

AN ORDINANCE 2006-08-31-0966

**AUTHORIZING A LEASE OF THE OLD MAIN LIBRARY BUILDING, ALSO KNOWN AS THE HERTZBERG CIRCUS MUSEUM BUILDING, TO THE NATIONAL WESTERN ART FOUNDATION FOR THE RENOVATION AND USE OF THE BUILDING LOCATED AT 210 W. MARKET STREET, AS WELL AS ADJACENT CITY OWNED PROPERTY ON MARKET STREET, AS A WORLD CLASS ART MUSEUM, LIBRARY HISTORICAL INFORMATION CENTER AND WESTERN HERITAGE CENTER WITH UP TO 5,000 SQUARE FEET OF DEDICATED SPACE IN THE BUILDING FOR USE BY THE SAN ANTONIO PUBLIC LIBRARY AS A LIBRARY HISTORY CENTER PORTAL, FOR AN OPERATING TERM OF TWENTY-FIVE YEARS WITH THREE FIVE-YEAR RENEWALS.**

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**WHEREAS**, the Hertzberg Circus Museum resided in the Hertzberg Library Building until it was closed in October 2001 as part of the annual budget process; and

**WHEREAS**, since closure and removal of the circus collection the building has remained vacant with minimal upkeep; and

**WHEREAS**, this agreement will provide for the renovation of a historically significant City of San Antonio asset and prevent further deterioration of the building; and

**WHEREAS**, as part of the renovations, up to 5,000 square feet of dedicated space will be allocated for a Library History Center Portal to serve as a focal point for those interested in historical documents significant in the history of San Antonio and Bexar County; and

**WHEREAS**, the Library Board of Trustees approved the terms and business concept of the Lease Agreement on July 26, 2006; and

**WHEREAS**, the San Antonio Water System (SAWS), which currently maintains the adjacent property included in the proposed lease agreement, approved the lease agreement in its regular meeting of August 16, 2006; and

**WHEREAS**, the City Council Quality of Life Committee considered this request at its regular meeting of August 17, 2006; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager, or her designee is hereby authorized to execute a lease of the old Main Library building located at 210 W. Market Street, as well as adjacent City owned property on market street, to the National Western Art Foundation for the renovation and use of the Building, as a world class art museum, Library historical information center and western

center with up to 5,000 square feet of dedicated space in the building for use by the San Antonio Public Library as a Library History Center Portal, for an operating term of twenty-five years with three five-year renewals. 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 amount of \$500,000.00 is appropriated in fund 45803000, 2003 Library Bonds, GO-00046-01-01-29 GL account 6102100 – Interfund Transfer out entitled Transfer to 04-00112-90-04. The amount of \$500,000.00 is authorized to be transferred to fund 45099000.

**SECTION 3.** The budget in fund 45099000, Project Definition 04-00112, Hertzberg Library Stabilization Project, shall be revised by increasing WBS element 04-00112-90-12 entitled Trf Fr GO-00046-01-01-29, GL account 6101100 – Interfund Transfer In, by the amount of \$500,000.00.

**SECTION 4.** The amount of \$500,000.00 is appropriated in Fund 45099000, General Obligation Capital Projects, Project Definition 04-00112, Hertzberg Library Stabilization Project, WBS element 04-00112-05-02-01, entitled City Construction, G/L Account 5201140, and is authorized to be encumbered and made payable for the stabilization of the building.

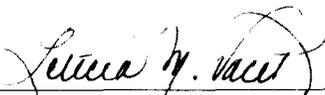
**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager’s designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

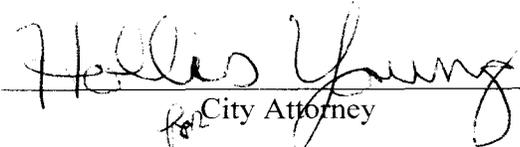
**SECTION 6.** This ordinance shall be effective on and after September 10, 2006.

PASSED AND APPROVED this 31st day of August, 2006.



**M A Y O R**  
**PHIL HARDBERGER**

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney



# Agenda Voting Results

**Name:** 8.

**Date:** 08/31/06

**Time:** 11:20:43 AM

**Vote Type:** Multiple selection

**Description:** An Ordinance authorizing a lease of the old Main Library building, also known as the Hertzberg Circus Museum building, to the National Western Art Foundation for the renovation and use of the Building located at 210 W. Commerce, as well as adjacent City owned property on market street, as a world class art museum, Library historical information center and western heritage center with up to 5,000 square feet of dedicated space in the building for use by the San Antonio Public Library as a Library History Center Portal, for an operating term of twenty-five years with three five-year renewals

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

**LEASE AGREEMENT**

This Lease Agreement (this "Lease") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2006 (the "Effective Date"), by and among the CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation ("Landlord"), the NATIONAL WESTERN ART FOUNDATION, a Texas nonprofit corporation ("Tenant"), the City of San Antonio, Texas, acting by and through its SAN ANTONIO PUBLIC LIBRARY BOARD OF TRUSTEES ("Library Trustees") and the SAN ANTONIO WATER SYSTEM, a municipally owned water and waste water utility f/k/a the Water Works ("SAWS") (each, a "Party" and collectively, the "Parties"); with each Party acting herein by and through its hereunto duly authorized representative.

**RECITALS:**

A. Landlord has title to possess that certain real property (the "Library Property") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes, and all improvements thereon located at 106 West Market Street in downtown San Antonio, Bexar County, Texas, which includes the building commonly known as the "Old Main Library Building" (such building hereinafter referred to as the "Building").

B. Landlord's ownership of the Library Property is subject to a condition contained in the deed granting the Library Property to Landlord (the "Deed"), which limits the uses of the Property to that of a public library and uses necessarily incident thereto (the "Condition"), which reads as follows:

"...and upon condition that said City of San Antonio shall, within a reasonable time, cause to be erected, established and maintained upon said property a public library building, or Carnegie Library Building in accordance with the terms of the offer of Andrew Carnegie; said library to be regulated and controlled for the benefit of the public by the City Council of the City of San Antonio; and upon the further condition that said property shall not be used or diverted to any other use than that of a public library and uses necessarily incident thereto; and upon the further condition that if said property be not applied to said use or such use be discontinued by the city, or said property be applied to a use inconsistent with the terms of this conveyance, then and in that event said property shall revert to these grantors."

C. The Building had been used in part during a substantial portion of the twentieth century to house and display to the public the Herzberg collection of circus artifacts, and was commonly referred to during that period of time as the "Herzberg Circus Museum."

D. As of the Effective Date, the Building is unoccupied and the Library Property is under no lease or lien.

E. Tenant proposes to modify the Building to: (i) establish a world class museum, historical information center and western heritage center devoted to the art and history of the American West with special emphasis on the San Antonio and South Texas region (the museum, historical information center and western heritage center collectively referred to herein as the

“Museum”); and (ii) provide up to 5,000 square feet of space within the Building for the use of the San Antonio Public Library (“Public Library”) as a library history center, reading room and computer facility for access to archival material (the library history center, reading room and computer facility collectively referred to herein as the “Library Gateway Portal”) (the Museum and Library Gateway Portal together referred to herein as the “Building Project”).

F. The Building Project was approved in concept by the Library Trustees on April 27, 2005.

G. Landlord and Tenant have expressly indicated their mutual desire to construct the Building Project and enter into a long-term lease on the Library Property pursuant to that certain Agreement between Landlord and Tenant (the “Agreement”) adopted by the City Council of the City of San Antonio, Texas, in Ordinance No. 100921 on May 19, 2005 to be effective on and after May 29, 2005.

H. Pursuant to the Agreement, Tenant is undertaking a fund-raising and planning effort (the “Planning Stage”) to prepare for the renovation and subsequent use of the Building to house the Building Project.

I. Pursuant to the Agreement, Landlord has allocated up to Five Hundred Thousand Dollars (\$500,000.00) for a planned stabilization project on the Building (the “Stabilization Project”), which funds may also be used for the renovation of the Building to house the Building Project.

J. Pursuant to a resolution adopted by the Water Works Board of Trustees on August 14, 1959 (“Water Works Resolution”) certifying to the City Council of the City of San Antonio, Texas (“City Council”), certain real property as surplus to the needs of the Water Works system. Landlord is the owner of that certain tract of land located on West Market Street in downtown San Antonio, Bexar County, Texas, adjoining the Library Property (the “Adjoining Property”), being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the Library Property and the Adjoining Property, together with all improvements thereon, collectively referred to herein as the “Premises”).

K. SAWS has use and control of that certain tract of land adjoining the Adjoining Property (the “SAWS Property”), being more particularly described in Exhibit C attached hereto and made a part hereof for all purposes, upon which SAWS has placed and operates, among other things, its Market Street pump station (“Pump Station”).

L. The SAWS Property consists in large part of (i) an area furthest from Market Street that is kept secure from the public (whereupon the Pump Station is located), (ii) an emergency access area leading from Market Street to the Pump Station (the “Alternate Access,” which does not have a curb cut on Market Street and is not, as of the Effective Date, used by SAWS as a regular means of access to the Pump Station), and (iii) an area closest to Market Street which SAWS has permitted to be used as a public access area and upon which there is, among other things, a patio area containing a fountain.

M. Pursuant to the Water Works Resolution, SAWS reserved to itself: i) control of an area approximately twenty foot (20’) square centered on that well formerly known as Well

No. 2 on the Adjoining Property, ii) a right of ingress and egress to Well No. 2, and iii) a free and unimpeded right of ingress and egress to the SAWS Facilities from Presa Street south of the Building and via an existing roadway (the "Rear Access") across the Premises adjacent to the north bank of the San Antonio River (this right of ingress and egress to the SAWS Facilities referred to herein as the "Right of Access").

N. SAWS has capped the well formerly known as Well No. 2 and requires no further access to or control of the area around former Well No. 2, except any such portion of the area around former Well No. 2 that is part of the Rear Access.

