SW/vv
04/16/15
Item #13

AN ORDINANCE 2015-04-16-0309

AUTHORIZING A LEASE AGREEMENT WITH THE SAN ANTONIO TENNIS ASSOCIATION FOR USE OF MCFARLIN TENNIS CENTER FOR OFFICE SPACE AND TENNIS COURTS FOR THE PURPOSE OF PROVIDING ON-GOING TENNIS PROGRAMS, TOURNAMENTS AND RELATED RECREATIONAL SERVICES TO THE COMMUNITY.

* * * * *

WHEREAS, the San Antonio Tennis Association (SATA) is a not-for-profit, volunteer-based community tennis organization affiliated with the United States Tennis Association (USTA) whose vision is to grow tennis in the greater San Antonio community; and

WHEREAS, SATA, whose presence at McFarlin Tennis Center dates back to the 1940's, promotes the lifetime sport of tennis as a means of healthful recreation and physical fitness, and provides programs for players of all ages and abilities, regardless of race, creed, color, national origin, or physical challenge; and

WHEREAS, SATA partners also include local schools, civic organizations, and other tennis associations in San Antonio and the surrounding area; and

WHEREAS, SATA has approximately 3,200 individual and organizational members and attracts many tennis players through more than fifteen (15) local, sectional and national USTA sanctioned tournaments each year; and

WHEREAS, in addition to USTA Programs, SATA offers additional programming for persons with disabilities, including Wounded Warriors and Special Olympics/Adaptive Tennis players; and

WHEREAS, the current Lease Agreement, which began on May 1, 2012, terminates on April 30, 2015; and

WHEREAS, the proposed new Lease Agreement will maintain SATA's presence at McFarlin Tennis Center through April 30, 2018, with the option to extend the lease for two (2) additional one-year periods; and

WHEREAS, SATA will continue to operate and provide tennis programs and tournaments for players of all ages and abilities at the site; and

WHEREAS, in lieu of rent, SATA will make a minimum investment of $3,000.00 annually; and

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WHEREAS, planned projects such as resurfacing tennis courts and shade structures are subject to City review and approval; **NOW THEREFORE:**

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 Parks and Recreation Department or his designee, is authorized to execute a Lease Agreement with the San Antonio Tennis Association (SATA) for use of McFarlin Tennis Center for office space and tennis courts for the purpose of providing on-going tennis programs, tournaments and related recreational services to the community. A copy of the lease agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. 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 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 16th day of April, 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:	**13 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 21, 22)**
Date:	04/16/2015
Time:	10:54:33 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Lease Agreement with the San Antonio Tennis Association for use of McFarlin Tennis Center for office space and tennis courts for the purpose of providing on-going tennis programs, tournaments and related recreational services to the community. [Gloria Hurtado, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
Result:	Passed

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

Lease Agreement

San Antonio Tennis Association

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1. Basic Information, Definitions.

Authorizing Ordinance: _____

Landlord: City of San Antonio, through its Parks and Recreation Department

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Parks and Recreation Department)

Tenant: San Antonio Tennis Association

Tenant's Address: 1503 San Pedro Avenue, San Antonio, Texas 78212

Premises:	Office Space and Tennis Courts 1503 San Pedro Avenue, San Antonio, Texas 78212
Permitted Use:	Operational and administrative office to conduct tennis programs, tournaments and league play. Space for other uses may be approved by City through its Director of Parks and Recreation.
Occupancy Commencement Date:	May 1, 2015
Initial Term:	Primary Term of three (3) years, with option for two (2), one-year renewals.
Base Rent:	See Section 3 below

2. Grant.

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

2.02. Tenant's right of occupancy begins at the Occupancy Commencement Date.

3. Rent and Consideration.

3.01 In consideration of Tenant's commitment to fund maintenance, repairs, and/or improvements to McFarlin Tennis Center, as described in 3.2 below, and the benefit derived by City from Tenant's tennis activities at McFarlin Tennis Center, no rental will be due from Tenant during the term of this Agreement.

