SW/vv
08/14/14
Item #12

AN ORDINANCE 2014-08-14-0576

AUTHORIZING A FIVE-YEAR AGREEMENT WITH GALLERY VENTURES LIMITED, L.L.C. D/B/A GALLERY VETRO! CREATIVE ARTGLASS TO OPERATE A RETAIL ESTABLISHMENT FROM 250 E. HOUSTON, LOCATED AT STREET LEVEL WITHIN THE HOUSTON STREET PARKING GARAGE.

* * * * *

WHEREAS, the City of San Antonio owns and operates the Houston Street Parking Garage, located at the southwest corner of Houston and Navarro Streets, which includes office/retail space at street level; and

WHEREAS, on August 31, 2014, 250 E. Houston will be vacated by Foto Center, Inc. d/b/a The Pink Giraffe after thirty-two years of operation at this location; and

WHEREAS, in order to keep this key retail space active, staff entered into negotiations with Gallery Vetro, currently located at 513 E. Houston, in May 2014 to occupy 250 E. Houston upon The Pink Giraffe's termination; and

WHEREAS, Gallery Vetro has been a successful downtown San Antonio retail establishment for over fourteen years; and

WHEREAS, Gallery Vetro's successful track record and retail mix will further enhance the downtown visitor and resident experience in and around the Houston Street Garage; and

WHEREAS, the proposed lease area is 2,187 square feet; and

WHEREAS, the initial term of the agreement will be for five years commencing on September 1, 2014 through August 31, 2019; and

WHEREAS, the agreement provides for one five-year renewal option; and

WHEREAS, rent payments will begin three months after the lease commencement; and

WHEREAS, Gallery Vetro will be responsible for completing improvements/upgrades to the space and in consideration may be abated up to $34,248.42 in rent; and

WHEREAS, the actual abatement amount will be determined based on Gallery Vetro's submission of receipts showing proof of payment for completing improvements/upgrades; **NOW THEREFORE:**

SW/vv
08/14/14
Item #12

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

SECTION 1. The City Manager or her designee, or the Director of the Center City Development and Operations Department or his designee, is authorized to execute a five-year agreement with Gallery Ventures Limited, L.L.C. d/b/a Gallery Vetro! Creative Artglass to operate a retail establishment from 250 E. Houston, located at street level within the Houston Street Parking Garage. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds generated by this ordinance will be deposited into Fund 53001000, Internal Order 219000000116 and General Ledger 4401120.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED this 14th day of August, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**12 (in consent vote: 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18)**
Date:	08/14/2014
Time:	11:53:42 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a five-year lease agreement with Gallery Venture Limited, L.L.C. d/b/a Gallery Vetro! Creative Artglass to operate a retail establishment from 250 E. Houston, located at street level within the Houston Street Parking Garage. [Carlos Contreras, Assistant City Manager; Lori Houston, Director; Center City Development and Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x			x	
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Retail Lease

(Gallery Vetro! Creative Artglass/Houston St. Garage)

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1. Basic Information, Definitions.

Effective Date: The effective date of the Authorizing Ordinance

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Center City Development Office)
Tenant:	Gallery Ventures Limited, L.L.C. d/b/a Gallery Vetro! Creative Artglass
Tenant's Address:	250 E. Houston Street, San Antonio, Texas 78205
Premises:	Approximately 2,187 square feet of leasable floor area being the east of five feet of Lot 5 and all of Lots 6, 7, and 8, Block 21, New City Block 406 San Antonio, Texas of leasable floor area, known a 250 E. Houston, as depicted on Exhibit A, which is incorporated into this Lease for all purposes as if fully set forth.
Permitted Use:	Retail Gift Shop
No. Parking Spaces:	1 free space, on a space-available basis in the Garage
Commencement Date:	September 1, 2014
Initial Term:	Five years.
Address for Payment of Rent:	City of San Antonio Financial Services Division Revenue Collections P.O. Box 839975 San Antonio, TX 78283-3975
Common Areas:	All facilities and areas of the Building and Parking Facilities and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has exclusive control over and right to manage the Common Areas.
Essential Services	(a) HVAC to the Premises reasonable for the Permitted Use; (b) hot and cold water for lavatories and drinking; and (c) electricity for normal retail usage.