O. Tenant desires to construct an extension to the Museum to include an enclosed pavilion, café, loggia, catering kitchen, and restrooms (collectively, the "Pavilion") a patio area with tables and chairs near the San Antonio River (the "Patio"), along with an outside porch area, sculpture courtyard, surrounding sidewalks, entry ways, a terrace and water features (collectively with the Pavilion and Patio, the "Pavilion Project"; the Pavilion Project and Building Project referred to collectively herein as the "Project").

P. SAWS has placed and owns, operates, maintains, repairs, replaces, constructs, reconstructs, realigns, inspects, patrols, adds and/or removes certain wells, pumps, water and wastewater lines, equipment and facilities (collectively, the "SAWS Facilities") upon the Premises and the SAWS Property.

Q. Landlord has permitted Persons approved of by Landlord during Landlord-sponsored events to use the Right of Access for ingress to and egress from the Arneson River Theater adjacent to the SAWS Property on the San Antonio River (SAWS having, from time-to-time, consented to such use in accordance with certain rules and requirements imposed by SAWS), and Landlord plans to continue to allow such usage on an infrequent basis.

R. Landlord and SAWS have conducted previous discussions with Tenant, relating to (i) a lease of the Adjoining Property by Landlord to Tenant, (ii) development and construction by Tenant of the Pavilion Project, subject to such lease, and (iii) development and construction by Tenant, at Tenant's sole cost and expense, of an improvement to the Alternate Access adequate to facilitate ingress and egress from Market Street to the Pump Station that accommodates SAWS access needs for equipment size, turning radius and frequency of use and that does not interfere with organized and efficient traffic control on Market Street (the "Front Access"). SAWS and Tenant have discussed that if the Front Access is designed and constructed in a manner acceptable to SAWS, then to the extent possible and feasible, in SAWS sole and absolute discretion, SAWS intends to utilize the Front Access in lieu of the Rear Access.

S. SAWS and Tenant intend to enter into a license agreement affecting a portion of the SAWS Property, upon terms and conditions mutually acceptable to SAWS and Tenant, and subject to approval by SAWS' Board of Trustees, to enable Tenant to undertake improvements to complement and extend the design and function of the Pavilion Project.

T. Subject to the terms and conditions of this Lease and in anticipation of successful completion of the Planning Stage, the Parties desire to enter into this Lease for the purposes of

delineating the respective obligations and duties of each Party in connection with the development, construction, use and long-term operation of the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

As used in this Lease, the following terms (in addition to the terms defined elsewhere herein), shall have the respective meanings indicated below when used herein with initial capital letters, unless context requires otherwise:

“Additional Rent” shall have the meaning ascribed to it in Section 3.2.

“Adjoining Property” shall have the meaning ascribed to it in Recital J.

“Agreement” shall have the meaning ascribed to it in Recital G.

“Alternate Access” shall have the meaning ascribed to it in Recital L.

“Article” shall refer to an article in this Lease.

“Base Rent” shall have the meaning ascribed to it in Section 3.1.

“Build-out Commencement Date” shall have the meaning ascribed to it in Section 5.3.

“Build-out Completion Date” shall have the meaning ascribed to it in Section 2.4.

“Building” shall have the meaning ascribed to it in Recital A.

“Building Completion” shall mean completion of construction on the Building Project.

“Building Project” shall have the meaning ascribed to it in Recital E.

“Business Days” shall mean Monday through Friday, excluding Landlord’s established holidays. All references in this Lease to a “day” or “date” shall be to a calendar day unless specifically referred to as a “Business Day.”

“City Council” shall mean the City Council of the City of San Antonio, Texas.

“Construction Completion Date” shall mean the date that Building Completion occurs.

“Effective Date” shall have the meaning ascribed to it in the opening paragraph of this Lease.

“Environmental Regulations” shall have the meaning ascribed to it in Section 11.4.

“Event of Default” shall have the meaning ascribed to it in Section 12.1.

“Final Plans” shall have the meaning ascribed to it in Section 5.1.

“Force Majeure” shall mean any delay due to strikes, lockouts, or other labor, civil disturbance, future order of any government, governmental act, failure of government to act, inability to obtain consent of government, court or regulatory body claiming jurisdiction, act of public enemy, war, riot, sabotage, blockade, embargo, act of God, and unusually adverse weather conditions. If a party is delayed, hindered or prevented from the performance of any obligation hereunder by reason of an event of Force Majeure (and such party shall not otherwise be in default of its obligations hereunder) the time for performance of the obligation shall be extended for the period during which the event is in existence.

“Front Access” shall have the meaning ascribed to it in Recital R.

“Governmental Authority” shall mean the federal government of the United States of America, the State of Texas, County of Bexar, City of San Antonio, and any other governmental body, subdivision, agency, authority now or hereafter in existence that has jurisdiction over the Land or any use or activity with respect to the Land.

“Impositions” shall have the meaning ascribed to it in Section 3.2(a).

“Landlord” shall mean the City of San Antonio, Texas, identified in the opening paragraph of this Lease.

“Landlord’s Interest” shall have the meaning ascribed to it in Section 5.3(c).

“Lease Year” shall mean, throughout the Term, the period commencing on each anniversary of the Effective Date and ending at midnight of the day prior to the anniversary of the Effective Date during the next succeeding calendar year, except that the last Lease Year shall end on the expiration or earlier termination of the Term of this Lease.

“Legal Requirements” shall mean all orders, injunctions, writs, statutes, rulings, rules, regulations, requirements, permits, certificates or ordinances of any Governmental Authority applicable to (and as enforced from time to time with respect to) the Land, the Improvements, or the Parties.

“Library Gateway Portal” shall have the meaning ascribed to it in Recital E.

“Library Property” shall have the meaning ascribed to it in Recital A.

“Library Trustees” shall mean the San Antonio Library Board of Trustees, identified in the opening paragraph of this Lease.

- “Market Rate” shall have the meaning ascribed to it in Section 3.1.
- “Museum” shall have the meaning ascribed to it in Recital E.
- “Museum Pieces” shall have the meaning ascribed to it in Section 5.4(i).
- “Operating Hours” shall have the meaning ascribed to it in Section 6.1(c).
- “Parties” shall have the meaning ascribed to it in the opening paragraph of this Lease.
- “Patio” shall have the meaning ascribed to it in Recital O.
- “Pavilion” shall have the meaning ascribed to it in Recital O.
- “Pavilion Project” shall have the meaning ascribed to it in Recital O.
- “Permitted Encumbrances” shall have the meaning ascribed to it in Section 4.3.
- “Permitted Use” shall have the meaning ascribed to it in Section 6.1.
- “Person” shall mean an individual, a corporation, a limited partnership, a limited liability company, a partnership, a joint stock association, a trust, or any other legal entity.
- “Phase I” shall refer to the Building Project.
- “Phase II” shall refer to the Pavilion Project.
- “Planning Stage” shall have the meaning ascribed to it in Recital H.
- “Premises” shall have the meaning ascribed to it in Recital J.
- “Project” shall have the meaning ascribed to it in Recital O.
- “Proposed Plans” shall have the meaning ascribed to it in Section 5.1.
- “Rear Access” shall have the meaning ascribed to it in Recital N.
- “Rent” shall have the meaning ascribed to it in Section 3.2.
- “Right of Access” shall have the meaning ascribed to it in Recital M.
- “SAWS Facilities” shall have the meaning ascribed to it in Recital P.
- “SAWS Property” shall have the meaning ascribed to it in Recital K.
- “Section” shall refer to a section in this Lease.
- “Stabilization Project” shall have the meaning ascribed to it in Recital I.

“Taking” shall mean the taking of all or any portion of the Premises by or on behalf of any Governmental Authority or any other Person pursuant to its power of eminent domain, condemnation or similar right.

“Tenant” shall mean the National Western Art Foundation, identified in the opening paragraph of this Lease, and its permitted and approved successors and assigns.

“Tenant’s Interest” shall have the meaning ascribed to it in Section 5.3(d).

“Tenant’s Insurance” shall have the meaning ascribed to it in Section 8.2.

“Term” shall have the meaning ascribed to it in Section 2.3.

“Utilities” shall have the meaning ascribed to it in Section 3.2(b).

## ARTICLE 2

### LEASE OF PROPERTY; TERM

Section 2.1 Premises Leased. Landlord, in consideration of the rents and agreements herein set forth that Tenant hereby agrees shall be paid and performed, does hereby lease and demise unto Tenant, and Tenant does hereby take and lease from Landlord, the Premises, together with all rights and interests appurtenant thereto, subject to the terms, covenants and agreements herein contained.

Section 2.2 Habendum. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges, and appurtenances thereunto attaching or in anywise belonging, unto Tenant, its permitted successors and permitted assigns, for the Term set forth and defined in this Article 2, upon and subject to the Right of Access and the Permitted Encumbrances.

Section 2.3 Planning Stage. The Planning Stage, which began on May 29, 2005 will terminate upon: (a) completion of the following:

(i) approval of the Proposed Plans (as defined in Section 5.1) by Landlord (to include the review of any and all necessary boards and/or commissions), the Library Trustees and SAWS, and

(ii) determination by mutual agreement of Landlord, the Library Trustees and Tenant that the required level of funding and/or financing to begin construction of the Building Project/Phase I has been achieved, and

(iii) receipt of all authorizations and/or permits required from any Governmental Authority to commence construction on the Building Project; or

(b) May 29, 2008, whichever occurs first (the “Planning Termination Date”). Landlord and Tenant shall execute a writing commemorating the date upon which the Planning

Termination Date occurs. If the Proposed Plans have not been approved or the required level of funding and/or financing to begin construction of the Building Project/Phase I has not been achieved by May 29, 2008, then Landlord and Tenant may agree to extend the Planning Termination Date by amending the Agreement, pursuant to approval by City Council (with a copy of any such amendment to be provided to SAWS). To the extent that any of the provisions of this Section 2.3 conflict with the Agreement, the language of this Section 2.3 shall control. Notwithstanding the preceding, in the event that adequate funding for Phase I cannot be obtained by May 29, 2008, and the parties are unable to come to agreement on an extension of time for the fund raising, then Landlord shall have the right to terminate this Lease Agreement and neither party shall have any further obligations or liabilities to the other party under this Lease Agreement.