3.02 On or before May 1 each year during the term of this Agreement, Tenant will recommend to City one or more maintenance, repair or improvement projects to the McFarlin Tennis Center ("Project") with a cost of at least $3,000. The Project is subject to the review and approval of City. Tenant agrees to implement and complete the approved Project within six (6) months after approval by City. The Project is to be completed by an appropriately licensed contractor hired and paid by Tenant. The above notwithstanding, in any year in which the Project implemented by Tenant costs in excess of $3,000,

Tenant shall have the right to apply the amount that exceeds $3,000 toward its Project for the following lease year or years; however, the total cost of Projects during the primary term of this Agreement will not be less than $9,000. For example, if the cost of the lease for the Project in year 2 is $4,000, the lease for the Project in year 3 would be required to cost $2,000 or more. Tenant's source of funds for Projects may include grants and/or donations.

4. Term, Renewal.

4.01. The term of this Lease will expire April 30, 2018, commencing on the Commencement Date shown above, with two (2), one-year renewals, unless sooner terminated as provided in this Lease.

4.02. Either party may terminate this lease with thirty (30) days written notice.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises described in Exhibit A in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises; and (c) any rules and regulations for the Premises and surrounding land as adopted by City.

5.03. Be responsible maintaining all exposed mechanical, plumbing and electrical facilities and equipment within the Leased building at its sole cost and expense, including, but not limited to, sinks, toilets, water fountains, electrical outlets, and HVAC equipment inside the building, light bulb and ballast replacement and HVAC filter changes. Tenant is responsible for all custodial activities within the Leased building. City shall have the right at reasonable times to make inspections of the Leased building.

5.04. At Tenant's sole cost and expense, be responsible to add electrical service, or service from any other utility provider. Tenant will be responsible for the cost of installation and use of all telephone, television, cable, internet and utility services other than the existing electrical service to the building.

5.05. Allow City to enter the Premises to perform City's obligations and inspect the Premises.

5.06. Allow City, CPS and SAWS to enter the Premises to access utility meters serving the Premises.

5.07. After casualty loss not terminating the Lease, rebuild any interior partitions, ceilings, wiring, light fixtures, and plumbing.

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

5.09. On request, execute an estoppel certificate that states the Occupancy 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 City, and provides any other information reasonably requested.

5.10. Tenant shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Premises, or upon Tenant; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Tenant. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Agreement by the City.

5.11. Will, in the event that City provides notice to Tenant that any employee, volunteer, or visitor of Tenant may be reasonably deemed to be discourteous, objectionable or rude, to take immediate appropriate remedial action, including but not limited to, removal of the employee, volunteer or visitor from employment by Tenant or from the Premises.

6. Indemnity.

6.01. Tenant covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, 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's activities under this Agreement, including any acts or omissions of Tenant, any agent, officer, director, representative, employee, consultant 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 Lease. 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 COMPARATIVLEY 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.

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 City in writing within 24 hours of any claim or demand against the City or Tenant known to Tenant related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's cost. 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.

7. Tenant's Negative Promises.

Tenant promises that it will not:

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

7.02. Create a nuisance.

7.03. Permit waste.

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

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

7.06. No advertisements, signs, decorations or displays will be placed in, on or about the Premises or McFarlin Tennis Center by Tenant without the prior written approval of City. Temporary signage acknowledging sponsors of tournaments will be allowed with the sign and location subject to the approval of City.

8. Landlord's Affirmative Promises.

City promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Occupancy Commencement Date.

8.02. Maintain the exterior of the building and the surrounding grounds.

8.03. Obey all applicable laws with respect to City's operation of the building and surrounding land.

8.04. Provide security and alarm systems for the building.

8.05. No provision in this agreement shall be interpreted to obligate the City to make any capital improvements or extraordinary repairs to any portions of the Premises. Tenant reserves the right to request such repairs subject to City's discretion. City has the right, but not the obligation to choose to make capital improvements or extraordinary repairs as City deems appropriate and subject to available funding.