2. Grant.

2.1 Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. Any calculation in this Lease based on the square footage of the Premises is based on 2,187 square feet. Tenant's parking rights will be in the basement of the Garage,

but Landlord may change the location to another part of the Garage.

3. Rent.

3.1. Rent includes all sums due to Landlord under this lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, whether or not specifically described as Rent in the location in this Lease where the payment is provided.

3.2 Base Rent is as follows:

Term	Lease Rate	Monthly	Lease Total
12/1/2014 - 8/31/2015	$20.88	$3,805.38	$34,248.42
9/1/2015 - 8/31/2016	$21.51	$3,920.20	$47,042.37
9/1/2016 - 8/31/2017	$22.16	$4,038.66	$48,463.92
9/1/2017 - 8/31/2018	$22.82	$4,158.95	$49,907.34
9/1/2018 - 8/31/2019	$23.50	$4,282.88	$51,394.50
Total			$231,056.55

3.3. Tenant must pay Base Rent and Additional Rent in the amounts described in this section in advance on the first day of each month. A fifty ($50.00) dollar late charge will be assessed on any payment received on any day thereafter. Tenant is responsible for remitting rent as established above regardless of receipt of invoice from City.

3.4. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.5. Tenant's covenant to pay Rent and Landlord's covenants are independent.

3.6 In consideration of improvements to be made by Tenant, City may abate up to $32,248.42, an amount equivalent to 9 months of the Initial Term's rent. The actual abatement amount will be determined based on Tenant's submission of receipts showing proof of payment for authorized improvements, which may include HVAC replacements, flooring upgrades, ceiling upgrades, electrical upgrades, and construction of a larger storage/office space including break area. Tenant shall provide proof of

payment for authorized improvements by no later than December 31, 2014 in order for abatement to be considered.

4. Term, Renewal.

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

4.2. If Tenant is not in default under the Lease, Tenant may renew this Lease for one additional five-year term by giving Landlord six months prior written notice before expiration of the Initial 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.

4.3. Renewal Terms are governed by this Lease just as the Initial Term, except for rent. Rent during any renewal year will be set at 3.00% of Rent the previous year.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

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

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

5.3. Obtain and pay for telephone, security, and waste collection services used by Tenant.

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

5.5. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear expected.

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

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

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

5.9. On 15 calendar days written 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. Notwithstanding the foregoing to the contrary, in no event shall Tenant be required to submit Tenant's financial statement(s). If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender upon fifteen calendar days written request a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

5.10. Arrange with Landlord in advance for any heating, air-conditioning, or electrical needs in excess of the services provided by Landlord and pay for such additional services as billed by Landlord.

5.11 Keep the Premises clean and tidy, including cleaning the plate glass windows at the front of the Premises.

5.12. Upon termination of this Lease, whether by expiration or otherwise, Tenant must, not later than 60 days from the date of termination, remove all its furniture, fixtures, and equipment and must restore the Premises to white-box condition.

6. Tenant's Negative Promises.

Tenant promises that it will not:

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

6.2. Create a nuisance.

6.3. Interfere with any other tenant's normal business operations or Landlord's management of the Building.

6.4. Permit waste.

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

6.6. Change Landlord's lock system.

6.7. Alter the Premises, except as permitted herein.

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

7. Indemnity.

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

7.2 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 Landlord in writing within 24 hours of any claim or demand against the Landlord or Tenant known to Tenant related to or arising out of Tenant's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Tenant's cost. The Landlord shall have the right, at its option and at its own expense, to participate in such defense without relieving Tenant of any of its obligations under this paragraph.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

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

8.2. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.3. Provide the Essential Services.

8.4. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, and (d) structural soundness of the exterior walls. Doors, and corridors, and (e) HVAC, as well as plumbing that is exterior to the Premises.

