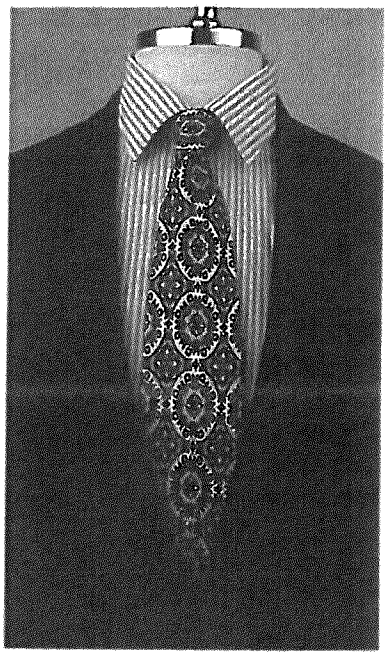
MDNY seeks to be fully operational as a working atelier and retail shop before the middle of November 2015 and to generate revenues sufficient to generate income from operations within the first year of commencing retail operations. In order to achieve these goals, MDNY is currently investing in equipment and preparing the space to commence cutting and sewing operations. In addition, MDNY is producing inventory through independent sewing contractors in order to meet the anticipated opening of the retail outlet. MDNY will staff the retail operation with individuals who have retail experience. Production will commence on the premises as soon as practicable.

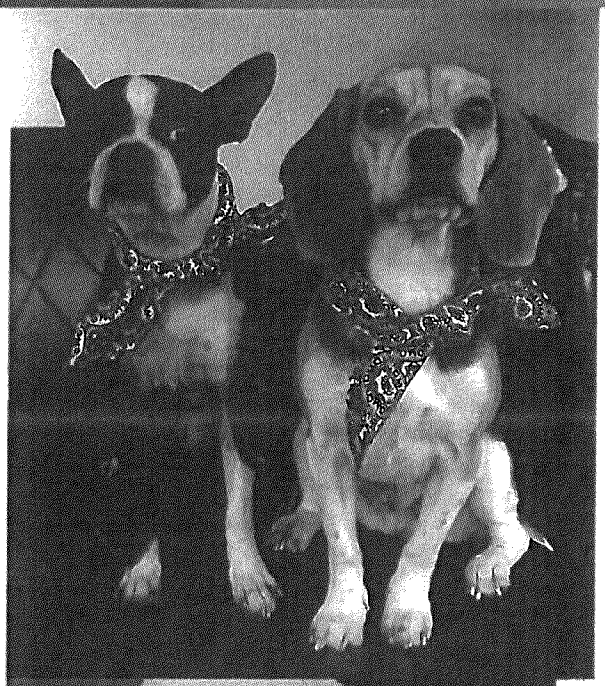
Building 22 and Alternate Space at La Villita

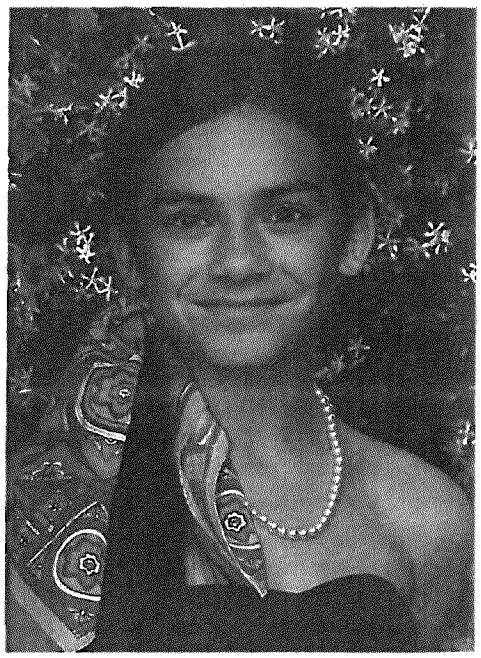
Ms. Deluna believes that Building 22 meets the space requirements of operating both cut and sew production and retail sales. The space is particularly well suited for fashion presentations by MDNY and educational programs of the Marisol Deluna Foundation, Inc. At this time, MDNY is not interested in alternative space at La Villita.