8.06. Should the City's decision not to make a capital improvement or extraordinary repair render the Premises untenable for the Tenant's use purposes, Tenant has an option to terminate this Lease by notifying City in writing within 10 days of when the request for repair is denied.

8.07. Provide the existing electrical and water/sewer service to the Premises at no cost to Tenant.

9. Landlord's Negative Promise.

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

10. Alterations and Improvement.

10.01. Except for maintenance of floor and wall finishes within the building, Tennant may not make, cause or allow any modifications to the Premises or McFarlin Tennis Center without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. If approved by the City's Parks and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined in 10.01 b) and c) outlined above.

10.02. Tenant shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.

10.03. The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

10.04. All modifications made to the Premises will be the property of City.

10.05. Tenant shall have the right, within thirty (30) days after the termination of this Agreement, whether such termination be by the expiration of the term or an earlier termination under any provision of this Agreement, to remove from the Premises all of its furniture, fixtures, equipment and furnishings and other property which are not the property of the City and have not become the property of the City as herein provided or by attachment to the Premises, and with respect to any damage caused thereby, it shall have the obligation to restore the Premises to its condition prior to such removal, and provided that, if any of Tenant's property remains in or on the Premises after ninety (90) days following termination of this Lease and no renewal agreement has been executed, such property as remains thereon shall be deemed to have become the property of the City and may be disposed of as the City sees fit, without liability to account to Tenant for the proceeds of any sale thereof.

10.06. Tenant may not bind or attempt to bind City for the payment of any money in connection with the construction, modification, repair, or maintenance of the Premises or McFarlin Tennis Center.

10.07. It is expressly understood and agreed that any and all machinery, equipment, furnishings and items of personal property of whatever nature owned by Tenant and at any time placed or maintained by Tenant on any part of the Premises or at McFarlin Tennis Center shall be and remain the property of the Tenant.

10.08. During any periods of time that modifications are occurring within the Premises, Tenant's contractors will be required to secure Builder's Risk insurance, if requested by City, and provide City with a certificate of insurance evidencing such coverage.

10.09. City shall not have any responsibility for making any modifications or capital repairs or capital improvements to the Premises.

10.10. City shall have the right to make repairs and improvements to McFarlin Tennis Center and allow improvement projects through or in conjunction with the John R. McFarlin Tennis Foundation. Tenant agrees to work cooperatively with the City and Foundation to facilitate these improvements.

11. Insurance.

11.01. 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 Parks and Recreation Department, which shall be clearly labeled "**San Antonio Tennis Association – all operations at McFarlin Tennis Center**" 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 Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.02. 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 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.

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $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	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

d. Personal Injury e. Contractual Liability f. Damage to property rented by you	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
5. Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased premises, if applicable	Coverage for a minimum of eighty percent (80%) of the replacement cost of Lessee's property.

*If applicable.

11.04. Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Tenant herein, and provide a certificate of insurance and endorsement that names the Tenant and the CITY as additional insureds. Respondent 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.

11.05 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: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

A. 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;

B. 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;

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

D. 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.

11.07. 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.

11.08. 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.

11.09. 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.

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.

1.11. 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 Subcontractors are responsible for all damage to their own equipment and/or property.

12. Release of Claims/Subrogation.

12.01. The insurance requirements of this Lease are a bargained-for allocation of risk of loss. City 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. City 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. Landlord's Municipal Powers.

13.01. City is a municipality as well as City 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 City as a municipality is a breach of City's duties as City 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 City's duties as City or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if City were a private entity.

14. Prohibited Interests in Contracts.

14.01. 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:

A. a City officer or employee;

B. his parent, child or spouse;

C. 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;

D. 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.

14.02. Tenant warrants and certifies as follows:

A. Tenant and its officers, employees and agents are neither officers nor employees of the City.

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

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

15. Non-Discrimination

15.01. As a party to this contract, 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 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.

16. Casualty/Total or Partial Destruction.

16.01. If the Premises are damaged by casualty Tenant may terminate this Lease.

17. Condemnation/Substantial or Partial Taking.

17.01. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, Tenant may terminate this Lease.