8.5 Allow Tenant the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.

9. Landlord's Negative Promise.

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

10. Alterations.

10.1 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. Insurance.

11.1 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 Center City Development & Operations Department, which shall be clearly labeled "Gallery Ventures Limited, L.L.C. d/b/a Gallery Vetro! Creative Artglass" 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 Downtown Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

11.3 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:

Section Left Intentionally Blank

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $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. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. g. Explosion, Collapse, Underground h. Damage to property rented by you	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 $100,000
4. Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property

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

11.5 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: Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

11.6.2 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;

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

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

11.7 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.

11.8 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.

11.9 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 subTenant's performance of the work covered under this Agreement.

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

11.11 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.

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

12. Release of Claims/Subrogation.

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

13. Environmental Matters.

13. 1. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other

management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

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

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

13.4. 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 calendar days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

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

13.6. 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.

13.7. Landlord may conduct, at Landlord's expense after 24-hours' notice, except in case of emergency, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants.

13.8. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must

perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

13.9. 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. Landlord agrees not to pursue any environmental claims against Tenant for environmental problems on the Premises not caused by Tenant's operation of Tenant's business.

14. Landlord's Municipal Powers.

14.1 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, enforcement or implementation of various ordinances, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

15. Prohibited Interests in Contracts.

15.1. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

15.2. Tenant warrants and certifies as follows:

(i) Tenant and its officers, employees and agents to the best of Tenant's knowledge are neither officers nor employees of the City.

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

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

16. Casualty/Total or Partial Destruction.

16.1. If the Premises are damaged by casualty and can be restored within 90 calendar days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises the maintenance of which is not assigned to Tenant under this lease. 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 90 calendar 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.

16.2. If the Premises cannot be restored within 90 calendar days, 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 calendar days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

16.3. To the extent the Premises are untenantable after the casualty; the Rent will be adjusted as may be fair and reasonable.

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

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

17. Condemnation/Substantial or Partial Taking.

17.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Landlord, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

17.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

17.3. Tenant will have not claim to the condemnation award or proceeds in lieu of condemnation.

18. Holdover.

18.1 If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (a) Tenant is a tenant at sufferance and (b) the Base Rent is 110% of what it was immediately before the term ended.

19. Contractual Lien.

19.1 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 not or hereafter be placed in the Premises and all additions, accessions, and replacement thereto, 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 is cumulative with the statutory lien.

19.2 In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any 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 (b) 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 an 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.

19.3 The proceeds from any disposition of the Collateral, less any and all expenses connected with taking 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 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.

20. Default, Remedies for Default.

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

20.1.1. Tenant fails to pay when due any installment of Rent, and such default continues for ten calendar days after written notice from Landlord.

20.1.2. 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 calendar days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is intentionally false or misleading in any material respect when given to Landlord.

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

20.1.4. Tenant of the Lease 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.

20.1.5. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not

dismissed or such receivership or trusteeship vacated within 60 calendar days after such institution or appointment.

20.1.6. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Occupancy Commencement Date and continues after ten calendar days written notice to Tenant. 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.

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

20.1.8. 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.

20.1.9. 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.

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

20.2.1. 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.

20.2.2. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by

force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

20.2.3. 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.

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

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

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

20.3. *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.

20.4. *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.

20.5. *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 rent 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.

20.6. *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.

20.7. *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 written demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

20.8. *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-calendar-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.**

20.9. *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 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.

20.10. *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 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.

20.11. *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.

21. 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:

21.1. 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;

21.2. 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;

21.3. 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.

21.4. 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 the Building;

(ii) adversely affect the reputation of the Building; or

(iii) be incompatible with other users of the Building.

21.5. 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

21.6. 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.

22. 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:

22.1. "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.

22.2. "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.

22.3. 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.

22.4. 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.

22.5. 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.

23.6. 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 calendar days after Tenant's receipt of the proposal, but in no event later than ten calendar 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 calendar days after Landlord's receipt of the notice.

