

AN ORDINANCE 2010-05-13-0422

AUTHORIZING THE SECOND AMENDMENT TO A LEASE FROM B&B SOUTH PARK MALL, LLC, FOR A 10-YEAR TERM, FOR SPACE AT 2310 S.W. MILITARY DRIVE, LOCATED IN COUNCIL DISTRICT 4, FOR USE AS A COMMUNITY LINK SERVICE CENTER FOR A MONTHLY RENTAL RATE OF \$3,796.58 IN THE FIRST YEAR AND INCREASING TO \$5,068.25 IN YEAR 10.

* * * * *

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

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

SECTION 2. Based on data provided by the department, The Office of Management and Budget will process administrative adjustments to the current year operating budget.

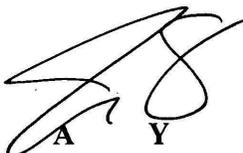
SECTION 3. Contingent upon the above administrative adjustments, funding in the amount of \$11,389.74 for this ordinance is available in Fund 11001000, Cost Center 2101020004, General Ledger 5206010, as part of the Fiscal Year 2010 Budget.

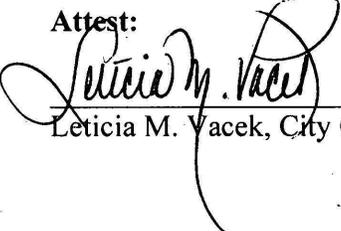
SECTION 4. Payment not to exceed the budgeted amount is authorized to B&B South Park Mall, LLC and should be encumbered with a purchase order.

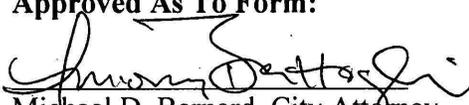
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

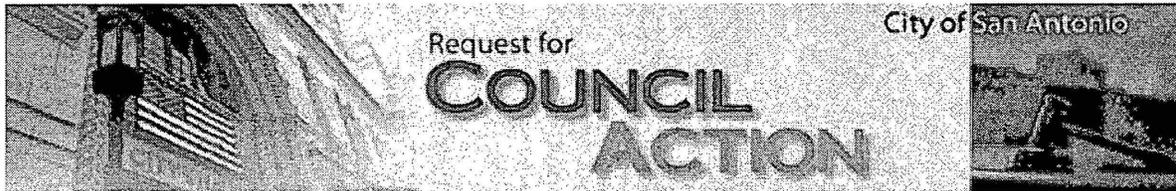
SECTION 6. This ordinance becomes effective ten days after passage unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 13th day of May 2010.


M A Y O R
Julián Castro

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

FOR Michael D. Bernard, City Attorney



Agenda Voting Results - 24

Name:	10, 11, 14, 16, 17, 20, 21, 22, 23, 24, 25, 26A, 26B, 26C, 26D, 26E, 26G, 29, 31, 32, 33, 34, 35, 37						
Date:	05/13/2010						
Time:	02:35:58 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the second amendment to a lease from B&B South Park Mall, LLC, for a 10-year term, for space at 2310 S.W. Military Drive, located in Council District 4, for use as a Community Link Service Center for a monthly rental rate of \$3,796.58 in the first year and increasing to \$5,068.25 in year 10. [Penny Post oak Ferguson, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1	x					
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7	x					
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Attachment I

SECOND AMENDMENT TO LEASE
(South Park Mall: Community Link Service Center)

THIS SECOND AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the _____ day of _____, 2010, by and between B&B SOUTH PARK MALL LLC, a Delaware limited liability company ("Landlord"), and CITY OF SAN ANTONIO, a Texas municipal corporation ("Tenant") acting by and through its City Manager or designee, pursuant to City Ordinance No. _____, passed and approved on _____, 2010 (the "Approval Date").

RECITALS

A. Landlord, as successor-in-interest to SoPark Limited Partnership, and Tenant are parties to a written shopping center lease agreement dated July 17, 2000 for the lease of certain premises ("Premises") known as Store Number 530, consisting of approximately 1,843 square feet, as more particularly described in said lease, located in South Park Mall, San Antonio, Texas (the "Shopping Center").

B. Said lease has not been modified or assigned, except as follows:

First Amendment to Lease dated as of November 22, 2004.

Said lease, together with such modification, is herein referred to as the "Lease".

C. Landlord and Tenant desire by this Amendment to extend the term of the Lease and to otherwise amend the Lease as set forth below.

D. Capitalized terms not defined in this Amendment shall have the meanings ascribed to them in the Lease. Except as set forth herein, the terms and conditions of the Lease remain in full force and effect.

TERMS

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

Lease Term. In Section 1(i) of the Lease, the term "June 30, 2010" is hereby deleted and replaced with the term "June 30, 2020."