18. Default, Remedies for Default.

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

A. Tenant fails to comply with any term, provision or covenant of this Lease and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is false or misleading in any material respect when given to City.

B. 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 days after the levy thereof.

C. 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 within the Premises, or fails to commence business operations at the Premises on or before the Occupancy 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.

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

E. 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.

18.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, City has the option to pursue any one or more of the following:

A. 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.

B. 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.

C. 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 City on demand for expenses City may incur in thus effecting compliance with Tenant's obligations. City is not liable for any damages resulting to the Tenant from such action.

18.03. *Repossession and Alteration of Locks.* No such alteration of locks or other security devices and no removal or other exercise of dominion by City over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to City'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 City may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as City may elect. City is not liable in trespass or otherwise for such re-entry. City's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.04. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, City, 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 City in taking the remedial action.

18.05. *Default by Landlord.* If City defaults, Tenant's exclusive remedy is termination of this lease effective in written notice to City (Tenant thereby waives the benefit of any laws granting it a lien upon the property of City or of rent due City). City has no further liability to Tenant for an act of default. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

18.06. *Cumulative Remedies.* Each right and remedy provided to City in this Lease is cumulative to every other right or remedy provided to City 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 City of one or more of the right or remedy does not preclude the simultaneous or later exercise by City of another remedy. All costs incurred by City 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 City from Tenant.

19. Warranty Disclaimer.

19.01. 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.

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

20. Abandoned Property.

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

21. Appropriations.

21.01. 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.

22. Sublease, Assignment.

22.01. Tenant cannot assign or sublease this Lease without the prior written approval of City. 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.

23. Dispute Resolution.

23.01. 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.

23.02. 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.

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

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

23.05. 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 (a) the copy of the contract before the court is authentic and (b) 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.

23.06. Mediator fees must be borne equally.

23.07. The parties need not mediate before going to court (a) for either party to seek emergency injunctive relief or (b) for City to seek forcible entry and detainer relief against Tenant.

24. Miscellaneous.

24.01. *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.

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

24.03. *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.

24.04. *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.

24.05. *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 terms of this Agreement may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (a) to apply any other term or condition or (b) 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.

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

24.07. *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.

24.08. *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.

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

24.10. *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.

24.11. *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.

24.12. *Administrative Actions and Agreements.* The Director of Parks and Recreation 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.

24.13. *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.

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

24.15. *Structure of San Antonio Tennis Association*

A. Tenant shall maintain a 501(c)3 status under the rules and regulations of the Internal Revenue Service and shall not modify that status without the prior written approval of City during the term of this Agreement.

B. Tenant agrees that its articles of Incorporation and by-laws shall not be modified without prior notice to City.

C. The City's liaison from its Parks and Recreation Department to the Board shall have full rights of access to all meetings and all records of Tenant.

25. Use of McFarlin Tennis Center.

25.01. Tournaments

A. Tenant will have the right to utilize McFarlin Tennis Center tennis courts for UTSA sanctioned and non-sanctioned tennis tournaments ("Tournament or Tournaments").

B. On or before June 15 of each year during the term of this Agreement, or other date agreed to by the Parties, Tenant will provide to City a list of requested court use dates and times for Tournaments for the following calendar year not to exceed eighteen (18) weekends each calendar year, except as may be approved by City. City will review and respond to Tenant's request not later than July 15, or other date agreed to by the parties, indicating which dates are approved. If certain requested dates conflict with planned City court use, City will recommend alternate dates for Tenant's use. City and Tenant will work cooperatively to maximize use of the courts for Tournaments and City events and other uses. Scheduled use will be finalized by August 1 of each year.

C. Tenant may request changes to scheduled use at any time after the schedule is finalized and, subject to availability, City will accommodate requested schedule changes. City shall have the right to reschedule Tenant scheduled dates to accommodate City events, uses and maintenance. In these situations, the parties will work cooperatively to identify alternate dates for scheduled use.

D. During Tenant Tournaments, a minimum of three (3) courts will remain open for use by the City and/or general public during McFarlin Tennis Center operating hours.