Section 2.4 Term. Unless sooner terminated as herein provided, this Lease shall be and continue in full force and effect for the following consecutive terms (all terms hereunder referred to collectively as the "Term"):

- (a) A term during which the Building Project will be built-out (the "Build-out") commencing on the Planning Termination Date and ending on the Construction Completion Date or midnight on the last day of the thirty-sixth (36th) calendar month following the month in which the Planning Termination Date occurs, whichever occurs sooner (the "Build-out Completion Date").
- (b) An operating term (the "Operating Term") commencing on the Build-out Completion Date and ending at midnight on the last day of the month twenty-five (25) years following the month in which the Planning Termination Date occurs.
- (c) Three (3) successive renewal terms ("Renewal Terms") of five (5) years each, each Renewal Term being subject to the approval of Landlord, the Library Trustees, and SAWS, which approval by each shall not be unreasonably withheld, conditioned or delayed. Tenant shall provide Landlord written notice of its intent to renew no later than six (6) months prior to the end of a given term.

Section 2.5 Phase II. Fundraising for the Pavilion Project and completion of the Pavilion and other improvements associated with the Pavilion Project may continue during the initial Operating Term. If the required level of funding and/or financing to begin construction of the Pavilion Project has not been achieved by May 29, 2010, then Landlord and Tenant may (i) agree to extend the time for fundraising for the Pavilion Project or (ii) redesign the Pavilion Project to fit within the available funding. Notwithstanding the preceding, in the event that adequate funding for Phase II has not been obtained by May 29, 2010, and the parties are unable to come to agreement on an extension of time or redesign, then Landlord shall have the right to terminate Tenant's right to lease the Adjoining Property and neither party shall have any further obligations or liabilities to the other party under this Lease with regard to the Adjoining Property. Phase II shall be required to be built out within thirty-six (36) months following commencement of construction on the Pavilion.

## ARTICLE 3

### RENT

Section 3.1 Base Rent. In consideration of the public benefit received from (i) the capital investment made by Tenant for the renovation and rehabilitation of the Building; (ii) the value of the space dedicated within the Building for use as the Library Gateway Portal; (iii) the Utilities paid by Tenant on behalf of Landlord for the Library Gateway Portal; (iv) the capital investment made by Tenant for the construction on and rehabilitation of the Adjoining Property; and (v) the cost to operate the Project and the Premises, which consideration is acknowledged and accepted by Landlord, Tenant promises and agrees to pay to Landlord a rental amount (“Base Rent”) on the first day of each calendar month. Base Rent shall be calculated using the market rate for street space along the San Antonio River (“Market Rate”), as determined by Landlord, multiplied by the square footage of the Patio being used for food service, as determined by Tenant. Landlord shall establish the initial Market Rate and Tenant shall establish the applicable square footage of the Patio prior to the commencement of the Operating Term. Landlord may adjust the Market Rate once every five (5) years during the Operating Term and shall submit any change in Market Rate to Tenant in writing pursuant to Section 15.1 at least six (6) months prior to implementation. Tenant may adjust the square footage of the Patio being used for food service once every year during the Operating Term and shall submit any change in applicable Patio square footage to Landlord in writing pursuant to Section 15.1 at least three (3) months prior to implementation. Landlord shall set the Market Rate prior to the commencement of any Renewal Term and the Market Rate shall remain fixed for that Renewal Term. Tenant, however, may continue to make annual adjustments to the applicable Patio square footage pursuant to the procedures above during each Renewal Term. Tenant shall pay no Base Rent during the Build-out.

Section 3.2 Additional Rent. All amounts required to be paid by Tenant under the terms of this Lease other than Base Rent, including but not limited to Impositions and Utilities (as defined below), are collectively referred to as “Additional Rent”. Base Rent and Additional Rent are collectively referred to as “Rent”.

(a) Impositions. The term “Impositions” shall mean all ad valorem taxes and use and occupancy taxes that during the Term shall be assessed, levied, or imposed by any Governmental Authority upon the Premises or any part thereof during the Term, Tenant will pay or cause to be paid prior to delinquency, as Additional Rent, any and all Impositions. Impositions that are payable by Tenant for the tax year in which this Lease commences as well as during the tax year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions payable for such periods of time and Landlord shall pay its proportionate share (if and to the extent Landlord is not exempt under applicable Legal Requirements); provided, however, such Impositions shall not be prorated, and Tenant shall be responsible for the full extent thereof, notwithstanding the termination of their Lease if Landlord would not have been responsible for such Impositions had Landlord not entered into this Lease. Where any Imposition that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Imposition in installments prior to delinquency. Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is

responsible, in which event the payment thereof may be deferred during the pendency of such contest, if diligently prosecuted. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to become the subject of a tax lien imposed by any Governmental Authority, or to be sold or seized by any Governmental Authority for the nonpayment of the same. Notwithstanding anything herein to the contrary, Tenant will take no action with any Governmental Authority with respect to any Imposition without first securing the written consent of Landlord, and Landlord may, without notice to or the consent of Tenant, pay or otherwise satisfy any Imposition if, in Landlord's reasonable discretion, the continued failure to pay or otherwise satisfy such Imposition is likely to result in seizure or forfeiture of the Premises or the imposition of a lien upon the Premises, and in the event Landlord takes such action, Tenant shall immediately reimburse Landlord for all costs incurred by Landlord in connection therewith. Tenant will indemnify, defend and hold Landlord harmless from and against any and all losses, costs and expenses, including reasonable attorneys' fees, as the result of the Impositions.

(b) Utilities. Tenant shall pay or cause to be paid all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, water, sewer service and all other utilities and similar services rendered or supplied to, or used in connection with, the Premises (collectively, the "Utilities") and for the maintenance of the Utilities during the Term. Tenant shall construct or cause to be constructed all facilities and connections for Utilities required under the Project.

Section 3.3 Payment of Rent. Rent shall be payable to Landlord in lawful money of the United States of America without notice or demand (except as otherwise set forth herein), at the address of Landlord as set forth in Section 15.1 or to such other person or at such other address as Landlord may designate from time to time in writing to Tenant.

## ARTICLE 4

### PLANNING

Section 4.1 Inspections. At any time prior to the Planning Termination Date, Tenant may enter upon the Premises to: (i) inspect the Premises, (ii) prepare development and building plans and specifications, (iii) obtain all necessary permits, and (iv) perform any and all engineering or other feasibility studies or tests (including, without limitation, soil studies or similar tests) which Tenant deems necessary or desirable to determine whether or not the Premises are suitable for Tenant's intended use (collectively, "Studies"); provided, however, Tenant shall not undertake any invasive or intrusive studies on the Premises without the prior written consent of Landlord, and approval by Landlord of the type of Studies and firms or entities performing the Studies, which consent and/or approval by Landlord shall not be unreasonably withheld, conditioned or delayed. Upon the completion of any Studies, Tenant or its contractors or representatives shall restore the Premises as nearly as is reasonably possible to the condition it was in immediately prior thereto. In no event shall Tenant's inspection activities, or the activities of its contractors or representatives, interfere with SAWS ability to access any of the SAWS Facilities. Tenant agrees to indemnify, defend and hold Landlord and SAWS

harmless from and against any and all losses, costs, expenses, claims, demands and causes of action of whatsoever nature arising out of or in connection with such Studies and the acts, omissions or negligence of Tenant or any of its officers, agents, employees or contractors, including, without limitation, all mechanics', surveyors', engineers' and materialmen's liens or claims of liens. Further, Tenant agrees to provide Landlord, within five (5) business days after Tenant's receipt thereof, with copies of all Studies obtained by it (including, without limitation, all surveys and all title commitments, searches or abstracts).

Section 4.2 Survey. Tenant shall, at its expense, within one hundred eighty (180) days from the Effective Date, obtain a survey (the "Survey") prepared by a licensed professional land surveyor reasonably acceptable to Landlord and SAWS, complying with the requirements of a Category IA, Condition II survey, as promulgated by the Texas Society of Professional Land Surveyors. The Survey shall depict the Premises, and shall include a legal description of the Premises. The Survey shall be certified to Tenant, Landlord and SAWS, and two (2) signed and sealed original Surveys shall be provided each to Landlord and SAWS.

Section 4.3 Title. Tenant shall, at its expense, within one hundred eighty (180) days from the Effective Date, obtain from a title insurance company licensed to do business in Texas a commitment for a leasehold owner policy of title insurance, and to object to any matters contained or set forth therein (other than the standard printed exceptions) as exceptions to or reservations from Landlord's title to the Premises. Landlord shall have until the Build-out Commencement Date to cure any such objections, but Landlord shall be under no obligation to do so. Any matters disclosed by the title commitment on the Premises so obtained by Tenant which Landlord has not corrected as of the Build-out Commencement Date as shown on Exhibit D attached hereto, together with any other title matters created, suffered, permitted or incurred by or at the request of Tenant during the Term shall constitute "Permitted Encumbrances" hereunder. If Tenant does not obtain a title commitment, then the Permitted Encumbrances shall be all validly existing covenants, restrictions, liens, conditions, or easements, together with all other matters recorded in the Real Property Records of Bexar County, Texas, if any, affecting all or any portion of the Premises, together with any and all encumbrances and other title matters created, suffered, permitted or incurred by or at the request of Tenant during the Term.

Section 4.4 Tenant's Right to Terminate. In the event Tenant shall notify Landlord and SAWS in writing on or before the Planning Termination Date, that Tenant, for any reason whatsoever, does not desire to lease the Premises, then, and in such event, this Lease shall, ipso facto, terminate, in which case neither party hereto shall have any further obligations hereunder, except that the indemnification obligations of Tenant herein shall survive such termination. Should Tenant fail to so terminate this Lease prior to the expiration of the Planning Termination Date, then Tenant shall have been deemed to have accepted the Premises and this Lease and to have waived the right to terminate this Lease pursuant to this Section 4.4.