22.7. 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.

24.1. 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. 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.

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

26. Appropriations.

26.1 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.

27.1 Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignment 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.

28. Dispute Resolution.

28.1. 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.

28.2. 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.

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

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

28.5. 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.

28.6. Mediator fees must be borne equally.

28.7. 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.

28.8. In the event of litigation between the Landlord and the Tenant relative to rights, obligations and duties of either party under this Lease, each party shall pay its own attorneys' fees and costs. Further, Landlord hereby waives any claim(s) against Tenant and any related parties for consequential, exemplary, and/or punitive damages. **In addition, both parties hereby waive their rights to a trial by jury.**

29. Miscellaneous.

29.1. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

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

29.3. *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.

29.4. *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.**

29.5. *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.

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

29.7. *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 calendar 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.

29.8. *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.

29.9. *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. Notwithstanding the foregoing to the contrary, in no event shall Tenant be required to submit Tenant's financial statement(s).

29.12. *Administrative Actions and Agreements.* The Director of Center City Development and Operations Department and the Deputy Assistant Director of Center City Development and Operations Department 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.

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

29.14. *Exhibits.* All exhibits to this lease are incorporated into it for all purposes as if fully set forth. In cases of conflict between this lease and any of its exhibits, the provisions of the exhibits shall prevail.

30. Disclaimer of Warranties.

Tenant takes the Premises As-Is, with all faults. Landlord disclaims all warranties not expressed in this Lease and specifically disclaims a warranty of suitability for any purpose.

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.

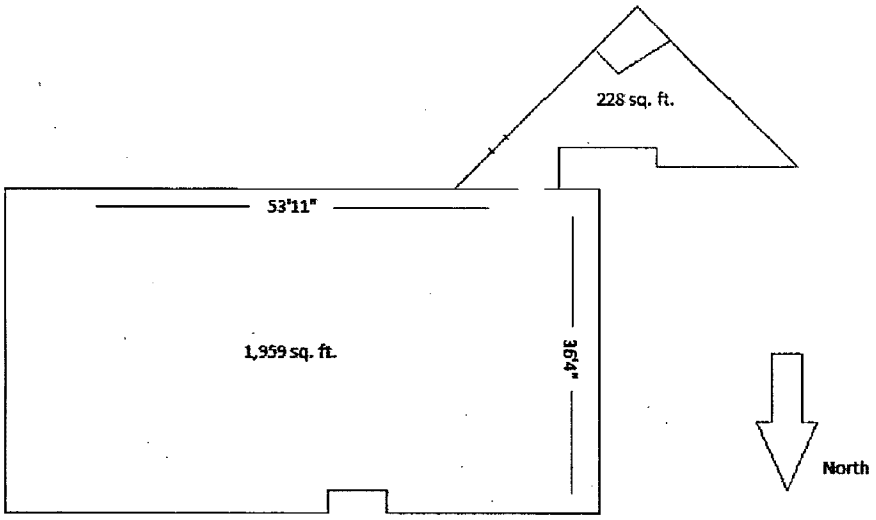
Landlord:	**Tenant:**
City of San Antonio, a Texas municipal corporation, by:	Gallery Ventures Limited, L.L.C. d/b/a Gallery Vetro! Creative Artglass:
_____ Name	PHILLIP SCHRANK Name
_____ Signature	Signature
_____ Title	MEMBER Title
_____ Date	JULY 22, 2014 Date

Approved As To Form:

_____
City Attorney

Exhibit A: Description of the Premises

250 East Houston



28.2. 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.

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

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

28.5. 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.

28.6. Mediator fees must be borne equally.

28.7. 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.

28.8. In the event of litigation between the Landlord and the Tenant relative to rights, obligations and duties of either party under this Lease, each party shall pay its own attorneys' fees and costs. Further, Landlord hereby waives any claim(s) against Tenant and any related parties for consequential, exemplary, and/or punitive damages. **In addition, both parties hereby waive their rights to a trial by jury.**

29. Miscellaneous.

29.1. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.