E. Tenant will pay to the City the tournament assessment Fee established by Ordinance, currently a $2.00 per participant for each Tournament. If this fee is increased by City Ordinance during the term of this Agreement, Tenant agrees to begin paying the increased fee beginning on the January 1 following the approval of the increased fee.

F. Tenant will provide City with copies of all tournament rosters within fifteen (15) days following the end of each tournament.

G. City will provide staff during Tenant tournaments that are outside of McFarlin operating hours. Tenant will pay the park usage special event fee for organizations established by City Ordinance, currently $75.00 per day per event for each day or part of a tournament day. If this fee is increased by City Ordinance during the term of this Agreement, Tenant agrees to begin paying the increased fee beginning on the January 1 following the approval of the increased fee. Payment of the special event fee is due to City within fifteen (15) days following the end of each such tournament.

25.02. Leagues

A. Tenant will have the right to utilize McFarlin Tennis Center tennis courts for league activities ("League or Leagues").

B. On or before September 1 and January 2 of each year during the term of this Agreement, or other dates agreed to by the parties, Tenant will provide to City a proposed League schedule for the fall or spring league period, respectively. City and Tenant will work cooperatively to finalize the schedule within fifteen (15) days following receipt for the proposed schedule.

C. Tenant may request League court use outside of McFarlin Tennis Center operating hours. City, through its Parks and Recreation Department Director, may approve this additional use; however, Landlord has the right to deny the request if it determines that funding and staffing resources cannot support the additional use.

D. Landlord shall have the right to reschedule Tenant's scheduled League dates to accommodate City events, uses and maintenance.

In these situations, the parties will work cooperatively to identify alternate dates for scheduled use.

E. Tenant's League fees are subject to the review and approval of City, through its Parks and Recreation Department.

F. During Tenant League play, a minimum of nine (9) courts will remain open during McFarlin Tennis Center operating hours for use by the City, the general public and other individuals and groups.

G. Tenant will pay to City the Tournament assessment fee established by Ordinance, currently $2.00 per participant per event for Leagues, with each day's use considered an event. If this fee is increased by City Ordinance during the term of this Agreement, Tenant agrees to begin paying the increased fee beginning on the January 1 following the approval of the increased fee.

H. Tenant will provide City with copies of all league rosters within fifteen (15) days following the beginning of each league.

25.03. Concessions

A. Tenant shall have the right to sell prepackaged beverage concessions from within or immediately outside its office space at McFarlin Tennis Center, however; such sales will be permitted only at such times as the City has not made its concessions available to Tenant's participants. Tenant's offered beverage concessions shall be limited to water, juices, sugar-free or sugar-reduced carbonated beverages or other healthy beverage options.

26. Public Information.

26.01. 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.