## ARTICLE 5

### BUILD-OUT

Section 5.1 Construction Plans. Prior to any commencement of construction on the Project by or for Tenant, Tenant shall cause to be prepared by a qualified architect and/or engineer licensed to do business in the State of Texas, who shall be obtained through an open and competitive bidding process which shall include an open solicitation for bids and a reasoned evaluation of bids received, and submit to Landlord, the Library Trustees and SAWS for their approval (which approval by each shall not be unreasonably withheld, conditioned or delayed), detailed plans and specifications for the Project (the "Proposed Plans"), which Proposed Plans shall include, without limitation, plans, schematic drawings and site elevations for the Museum to include the Stabilization Project (plans for which shall be provided by Landlord for incorporation) and construction of the Library Gateway Portal (plans for which shall be provided by the Library Trustees through their designated representatives and/or contract designer(s) working in conjunction with Tenant), together with any demolition, destruction and/or site preparation for the Museum, as well as provisions for a Pavilion floor plan, Patio plan, landscaping, grading, drainage, signage, parking, and other plans for the Adjoining Property, together with any demolition, destruction and/or site preparation for the Pavilion Project, any construction safety plans that are necessary for the Project, and plans for the improvement of the Rear Access. The Proposed Plans shall show in reasonable detail (i) all proposed buildings, structures, fixtures, signage, equipment and other improvements to be constructed as part of the Project and (ii) all uses to be made of each area of the Premises. The Proposed Plans will include without limitation, the location of restroom facilities and a drinking water fountain which shall be made available to patrons of the Library Gateway Portal, and the specifications from SAWS listed in Exhibit D.

Section 5.2 Plan Approval. Landlord, the Library Trustees and SAWS shall advise Tenant of their approval or disapproval of the Proposed Plans within sixty (60) days after submission of the Proposed Plans. Approval of the Proposed Plans by any Party shall not be unreasonably withheld, conditioned or delayed. If any of Landlord, the Library Trustees or SAWS does not approve the Proposed Plans, that Party shall give Tenant notice thereof within sixty (60) days after receipt of the Proposed Plans describing specifically all items which fail to meet that Party's approval. That Party and Tenant shall work together to resolve all objections and, upon resolution, Tenant shall have the Proposed Plans modified as necessary for resubmission to Landlord, the Library Trustees and SAWS. The Proposed Plans approved by Landlord, the Library Trustees and SAWS shall be referred to herein as the "Final Plans". Approval by Landlord, the Library Trustees or SAWS of the Final Plans shall not constitute a representation that the Final Plans comply with any Governmental Requirements, safety standards or industry standards, and neither Landlord, the Library Trustees nor SAWS shall have any liability as a result of its approval or disapproval of the Final Plans.

Section 5.3 Tenant's Construction Notice and Build-out Commencement Date Defined. Tenant shall provide written notice to Landlord and SAWS sixty (60) days prior to the anticipated Build-out Commencement Date. The actual Build-out Commencement Date shall be the date Tenant enters the Premises and commences construction of the Project.

Section 5.4 Construction of Project. Commencing promptly upon the Build-out Commencement Date and continuing continuously and diligently thereafter until Build-out Completion (subject only to delays occasioned by Force Majeure), Tenant shall construct or cause to be constructed the Project on the Premises, in accordance with the Final Plans and all Legal Requirements. The Parties agree that during the construction:

(a) Landlord may, if requested by Tenant, cooperate with Tenant in procuring any and all approvals of Governmental Authorities, and in obtaining all zoning changes, building permits, certificates of occupancy and other licenses and permits that may be required in connection with the construction of the Project. Tenant shall pay any fees associated with such licenses and permits. Without limiting the foregoing, Landlord agrees that upon the request of Tenant, Landlord will join in applications for licenses and permits where the signature of Landlord is required by applicable laws, regulations, or ordinances as the owner of the Premises.

(b) Landlord shall not be required to remove any trees or landscaping, perform any site grading, or undertake any other site preparation. Landlord approves of the destruction of any existing improvements on the Premises other than the Building by Tenant as part of the construction of the Project, provided such destruction is in accordance with the Final Plans.

(c) Tenant shall contract for construction of the Building Project through an open and competitive bidding process which shall include an open solicitation for bids and a reasoned evaluation of bids received. Tenant shall bid the finish out of the Library Gateway Portal as part of the construction. The construction contract will be subject to any prevailing wage requirements imposed in contracts for improvement projects undertaken by Landlord.

(d) Tenant shall coordinate with the Library Trustees to manage the finish out of the Library Gateway Portal as part of the Building Project. The finish out shall include the construction and installation of finished walls, ceiling (including lighting), flooring and all necessary utilities to include electricity, telecommunication wiring, water and sewer and any other utilities customarily installed as part of a major renovation, but only to the extent financed in subsection (e) below, and shall not include the installation of any cabinetry, tables, counters or other such fixtures or equipment.

(e) Landlord shall pay to Tenant such funds as Landlord may have up to a maximum of \$500,000.00 for construction of the Stabilization Project (the actual amount of funding received by Tenant for this purpose is referred to herein as the "Stabilization Funds"). Tenant shall only be required to finish out the Library Gateway Portal to the amount of construction that can be done for the amount of the Stabilization Funds, unless Landlord provides additional construction funds to cover any increased costs.

(f) Tenant shall have no right, authority, or power to bind the Premises, SAWS, Landlord or Landlord's interest under this Lease and in and to the Premises ("Landlord's Interest") for any claim for labor or material or for any other charge or expense incurred in the construction of the Project or any change, alteration, or addition thereto, or any

replacement or substitution therefor, nor to render Landlord's Interest subject to any lien or right of lien for any labor or material or other charge or expense incurred in connection therewith without specific written approval of Landlord. If any involuntary liens for labor and materials supplied or claimed to have been supplied to the Premises shall be filed. Tenant shall promptly pay or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof.

(g) Tenant will not encumber Tenant's interest under this Lease and in and to the Premises ("Tenant's Interest"), Landlord's Interest, the Premises or any part thereof with any restrictions or conditions, nor shall Tenant pledge as collateral or place a lien or mortgage on the Landlord's Interest, Tenant's Interest, the Premises or any part thereof without the prior written consent of Landlord.

(h) Tenant shall comply with the provisions in Chapter 6 of the Code of the City of San Antonio, Texas (Building Code). Tenant shall comply with all zoning and land use requirements as required by any Governmental Authority applicable to the Premises. Tenant shall comply with all requirements associated with the renovation and modification of the Building as a facility owned by a municipality, as those requirements are provided by Landlord. Tenant shall further comply with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990) and the Texas Architectural Barriers Act (Article 9102, TEX. REV. CIV. ST. (1991)) applicable to the Premises and the conduct of Tenant's business thereon, as amended or modified from time to time.

(i) Tenant shall provide all exhibits and programs for the Museum. All works of art, displays, furnishings, trade fixtures, equipment, inventory and items of personal property related to the Museum and its operation, including items which may be borrowed for exhibition purposes (collectively referred to as "Museum Pieces"), even if mounted or secured to the Premises, is the sole property of Tenant and Landlord shall have no rights nor make any claim as to any of the Museum Pieces.

(j) Landlord shall provide the furnishings and equipment required for the operation of the Library Gateway Portal, including exhibits, if any, and all necessary computers and other technical equipment. The Library Trustees shall be responsible for staffing the Library Gateway Portal.

(k) Tenant shall upgrade the Rear Access as necessary to meet the load-bearing requirements for SAWS use of the Right of Access. Tenant agrees that no buildings or other permanent improvements shall be constructed on the Rear Access or in the area between the Building and Pavilion where SAWS Facilities are known to exist, unless such construction is approved in writing by SAWS in its sole discretion.

(l) Notwithstanding anything in this Lease to the contrary, in no event shall Tenant's construction activities interfere with SAWS ability to access any of the SAWS Facilities. Tenant shall coordinate use of the Right of Access during construction with SAWS and ensure that neither the Project nor construction of the Project creates a condition that

would jeopardize the ability of SAWS to access, operate or maintain the SAWS Facilities.

(m) Tenant shall have the right to explore and structure the transaction to obtain rehabilitation and/or historic tax credits for the Project. Provided, however, the Parties agree that the rehabilitation tax credits will not be utilized if they adversely affect the tax exempt status of the interest on any existing bonds, the proceeds of which will be used to construct a portion of the Project.

(n) Tenant and Library Trustees shall use reasonable efforts to obtain assurances and releases from the heirs of the grantor of the Deed that the Building Project, as constructed, is an appropriate use of the Library Property.

Section 5.5 Easements. Tenant shall not, without Landlord's and SAWS' prior written consent, grant any easements or other encumbrances on the Premises. Landlord's and SAWS' consent shall not be unreasonably withheld, conditioned or delayed with respect to the granting of utility, drainage and other easements or rights-of-way as are reasonably necessary for the operation of the Project and which do not interfere with the construction, operation or maintenance of the SAWS Facilities.

Section 5.6 Ownership of Improvements. Throughout the Term and subject to the provisions of this Lease, Landlord shall own all permanent improvements now existing or hereafter constructed on the Premises, including without limitation, the Building, but specifically excluding any SAWS Facilities. Upon the expiration or earlier termination of this Lease, Tenant, at its option and election, shall have, during the period of sixty (60) days from and after any such expiration or earlier termination, the right to remove all of the Museum Pieces and any other items of personal property from the Premises, and to the extent that Tenant does not remove any such items from the Premises during such sixty (60) day period, the improvements, personal property and trade fixtures then remaining on the Premises shall become the property of Landlord; provided, however, Tenant will be liable for any costs of disposal for personal property which Landlord, in its sole discretion, shall determine is of no value to Landlord upon fifteen (15) days after Tenant has received written notice from Landlord listing all such personal property that Landlord has designated for disposal. Tenant shall not be entitled to remove any buildings, non-trade fixtures (which term shall include, without limitation, wall, floor or ceiling coverings, lighting fixtures and plumbing fixtures) or heating, ventilation or air conditioning (HVAC) equipment from the Premises (other than in connection with the repair or replacement of the same in the ordinary course of business).