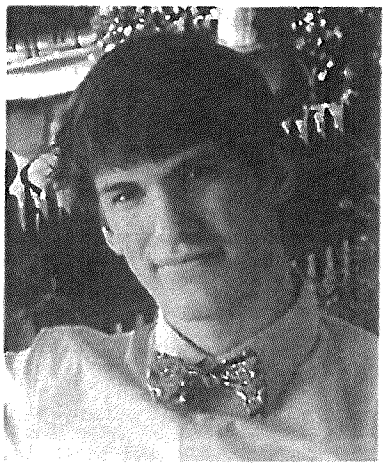
MARISOL DELUNA
NEW YORK®

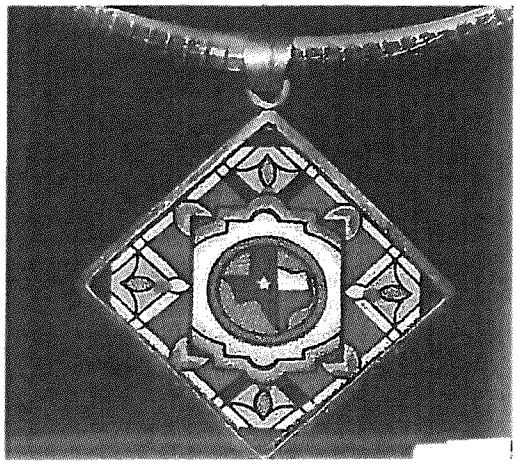


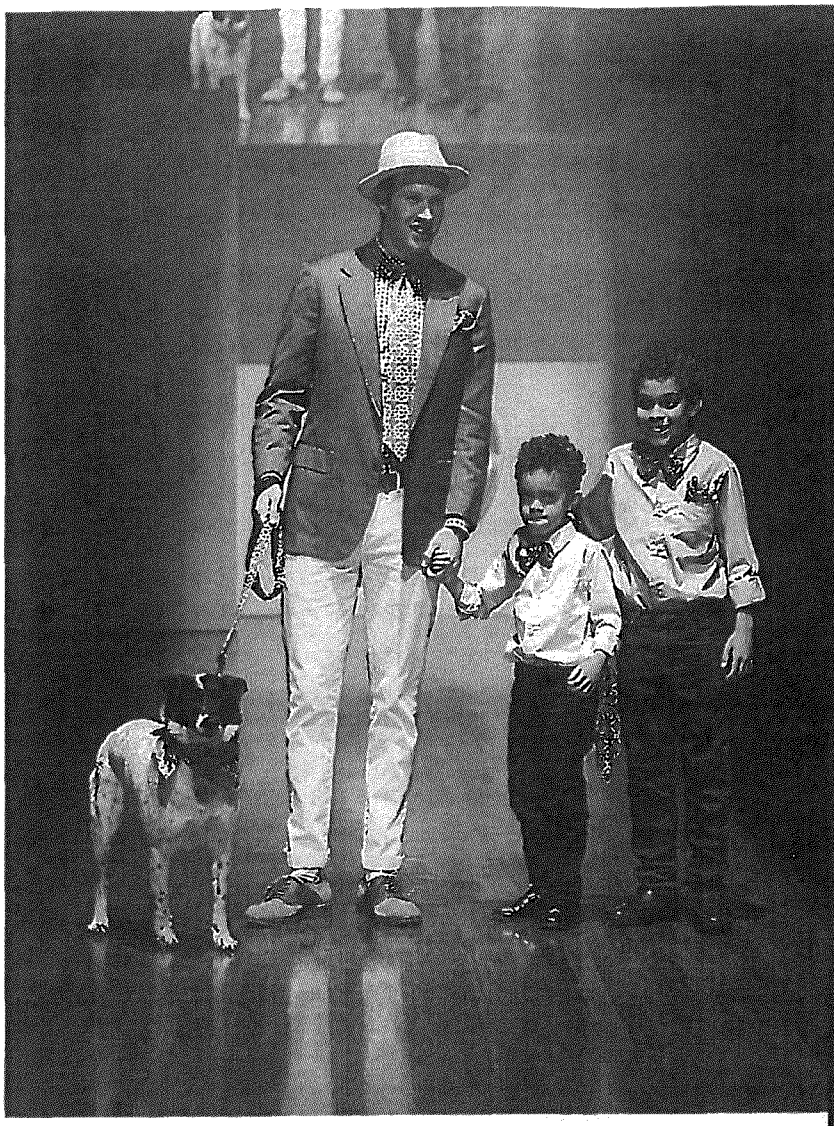












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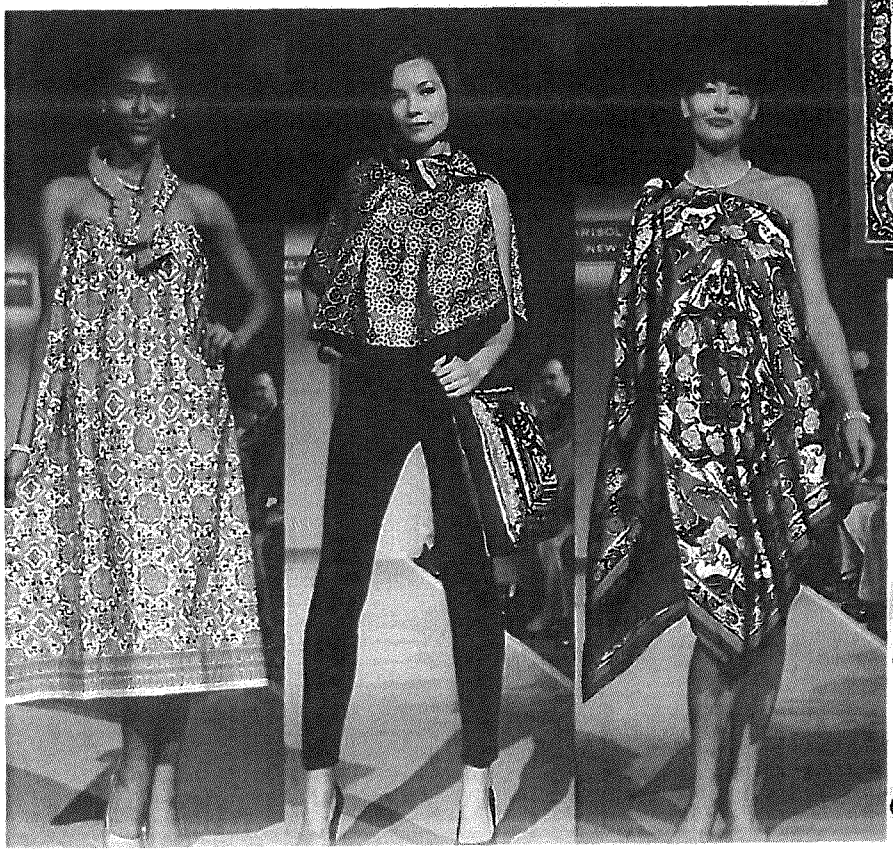

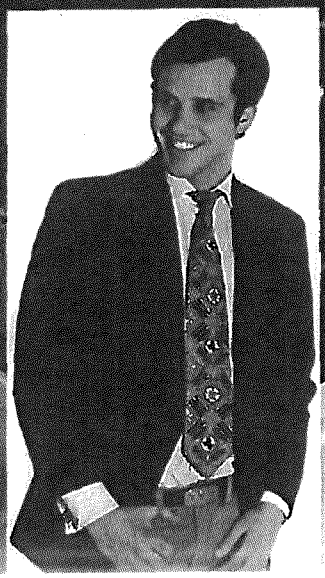

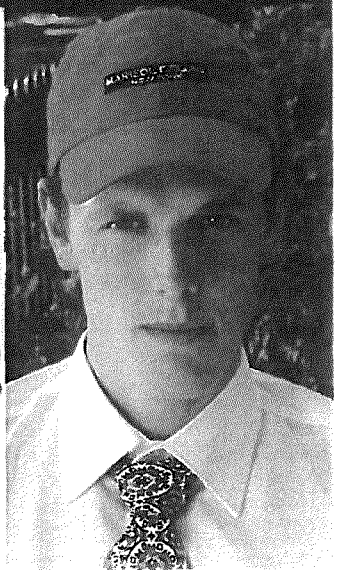

Attachment II

Merchandising Plan
Building 22 consist of a large room and three smaller rooms. The majority of the space will be used for design and fabrication operations. The remaining space will be utilized for a retail shop in addition to an operational office, dressing room and storage of raw materials and finished goods inventory. The Foundation will use the large room for educational programs.

The retail space will celebrate the City's heritage with wrought iron fixtures, local fold art and antique and antique and repurposed furniture. The studio will embody an ambitious vision for fashion in the City. By creating and producing apparel and fashion accessory under the Marisol Deluna New York label in San Antonio, the studio will provoke visitors to see the true potential of the City.

Proposed Tenant Improvements
Marisol Deluna New York, LLC finds the premises adequate for its operation in its current condition and is not proposing any capital improvements at this time. The premises will be cleaned and painted, and incorporate new fixtures into the space.