Fixed Minimum Rent. Section 6(b)(vi) of the Lease is hereby deleted and the following is hereby added to the end of Section 6(b) the Lease:

“(vi) \$45,558.96 per annum, payable in equal installments, in advance, at the rate of \$3,796.58 per

month from July 1, 2009 through and including June 30, 2012;

(vii) \$47,918.00 per annum, payable in equal installments, in advance, at the rate of \$3,993.17 per month from July 1, 2012 through and including June 30, 2015;

(viii) \$53,447.00 per annum, payable in equal installments, in advance, at the rate of \$4,453.92 per month from July 1, 2015 through and including June 30, 2017; and

(ix) \$60,819.00 per annum, payable in equal installments, in advance, at the rate of \$5,068.25 per month from July 1, 2017 through and including June 30, 2020.”

Air Conditioning Unit. Landlord shall replace the air conditioning unit serving the Premises within one hundred twenty (120) days that a fully executed lease amendment is delivered to the parties. Notwithstanding anything to the contrary contained herein or in the Lease, in the event that the Lease terminates prior to the expiration of the Lease Term as extended by this Amendment, Tenant shall reimburse Landlord an amount equal to the remaining unamortized balance of Landlord’s costs incurred in connection with the replacement of such air conditioning unit as shown on Landlord’s books and records maintained for Federal Income Tax purposes, not to exceed costs using the straight line method of accounting for such costs over the ten (10) year period that the Lease Term is extended by this Amendment without allowing interest (the “HVAC Reimbursement”). Landlord shall confirm in writing the total cost incurred in connection with the replacement of such air conditioning unit (the “HVAC Cost”) within 30 days of the completion of the installation.

Tenant’s Right to Terminate. Tenant shall have the right to terminate the Lease by written notice to Landlord given during one of the following periods: July 1, 2012 through September 1, 2012, July 1, 2014 through September 1, 2014 or July 1, 2018 through September 1, 2018. Tenant’s notice shall state the effective date of termination, which shall be not less than one hundred twenty (120) days after Landlord receives such notice from Tenant, and which notice shall be accompanied by the HVAC Reimbursement. Such termination shall only be effective if accompanied by the HVAC Reimbursement provided Landlord has timely delivered to Tenant the details of the HVAC Cost as provided in Paragraph 3 above. In the event Landlord has failed to timely deliver the HVAC Cost then Tenant shall have forty five (45) days from the date that Landlord has confirmed the cost as of the Tenant’s specified termination date to submit payment for the HVAC Reimbursement. If Tenant so elects to terminate the Lease, the Lease Term will end upon such effective date of termination, and thereafter the parties will be released from all further obligations under the Lease except for accrued obligations then unpaid or unperformed.

Hours of Operation. Notwithstanding the terms of Section 22(b) of the Lease, the

parties hereby acknowledge that Tenant may reduce its hours or days of operation if necessary given Tenant's budget restraints.

Maintenance and Repair. Tenant acknowledges and agrees that Tenant shall inspect the Premises and take any actions necessary to make the Premises in compliance with the provisions of Section 28(b) of the Lease.

Budget. Landlord understands and agrees that Tenant has projected costs for the Lease and Tenant expects to pay all obligations of the Lease from projected revenue sources, but all obligations of Tenant are subject to annual appropriation by the City Council in future years, after September 30, 2010. Accordingly, in the event Tenant shall fail to appropriate sums to pay any of the Tenant's obligations under the terms of the Lease, and due to such failure to appropriate, fails to pay such obligations, Landlord's sole remedy shall be to terminate Tenant's rights under the Lease and Tenant shall have no further obligations under the Lease. Tenant agrees to give Landlord a minimum of thirty (30) days prior written notice of any non-appropriation.

Notice Addresses. The parties hereto acknowledge that Landlord's and Tenant's addresses for notice and for receipt of payments are as follows:

Landlord's Notice Address:

B&B South Park Mall LLC
124 Johnson Ferry Road
Atlanta, GA 30328
Attn: Asset Manager/South Park Mall

For receipt of payments:

B&B South Park Mall LLC
PO Box 934706
Atlanta, GA 31193-4706

with a copy to:

Jones Lang LaSalle Americas, Inc.
3344 Peachtree Road NE, Suite 1200
Atlanta, GA 30326
Attn: Counsel/South Park Mall

Tenant's Notice Address:

City of San Antonio
P.O. Box 829966
San Antonio, Texas 78283-3966
Attn: Director, Capital Improvements Management Services

with a copy to:

City Of San Antonio, City Clerk
P.O. Box 829966
San Antonio, Texas 78283-3966

Ratification of Lease. The Lease as amended by this Amendment is hereby ratified, confirmed and approved in all respects.

Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter hereof. There are no agreements between Landlord and Tenant relating to the Lease or the Premises other than those set forth in writing and signed by the parties. Neither party hereto has relied

upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

Successors and Assigns. The provisions contained herein shall bind and inure to the benefit of the legal representatives, successors and assigns of the parties hereto, subject to the applicable provisions of the Lease.

IN WITNESS WHEREOF, this Amendment shall be effective upon ten (10) days after the Approval Date.

LANDLORD: B&B SOUTH PARK MALL LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

TENANT: CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Title: City Attorney