Section 5.7 Alterations and Additions. Tenant shall have the right, from time to time, to make non-structural additions, alterations and changes in or to the interior of the Building and the Pavilion provided that such additions, alterations and changes do not deviate materially from the Final Plans or have a materially detrimental effect on the operation of the Library Gateway Portal and/or the operation of the SAWS Facilities, and provided further that no uncured Event of Default is then existing hereunder. All other additions, alterations and changes to the Project shall require Landlord's and SAWS' prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 6

### OPERATIONS

Section 6.1 Tenant Use. Subject to the terms and provisions hereof, Tenant shall continuously throughout the Term use and occupy the Premises for the purpose of constructing, maintaining and operating facilities associated and used in connection with the Museum (the "Permitted Use").

- (a) Tenant shall obtain any and all governmental licenses, permits and approvals necessary to allow the use and occupancy of the Premises. Tenant shall comply at all times with (i) all applicable Legal Requirements for the use of the Premises, and (ii) all governmental orders for the correction, prevention and abatement of nuisances arising from Tenant's use of the Premises, all at Tenant's sole cost and expense.
- (b) Tenant shall not use or occupy the Premises in a manner which would make void or voidable any insurance then in force with respect thereto, or which would make it impossible to obtain the insurance required to be furnished by Tenant hereunder, or which would constitute a public nuisance. Tenant shall not be permitted to use the Premises for any use or operation which is obnoxious to or out of harmony with the Permitted Use.
- (c) Tenant shall establish normal operating hours for the Museum ("Operating Hours"), which shall consist of at least six (6) hours per day, six (6) days per week. Once established, Operating Hours are subject to change at Tenant's discretion, with written notification to Landlord and SAWS prior to implementation, but in no event shall such hours be less than the minimum established by this subsection.
- (d) Tenant may alter, modify, remove and update Museum Pieces, displays and exhibits and conduct programs as Tenant sees fit.
- (e) Tenant shall use its best efforts to obtain grants and other funds that would allow Tenant to offer free or reduced price admissions on a regular basis to encourage visits to the museum by children, school groups, and other members of the public of limited financial means.
- (f) Tenant agrees to cooperate with Landlord to satisfy, to the extent required by law, any and all requests for information received by Landlord under the Texas Public Information Act or related laws pertaining to this Lease.
- (g) Tenant, in conjunction with the Public Library, shall provide for an annual fundraising activity in conjunction with the Library Trustees, the proceeds of which will go to support staffing, equipping and maintaining the Library Gateway Portal.
- (h) Tenant agrees to provide access to restroom facilities and a drinking water fountain for use by patrons of the Library Gateway Portal during Operating Hours.

(i) Any outdoor areas developed on the Premises that are not part of the Museum, the Pavilion or a related display area, and excluding the area of the Patio for which Basic Rent is being paid, shall remain accessible and open, free of charge, to the public during Operating Hours.

Section 6.2 Landlord Use. After completion of the Project and pursuant to the terms and provisions of Section 12.3, Landlord and Landlord's agents and representatives shall have the right to enter the Premises.

Section 6.3 Public Library Use. Public Library employees, agents and representatives may make the Library Gateway Portal available to the public free of charge during the normal Operating Hours. Public Library personnel will ensure that use and occupancy of the Library Gateway Portal will at all times be consistent with and not disruptive of the Permitted Use. Pursuant to the Agreement, the chairperson of the Library Trustees or his designated representative shall be added as a non-voting member of Tenant's board of directors from the Planning Termination Date until the end of the Term.

Section 6.4 SAWS Use. SAWS, its agents, employees, contractors and consultants shall have free, unimpeded access at all times and from time-to-time to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace the SAWS Facilities and appurtenances related to the SAWS Facilities, including, without limitation, use of the Right of Access for the conveyance, unloading and/or temporary storage of products used in the treatment, chlorination and/or fluoridation of water. SAWS agrees that if the Front Access is constructed in accordance with plans and specifications approved by SAWS, from and after such time, to the extent possible and feasible in SAWS' sole and absolute discretion, SAWS will utilize the Front Access in lieu of the Rear Access; provided, however, in no event shall SAWS be relinquishing any of its rights under the Right of Access or any right to use the Rear Access at any time and from time-to-time, which use shall be available to SAWS, its agents, employees, contractors and consultants at all times. SAWS agrees that following final completion of the Project, except in the event of an emergency, SAWS shall attempt to provide Tenant and any Subtenant subleasing all or a portion of the Patio ("Subtenant") at least two (2) hours telephonic notice that SAWS intends to use the Rear Access, so that Tenant or Subtenant or their agents, employees, contractors or representatives may remove any personal property associated with the Museum or Pavilion from the Rear Access so as to allow SAWS free, unimpeded use of the Rear Access. SAWS shall have the right at any time to remove any personal property or obstructions in order to use the Rear Access in its exercise of Right of Access. SAWS shall not be liable for any costs, expenses or damages of Tenant or Subtenant, their agents, employees, contractors or representatives, in connection with the removal of said personal property, nor damage to any of said personal property caused by SAWS, or its agents, employees, contractors or consultants use of the Rear Access, unless such damage results from the negligence or willful misconduct of SAWS, its agents, employees, contractors or consultants. Notwithstanding anything in this Lease to the contrary, SAWS Right of Access shall be superior to any and all rights granted to Tenant herein. During the Term, SAWS agrees not to exercise its right of ingress/egress to the former Well No. 2 and its right to control the twenty square foot area surrounding the former Well No. 2, provided that this in no way limits SAWS' Right of Access. In addition, SAWS, its agents, employees, contractors and consultants shall have access to construct, reconstruct, realign, inspect, maintain, operate and repair the SAWS Facilities; provided, however, that

SAWS agrees to attempt to coordinate such activities with Tenant unless immediate access to the SAWS Facilities is required on an emergency basis for the health, safety or welfare of the public, as determined by the President/Chief Executive Officer of SAWS, in which case SAWS will inform Tenant of the estimated scope and length of time required to work on the SAWS Facilities as soon as reasonably practicable.

Section 6.5 Arneson River Theater Access. Landlord shall provide a schedule to Tenant in advance of any events at the Arneson River Theater that require any other Person (an "Arneson Patron") to use the Right of Access for ingress to and/or egress from that portion of the San Antonio Riverwalk leading to the Arneson River Theater. Arneson Patrons shall be allowed a reasonable amount of time during Operating Hours to use the Right of Access, provided that such use does not unreasonably interfere with Tenant's operations. Tenant shall make any such reasonable accommodations necessary so as not to impede the Right of Access for the Arneson Patron.

Section 6.6 Pavilion Events. Tenant agrees that Landlord shall have the right to use the Pavilion for up to six (6) events per calendar year and SAWS shall have the right to use the Pavilion for up to four (4) events per calendar year, with prior written notice to Tenant, based on availability of the facility. An event shall not necessarily constitute the use of a full twenty-four (24) hour period. Landlord or SAWS shall pay fifty percent (50%) of the amount that Tenant has established as its rental rate for the time Landlord or SAWS uses the Pavilion during each event. Landlord or SAWS may contract for independent catering services at these events.

Section 6.7 Maintenance and Repairs. Prior to Build-out Commencement Date, Landlord, at its sole cost and expense, shall conduct routine maintenance of the Premises. Commencing on the Build-out Commencement Date and for the remainder of the Term, Tenant, at its sole cost and expense, shall take good care of and maintain the Premises, shall make all repairs thereto (including, without limitation, repairs to the walls, structural components, foundation, roof, mechanical, electrical and plumbing systems of the Building), and shall maintain and keep the Premises and the landscaping, sidewalks and curbs around the Premises, including the Rear Access, in a good, clean and safe condition. Tenant shall, out of Tenant's operating budget, establish (i) a maintenance fund to provide for future repairs of the Project, and (ii) a preservation fund to be used for capital replacements and improvements (but not for routine maintenance and repair). During the Operating Term and any Renewal Terms, Landlord and SAWS shall have no obligation or responsibility for maintenance and repairs to the Premises except for damage caused by Landlord and/or SAWS, their elected officials, trustees, employees, officers, directors, volunteers, agents, or representatives. Tenant shall have no responsibility for maintenance and repair of the Library Gateway Portal, to include any furnishings or equipment therein, which shall be Landlord's obligation to maintain, repair and replace as necessary, at Landlord's sole cost and expense. Landlord will have no duty to make repairs or replacements of any kind to the Project or any property of Tenant as a result of SAWS operations.

Section 6.8 Security. Tenant shall be responsible for the security and safekeeping of the Project and its contents, except for the contents of the Library Gateway Portal which shall be the responsibility of Landlord. Landlord shall control and be responsible for the public access to the Library Gateway Portal, and shall prevent the public from entering any private portions of the Museum from the Library Gateway Portal.

Section 6.9 Annual Report. Tenant shall provide Landlord and SAWS a comprehensive financial report of Tenant activities under this Lease during Tenant's most recently completed fiscal year. Such report shall include but not be limited to:

- (a) Quantifiable statistical data related to number of visitors to the Museum, broken down, if available, by general admission (children, adults, groups, etc.), attendance related to special exhibits and special admissions, reduced price admissions and any other pertinent data which may be helpful in determining general public interest in and utilization of the Museum.
- (b) Details of the preservation funds collected and expended in compliance with the terms of Section 6.7.

Section 6.10 Nondiscrimination. Tenant covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the Premises, which said discrimination Tenant acknowledges is prohibited.

## ARTICLE 7

### SUBLETTING AND ASSIGNMENT

Section 7.1 Tenant's Right to Sublet and License. Tenant shall not voluntarily or involuntarily sell, assign, sublet or otherwise transfer all or any portion of its interests under this Lease or otherwise with respect to the Premises and the leasehold estate hereby created without the prior written consent of (i) Landlord given through passage of an appropriate ordinance by the City Council and approved by the Library Trustees, and (ii) SAWS by administrative approval; provided, however, SAWS prior written consent shall not be required for a partial assignment or subletting of any portion of the Premises that is situated wholly inside the Building or the Pavilion. Any sublease shall expressly be made subject to the provisions of this Lease. Notwithstanding the above, Tenant shall have the right, to sublease a portion of the Building and/or Pavilion and all or a portion of the Patio to a food service provider of Tenant's choosing to provide restaurant and catering services and to sell food and drink to Museum patrons on the Patio with only administrative approval required from the appropriate City department and SAWS, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant may also license portions of the Premises without Landlord consent for concessionaire purposes, including but not limited to a gift shop and snack bar on the Premises, and to contract for concessionaires and other third-party contractors to conduct operations on the Premises for any purpose within the Permitted Use. Regardless of any subletting or licensing, Tenant shall be primarily liable for the performance of its obligations under this Lease.