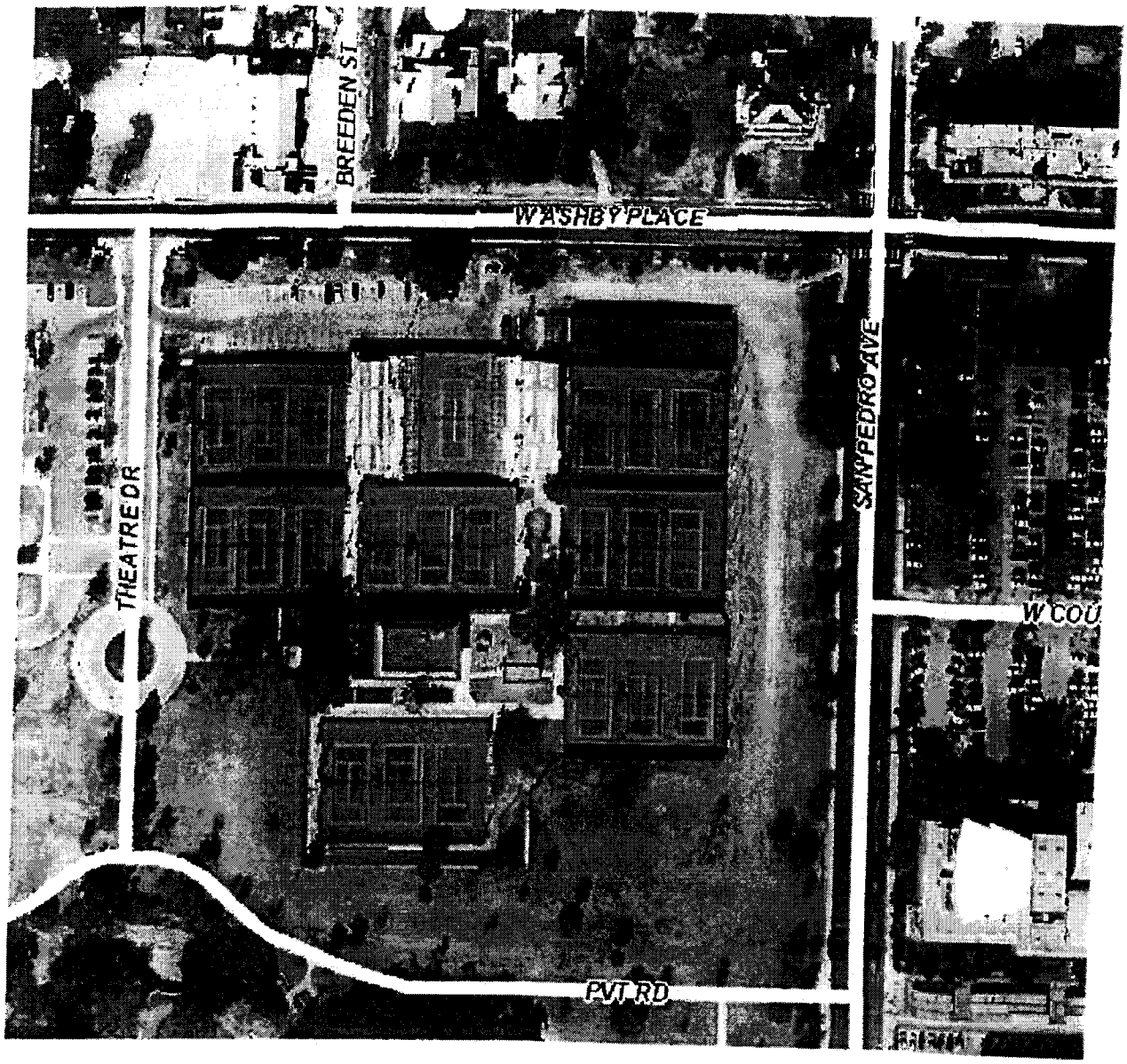
In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:	**Tenant:**
City of San Antonio, a Texas Municipal Corporation	**San Antonio Tennis Association**
Signature:_____	Signature: Debbie Grieder
Printed Name: Xavier D. Urrutia, Director	Printed Name: Debbie Grieder
Date: _____	Date: 3/20/15

Approved as to Form:

_____
City Attorney

Attachment: Exhibit A: "Premises"



N

Exhibit A

Premises = Red Boundary

The City of San Antonio does not guarantee the accuracy, adequacy, completeness or usefulness of any information. The City does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. Information shown on these maps is derived from public records that are constantly undergoing revision. Under no circumstances should GIS-derived products be used for final design purposes. The City provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

The City of San Antonio property located in the San Pedro Park and containing a total of 289.20 square feet, N.C.B. 996.

BEGINNING from a mark in a concrete walk being the southeast corner of San Pedro Park

THENCE N 00 degrees 02' 45" W – 1098.30' on the west right-of-way of San Pedro to a point;

THENCE S 89 degrees 57' 15" W - 301.60' to corner of lease building and point of beginning;

THENCE S 89 degrees 57' 15" W – 23.90';

S 00 degrees 02' 45" E – 12.10';

N 89 degrees 57' 15" E – 23.90';

N 00 degrees 02' 45" W – 12.10' to a point of beginning and containing +/- 289.20 square feet.