Section 7.2 Landlord's and SAWS' Right to Assign. Landlord and SAWS shall have the right to assign their interest in this Lease in whole or in part, by operation of law or otherwise, including all of their rights, benefits, privileges, duties and obligations hereunder, subject to the provisions of this Lease, whenever Landlord and/or SAWS in its sole judgment

deems it appropriate, and Tenant shall attorn to any such assignee upon being furnished notice of the assignment. Such assignment shall relieve Landlord and/or SAWS of any liability or obligation under the Lease, other than those accrued hereunder prior to the date of such assignment, it being the intention of Landlord, SAWS and Tenant that Tenant shall look solely to Landlord's and/or SAWS' successor in interest for performance of all obligations under the Lease accruing from and after the date of such assignment.

## ARTICLE 8

### INSURANCE

Section 8.1 Building and Pavilion Insurance. Tenant shall obtain and continuously maintain in full force and effect during the Term, commencing on the Build-out Commencement Date, policies of insurance covering the Building and Pavilion and providing that the Landlord and SAWS are additional insureds and loss payees for the amounts of their interests as defined in this Lease against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter embraced by an "All Risks" property insurance policy including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (c) loss for flood if the Building and/or Pavilion is in a designated flood or flood insurance area; and (d) loss or damage from such other risks or hazards of a similar or dissimilar nature which are now or may hereafter be customarily insured against with respect to a structure similar in construction, design, general location, use and occupancy to the Building or Pavilion. At all times, such insurance coverage shall be in an amount equal to Replacement Cost coverage of the Building and Pavilion. "Replacement Cost" shall be interpreted to mean the cost of replacing the improvements without deduction for depreciation or wear and tear, and it shall include a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Building or Pavilion in the event of damage thereto or destruction thereof.

Section 8.2 Other Insurance Coverage. Commencing on the Build-out Commencement Date and continuing for the remainder of the Term, Tenant shall obtain and continuously maintain in full force and effect the following insurance coverage (all of the following along with insurance on the Building and Pavilion referred to collectively herein as "Tenant's Insurance"):

- (a) Commercial general liability insurance against any loss, liability or damage on, about or relating to the Premises, or any portion thereof, with limits of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit, per occurrence, coverage on an occurrence basis and Two Million and No/100 Dollars (\$2,000,000.00) general aggregate or its equivalent in umbrella or excess liability coverage, and providing for reasonable loss retentions or deductibles. Any such insurance obtained and maintained by Tenant shall provide that the Landlord and SAWS are additional insureds therein.

(b) Workers' Compensation and Employer's Liability Insurance providing for statutory benefits and limits for Employer's Liability of not less than One Million and No/100 Dollars (\$1,000,000.00) per claim.

(c) "Builders risk" insurance in commercially reasonable amounts during construction of the Project. Tenant may cause Tenant's contractors, suppliers or agents to provide and maintain this insurance.

(d) Boiler and pressure vessel insurance (including, but not limited to, pressure pipes, steam pipes and condensation return pipes), provided the Building and/or Pavilion contains a boiler or other pressure vessel or pressure pipes. Landlord and SAWS shall be provided for as an additional insureds and loss payees as their interests may appear in such policy or policies of insurance.

(e) Property insurance coverage upon Tenant's business and upon all personal property of Tenant or the personal property of others kept, stored or maintained on the Premises against loss or damage by fire, windstorm or other casualties or causes for such amount as Tenant may desire.

(f) Each policy required under this Article 8 shall contain a waiver of subrogation clause as to Landlord and SAWS and shall contain a provision through endorsement or otherwise that (i) Landlord and SAWS shall be provided written notice of a cancellation, and (ii) an endorsement to the effect that the insurance as to the interest of Landlord or SAWS shall not be invalidated by any act or neglect of Landlord, SAWS or Tenant.

Section 8.3 Library Gateway Portal Insurance. Notwithstanding the insurance coverage by Tenant above, Landlord shall obtain and continuously maintain in full force and effect commercial general liability insurance and property insurance coverage of commercially reasonable amount on the Library Gateway Portal, and Workers' Compensation and Employer's Liability Insurance for all employees in the Library Gateway Portal. Landlord may, in its sole discretion, satisfy any of these requirements by a reasonable program of self-insurance.

Section 8.4 Waiver of Subrogation. Each Party hereby waives, releases and discharges the others, their agents and employees from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered by insurance required under this Article 8, or otherwise maintained with respect to the Premises, notwithstanding that such loss, claim, expense or damage may have been caused by the fault or negligence of one of the others, its agents or employees, and each Party agrees to look to the insurance coverage only in the event of such loss. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss or damage to the Premises.

## ARTICLE 9

### CASUALTY LOSS

Section 9.1 Notice of Damage. Tenant shall immediately notify Landlord and SAWS of any destruction or damage to the Premises in an amount, in each case, in excess of \$10,000.00.

Section 9.2 Tenant's Obligation to Restore.

(a) Total Destruction. Should the Building, the Pavilion or other improvements be wholly destroyed or damaged by fire, wind or any other casualty covered by the insurance to be provided by Tenant pursuant to Article 8 of this Lease and subject to Section 9.2(b) below, Tenant shall, to the extent of the proceeds from Tenant's Insurance, promptly repair, replace, restore, and reconstruct the same in substantially the form in which it existed prior to such casualty, with at least as good workmanship and quality as the improvements being repaired or replaced; provided however, any such reconstruction shall be subject to design approval by Landlord and SAWS which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall complete any such reconstruction within two (2) years of the time that it receives final design approval from Landlord.

(b) Destruction Near End of Term. Notwithstanding the foregoing provisions of Section 9.2(a) above, if during the last two (2) Lease Years of the Term, the Building, the Pavilion or other improvements are wholly destroyed by fire, wind or any other casualty, or destroyed to such extent that Tenant reasonably determines that it would be uneconomic to cause the same to be restored and replaced, then Tenant shall not be obligated to restore, rebuild, or replace the Building, the Pavilion or other improvements and, at Tenant's option, this Lease shall terminate as though the date of such destruction was the date of the expiration of the Term. In the event of such election to terminate and to the extent covered by the proceeds of Tenant's Insurance, Tenant shall remove any debris and damaged improvements from the Premises so as to leave the Premises in a safe and clean condition, which obligation shall survive the termination of this Lease.

(c) Partial Destruction. If the Building, the Pavilion or other improvements should be damaged by a peril covered by Tenant's Insurance, and if such insurance is in effect, and if rebuilding or repairs can be completed within two (2) years after the date upon which Landlord and SAWS are notified by Tenant of such damage, this Lease shall not terminate, and Tenant shall, at its sole cost and expense to the extent of the proceeds of Tenant's Insurance, thereupon proceed with reasonable diligence to rebuild and repair the Building, the Pavilion or other improvements to substantially the condition in which it existed prior to such damage. The Rent payable hereunder, except to the extent covered by insurance, shall in no event abate by reason of damage or destruction. In the event that Tenant should fail to complete such repairs and rebuilding within two (2) years after the date upon which Landlord and SAWS are notified by Tenant of such damage, either Landlord or Tenant may, at its option, terminate this Lease by delivering written notice of termination within thirty (30) days to the other Party, whereupon all rights and

obligations hereunder (other than those which survive the termination of this Lease) shall cease and terminate.

Section 9.3 Use of Insurance Funds for Restoration. In the event of destruction or damage to the improvements by casualty where Tenant is obligated or where Tenant elects to repair, replace, restore and reconstruct the Building, the Pavilion or other improvements, all of the proceeds of Tenant's Insurance may be used by Tenant in connection with such restoration and neither Landlord nor SAWS shall make any claim on such proceeds.

## ARTICLE 10

### CONDEMNATION

Section 10.1 Notice of Taking. Tenant shall immediately notify Landlord and Landlord shall immediately notify Tenant (whichever receives notice of or becomes aware of such activity), of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises.

Section 10.2 Total Taking. Upon the Taking of the entire Premises by a Governmental Authority other than Landlord, this Lease shall terminate as of the date the condemning authority is entitled to possession and no further Base Rent shall be due. Additional Rent shall be apportioned and paid to the date of the Taking, and the condemnation proceeds will be distributed to Landlord and to Tenant in proportion to the value of their interests in the Premises and the Project, respectively.

Section 10.3 Partial Taking. Upon the Taking of a portion of the Premises, (including without limitation the Building and/or Pavilion and the equipment, machinery, and fixtures comprising a part thereof) by a Governmental Authority other than Landlord, this Lease shall nevertheless continue in effect as to the remainder of the Premises unless, in Tenant's and Landlord's reasonable judgment, so much of the Premises shall be subject to the Taking as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate (as of the date the condemning authority is entitled to possession) in the same manner as if the whole of the Premises had thus been subject to the Taking, no further Base Rent shall be due, Additional Rent shall be apportioned and paid to the date of the Taking, and the condemnation proceeds shall be distributed as provided in Section 10.2. In the event of a partial Taking where this Lease is not terminated, then to the extent of the condemnation proceeds made available to Tenant for restoration, Tenant shall proceed promptly to restore the remaining portion of the Premises to an integral unit, and the Rent payable during the remainder of the Term after the condemning authority is entitled to possession shall not be reduced.

Section 10.4 Temporary Taking. Upon a Taking of all or any portion of the Premises for temporary use or occupancy by a Governmental Authority other than Landlord, the Term shall not be reduced or affected and Tenant shall continue to pay the Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements,

terms, and provisions of this Lease. Tenant shall be entitled to receive the entire amount of any award provided for any temporary Taking.

Section 10.5 Taking by Landlord. Upon the Taking of all or any portion of the Premises by Landlord, Tenant shall be entitled to collect, in addition to any condemnation proceeds reasonably due Tenant, the value of the improvements to the Premises completed by Tenant, prorated for the amount of time remaining in the Term at the time of condemnation.

## ARTICLE 11

### RELEASE AND INDEMNIFICATION

Section 11.1 Tenant Release. Tenant has agreed to and does hereby, RELEASE, ACQUIT, AND FOREVER DISCHARGE Landlord and SAWS and the elected officials, employees, officers, directors, volunteers and representatives of Landlord and SAWS, individually or collectively, from and against any and all claims, demands, obligations, liabilities, suits, liens, rights, offsets, and causes of action of whatsoever nature, for damages directly relating to Tenant's activities under this Lease or the use of the Premises by Tenant, its agents, employees, contractors and invitees, whether accrued or unaccrued, known or unknown, except for damages caused by Landlord or SAWS or a breach of this Lease by Landlord or SAWS. In no event shall Landlord or SAWS be liable for any consequential or punitive damages in connection with this Lease.

Section 11.2 Landlord Release. Landlord and SAWS have agreed to and do hereby, RELEASE, ACQUIT, AND FOREVER DISCHARGE Tenant and its employees, officers, directors, volunteers and representatives, individually or collectively, from and against any and all claims, demands, obligations, liabilities, suits, liens, rights, offsets, and causes of action of whatsoever nature, for damages directly relating to Landlord's or SAWS' activities under this Lease or the use of the Premises by Landlord or SAWS, its agents, employees, contractors and invitees, whether accrued or unaccrued, known or unknown, except for damages caused by Tenant or a breach of this Lease by Tenant. In no event shall Tenant be liable for any consequential or punitive damages in connection with this Lease.

Section 11.3 Indemnification. Tenant covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Landlord and SAWS and the elected officials, trustees, employees, officers, directors, volunteers and representatives of Landlord and SAWS, individually or collectively, from and against any and all 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 bodily injury, death and property damage, made upon Landlord or SAWS, directly or indirectly arising out of, resulting from or related to Tenant's activities under this Lease, including any acts or omissions of Tenant, any agent, officer, director, representative, employee, consultant, contractor, subcontractor or invitee of Tenant, while in the exercise or performance of the rights or obligations under this Lease, all without, however, waiving any governmental immunity available to Landlord or SAWS 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 Landlord and SAWS and are not intended to create or

grant any rights, contractual or otherwise, to any other Person, including, but not limited to, independent contractors of Landlord or SAWS. Tenant shall promptly advise Landlord and/or SAWS in writing of any claim or demand against Landlord and/or SAWS or against Tenant known to Tenant related to or arising out of Tenant's activities under this Lease. Landlord or SAWS shall have the right, at its option and at its own expense, to participate in defense of any such claim or demand without relieving Tenant of any of its obligations under this paragraph.

Section 11.4 Environmental Indemnification. Tenant hereby agrees to INDEMNIFY and HOLD Landlord and SAWS HARMLESS from any and all losses, costs, expenses, claims, demands and causes of action of whatsoever nature, including all reasonable fees for attorneys, experts, environmental consultants and engineers, plus court costs and costs of remediation, relating to or in any way arising out of (i) Tenant's breach or violation of any of the Environmental Regulations by Tenant or any of its agents, employees, representatives, invitees or contractors, (ii) any noncompliance under the Environmental Regulations of the Premises that first exists or is directly attributable to Tenant from an event arising from and after the Effective Date (but prior to the expiration of the Term), or (iii) any property damage or personal injury alleged to be caused by environmental conditions of the Premises first existing from and after the Effective Date, but prior to the expiration of the Term attributable to activities by Tenant. The provisions of this Section 11.4 are solely for the benefit of the Landlord and SAWS and are not intended to create or grant any rights, contractual or otherwise, to any other Person. The provisions of this Section 11.4 shall not apply to any environmental damage or violation of Environmental Regulations caused by Landlord's or SAWS' activities on the Premises. As used herein, the term "Environmental Regulations" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. §4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §401 et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq., the Texas Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. art. 4477-7, the Texas Water Code Chapters 26 and 27; and the Texas Clean Air Act, Tex. REV. CIV. STAT. ANN. art 4477-5, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), to exposure to toxic, hazardous, or other controlled, prohibited or regulated substances, to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

Section 11.5 Joint Defense. Landlord and Tenant agree to jointly defend any and all claims or causes of action which are brought by any heirs of the grantor of the Deed in relation to the Condition or otherwise.

Section 11.6 Survival. The provisions of this Article 11 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 12

### DEFAULT AND REMEDIES

Section 12.1 Tenant Default. Each of the following shall be deemed an “Event of Default” by Tenant hereunder and a material breach of this Lease:

(a) Tenant shall fail to pay any installment of Base Rent and such failure shall continue for a period of ten (10) Business Days after written notice from Landlord of non-payment.

(b) Tenant shall fail to pay the Additional Rent when due, and the failure continues for a period of ten (10) Business Days after Tenant shall have been given written notice specifying the same by Landlord; provided, however, that so long any such amount shall be disputed in good faith by appropriate procedures, and the non-payment of such amount does not result in the imposition by a Governmental Authority of a lien against the Land or any threat of seizure of the Premises or forfeiture of title thereto, then Tenant shall not be in default of its obligation hereunder until final resolution of such dispute.

(c) Tenant shall fail to keep, perform, or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent, and Tenant shall fail to commence and take such steps as are necessary to remedy the same as soon as reasonably possible, and in any event within thirty (30) days after Tenant shall have been given a written notice by Landlord specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same; unless such occurrence is of a nature that remedy is possible but will take longer than thirty (30) days, in which event Tenant will not be in default so long as it promptly commences and diligently pursues such cure to completion within ninety (90) days following the original notice from Landlord.

(d) Tenant shall sell, assign or sublet its interest in this Lease in violation of Section 7.1 above.

(e) Tenant shall abandon the Premises.

(f) Tenant shall deny SAWS the use of its Right of Access.

Section 12.2 Landlord Remedies. Upon the occurrence of an Event of Default and after the time for cure, if any, has run, Landlord may, in addition to and without prejudicing any

remedies available to Landlord at law or in equity, exercise any one of more of the following rights and remedies:

- (a) Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall surrender the Premises to Landlord after an amount of time reasonable to remove all of Tenant's personal property and trade fixtures, including all Museum Pieces, but not to exceed sixty (60) days. In the event of such termination, Tenant shall owe no Rent to Landlord for any period subsequent to surrender of the Premises, provided however Tenant's liability hereunder as to Rent still due and owing for periods prior to such surrendering of the Premises shall not be waived. Upon surrender of the Premises by Tenant, all rights and obligations hereunder (other than those which survive the termination of this Lease) shall cease and terminate.
- (b) Enter upon the Premises and correct the condition underlying the Event of Default pursuant to Section 12.3 below.

Section 12.3 Landlord's Right of Entry. Landlord shall have the right but not the obligation, prior or subsequent to an Event of Default without in any way limiting Landlord's other rights and remedies under this Lease, to enter onto the Premises during the normal business hours of the Museum and with prior notice to Tenant, to make inspections or to take such other actions as it deems reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any event or condition at the Premises. If such entry has been made necessary by the failure of Tenant to perform its obligations under this Lease, all reasonable costs and expenses paid or incurred by Landlord in the exercise of any such rights shall be payable by Tenant within thirty (30) days after demand, which obligation shall survive the expiration of the Term or earlier termination of this Lease.

Section 12.4 SAWS Remedy. Upon thirty (30) days after Tenant shall have been given written notice by SAWS of Tenant's default under this Lease, which default remains uncorrected, SAWS shall have the right to enter upon the Premises and correct the condition underlying the default, and Tenant agrees to reimburse SAWS upon demand for any reasonable expenses incurred by SAWS to affect compliance. SAWS Right of Access shall in no way be limited by the provisions of this Section 12.4.

Section 12.5 Landlord and/or SAWS Default; Tenant Remedy. If Tenant identifies a default by Landlord and/or SAWS of any of their obligations under this Lease and such condition of default is acknowledged by Landlord and/or SAWS but such default is not cured within thirty (30) days after written notice from Tenant, then Tenant shall have the right to (i) cure such default and collect the costs thereof from Landlord and/or SAWS; provided that if such failure cannot be cured within such thirty days and Landlord and/or SAWS has commenced to cure such failure within such thirty days and is diligently pursuing such cure, then Landlord shall have such additional time as is reasonably necessary to effect such cure; or (ii) terminate this Lease.

## ARTICLE 13

### REPRESENTATIONS AND WARRANTIES

Section 13.1 Landlord Representations. Landlord makes the following representations with respect to the Land as of the Effective Date:

- (a) Landlord owns good and indefeasible fee simple title to the Premises, subject only to the Permitted Encumbrances.
- (b) Subject to the Condition, no Person other than Landlord, the Library Trustees and SAWS has any interests in the Premises.
- (c) The Premises is not now in whole or in part under lease to any Person other than Tenant.

Section 13.2 Condition of Premises. Landlord and SAWS make no representation or warranty, express or implied, as to the condition of the Premises, and Tenant accepts the use of the Premises in its "AS IS – WHERE IS" condition, with all faults. Tenant will inspect the condition of the Premises prior to the Planning Completion Date to determine that the Premises is suitable for its use. Tenant accepts the Premises with the full knowledge, understanding and agreement that Landlord and SAWS disclaim any warranty of suitability for Tenant's intended purposes. Tenant agrees that Landlord is leasing to Tenant all of Landlord's right, title and interest to the Premises without warranty of title.

Section 13.3 Tenant as Non-Profit. Tenant represents that as of the Effective Date, Tenant is a validly formed 501(c)(3) foundation, and Tenant agrees that it shall continue to maintain its 501(c)(3) status for the duration of the Term.

Section 13.4 Future Agreements. During the Term, neither Landlord, the Library Trustees nor SAWS will enter into any oral or written agreements affecting the Premises, or permit any other agreements, encumbrances, liens or restrictions to attach to the Premises, without Tenant's prior written approval.

Section 13.5 Warranty of Peaceful Possession. Landlord covenants that Tenant, on timely observing all of the covenants and agreements herein contained and provided to be performed by Tenant, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term without ejection or interference by or from Landlord or any other Person claiming by, through or under Landlord (other than Persons claiming by, through or under Tenant), subject only to (i) rights of permitted subtenants arising by, through or under Tenant, (ii) the Permitted Exceptions, (iii) Legal Requirements, (iv) the power of eminent domain, (v) the police power of Governmental Authorities, and (vi) the rights and reservations of Landlord and SAWS under this Lease, and may exercise all of its rights hereunder, subject only to the provisions of this Lease; provided, however, that this provision shall not apply to circumstances beyond Landlord's control or circumstances otherwise necessitating interference with such use in order to preserve or otherwise maintain the Premises. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use and enjoyment of the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part

thereof, subject only to the provisions of this Lease, the Right of Access, the Permitted Encumbrances and all applicable Legal Requirements.

## ARTICLE 14

### CONFLICT OF INTEREST

Section 14.1 Tenant Covenants. Tenant covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Lease. Tenant further covenants that in the performance of this Lease, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff. Tenant further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

Section 14.2 Prohibited Financial Interest. Tenant acknowledges that it is informed that the Charter of the City of San Antonio (for purposes of this paragraph, the "City") and the City's Ethics Code prohibit a City officer or employee, as those terms are defined in 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 services, if any of the following individual(s) or entities is party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Section 14.3 Tenant Certification. Tenant warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of Landlord or SAWS. Tenant further warrants and certifies that it has tendered to Landlord a Discretionary Contracts Disclosure Statement in compliance with the Landlord's Ethics Code.

## ARTICLE 15

### MISCELLANEOUS

Section 15.1 Notices. Any notice, approval or consent provided for or permitted to be given hereunder must be in writing and may be given by depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth below:

If to Landlord: City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attn: Leticia Vacek, City Clerk

With a copy to: San Antonio Public Library  
600 Soledad  
San Antonio, Texas 78205  
Attn: Ramiro Salazar, Director

and

San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298  
Attn: Vice President and General  
Counsel

If to Tenant: Mr. Jack Guenther, Director  
153 Treeline Park, Suite 300  
San Antonio, Texas 78209

and

Mr. Mark E. Watson, Jr., Director  
P.O. Box 6886  
San Antonio, Texas 78261

with a copy to: Fulbright & Jaworski L.L.P.  
300 Convent Street, Suite 2200  
San Antonio, Texas 78205  
Attn: Jane H. Macon

The Parties shall have the right from time to time to change their respective addresses for purposes of notice hereunder by giving a notice to such effect in accordance with the provisions of this Section 15.1.

Section 15.2 Governing Law. This Lease has been made and is performable in Bexar County, Texas, and shall be construed and enforced in accordance with the laws of the State of Texas.

Section 15.3 Construction. Unless the context of this Lease clearly requires otherwise, (a) pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character; (b) the singular shall include the plural wherever and as often as may be appropriate; (c) the term “includes” or “including” shall mean “including without limitation”; and (d) the words “hereof” or “herein” refer to this entire Lease and not merely the Section or Article number in which such words appear. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Any reference to a particular Article or Section shall be construed as referring to the indicated article or section of this Lease.

Section 15.4 Severability. If any provision of this Lease or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 15.5 Relation of Parties. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties. It is expressly understood and agreed that Tenant is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that neither Landlord nor SAWS shall in any way be responsible therefore.

Section 15.6 Non-Merger. Notwithstanding the fact that the fee title or the leasehold estate in the tracts or parcels of land described in Article 2 hereof and the leasehold estate hereby created may, at any time, be held by the same party, there shall be no merger of the leasehold estate hereby created with fee title unless the owner thereof executes and files for record in the Office of the County Clerk of Bexar County, Texas a document expressly providing for the merger of such estates.

Section 15.7 Recitals. The Recitals to this Lease are incorporated herein for all purposes.

Section 15.8 Complete Agreement. This Lease, including the exhibits hereto, has been entered into by the Parties pursuant to the Agreement, which remains binding between Landlord and Tenant. To the extent that any provision of the Agreement contradicts the terms of this Lease, the language in this Lease shall control. No other agreements, oral or otherwise, regarding the subject of this Lease, except for the Agreement, shall be deemed to exist or to bind the parties hereto.

Section 15.9 Amendments. This Lease may only be amended in a written document expressly described as an amendment to this Lease, dated subsequent to the Effective Date and duly executed by the Parties.

Section 15.10 Memorandum of Lease. Landlord and Tenant, at the request of either Party, will file a Memorandum of Lease in the Real Property Records of Bexar County, Texas and a recorded copy will be provided to all Parties. Under no circumstances will either party otherwise record this Lease or any portions thereof.

Section 15.11 Binding Effect; Successors and Assigns. This Lease shall constitute a real right and covenant running with the Land, and this Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted hereunder. Whenever a reference is made herein to a Party, such reference shall include the Party's successors and assigns.

Section 15.12 No Third Parties Benefited. The terms and provisions of this Lease are for the sole benefit of Landlord, Tenant, the Library Trustees and SAWS, and no other party whatsoever.

Section 15.13 Time of the Essence. Time is of the essence with respect to each provision, term and covenant of this Lease.

Section 15.14 Counterparts. This Lease may be executed in multiple counterparts, which together shall constitute but one and the same instrument, and counterparts of the signature pages hereto separately executed by each of the parties may be collated and attached to one counterpart hereof to collectively constitute one fully executed instrument.

EXHIBITS

- A – LIBRARY PROPERTY
- B – ADJOINING PROPERTY
- C – SAWS PROPERTY
- D – SAWS PLANS SPECIFICATIONS

*[ Signatures of Tenant, Landlord, the Library Trustees and SAWS on Next Page ]*

IN WITNESS WHEREOF, this Lease Agreement has been executed to be effective as of the Effective Date set forth herein.

TENANT:

NATIONAL WESTERN ART FOUNDATION, a  
non-profit 501(c)(3) corporation.

By: \_\_\_\_\_  
Jack Guenther, Director

By: \_\_\_\_\_  
Mark E. Watson, Jr., Director

LANDLORD:

CITY OF SAN ANTONIO, TEXAS, a Texas  
municipal corporation and home-rule city of the  
State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attested By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_  
City Attorney

PUBLIC LIBRARY:

SAN ANTONIO LIBRARY BOARD OF  
TRUSTEES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SAWS:

SAN ANTONIO WATER SYSTEM

By: \_\_\_\_\_  
David E. Chardavoyne, President and CEO

**EXHIBIT A**

**Legal Description of the Library Property**

0.586 acres of land situated in the City of San Antonio, Bexar County, Texas, being Lot 8, Lot 9, Lot 10, Lot 11, NCB 161, and being the same acre tract of land conveyed to the City of San Antonio in Volume 237, Page 192 Deed Records of Bexar County, Texas; said 0.586 acre tract being more particularly described as follows:

BEGINNING, at a found monument at the intersection of the southerly right-of-way line of West Market Street (R.O.W. varies), with the easterly right-of-way line of South Presa Street (R.O.W. varies), same being the northeasterly corner of said Lot 8;

THENCE, N 75°44'07" E. along the southerly right-of-way line of West Market Street (R.O.W. varies), a distance of 139.16 feet to a set ½ inch iron rod with BPI cap for the northeasterly corner of said Lot 11;

THENCE, S 14°15'53" E. leaving the southerly right-of-way line of West Market Street (R.O.W. varies), along the easterly line of said Lot 11, a distance of 161.51 feet to a set ½ inch iron rod with BPI cap on the northerly line of the San Antonio River, same being the southeasterly corner of said Lot 11;

THENCE, along the northerly line of the San Antonio River, the following courses:

N 80°52'53" W, a distance of 19.79 feet to a set ½ inch iron rod with BPI cap;

S 63°04'09" W, a distance of 56.30 feet to a set ½ inch iron rod with BPI cap;

S 68°00'49" E, a distance of 97.22 feet to a set ½ inch iron rod with BPI cap at the intersection of said easterly right-of-way line of South Presa Street (R.O.W. varies) with the northerly line of the San Antonio River;

THENCE, N 04°40'08" W, along the easterly right-of-way line of South Presa Street, a distance of 181.60 feet to the POINT OF BEGINNING, containing an area of 0.586 acres of land, more or less.

**EXHIBIT B**

**Legal Description of the Adjoining Property**

0.305 acres of land situated in the City of San Antonio, Bexar County, Texas, being Lot 12, and the westerly 16.7 feet of Lot 13, NCB 161, and being a portion of the same acre tract of land conveyed to San Antonio Water Supply Company in Volume 707, Page 233 Deed Records of Bexar County, Texas: said 0.305 acre tract being more particularly described as follows:

COMMENCING, at a found monument at the intersection of the southerly right-of-way line of west market Street (R.O.W. varies), with the easterly right-of-way line of South Presa Street (R.O.W. varies). same being the northeasterly corner of said Lot 8;

THENCE, N 75°44'07" E. along the southerly right-of-way line of West Market Street (R.O.W. varies), a distance of 139.16 feet to a set ½ inch iron rod with BPI cap for the POINT OF BEGINNING, and the northwesterly corner of said Lot 12;

THENCE, N 75°44'07" E. along the southerly right-of-way line of West Market Street (R.O.W. varies), a distance of 75.00 feet to a set ½ inch iron rod with BPI cap for the northeasterly corner of herein described tract:

THENCE, S 14°15'53" E. leaving the southerly right-of-way line of West Market Street (R.O.W. varies), and crossing said Lot 13, a distance of 193.94 feet to a set ½ inch iron rod with BPI cap on the northerly line of the San Antonio River, same being the southeasterly corner of herein described tract:

THENCE, N 80°52'53" W. along the northerly line of the San Antonio River, a distance of 81.71 feet to a set ½ inch iron rod with BPI cap for the southwestly corner of said Lot 12;

THENCE, N 14°15'53" W. along the westerly line of said Lot 12, a distance of 161.51 feet to the POINT OF BEGINNING, containing an area of 0.305 acres of land, more or less.

**EXHIBIT C**

**Legal Description of SAWS Property**

1.021 acres of land situated in the City of San Antonio, Bexar County, Texas, being a portion of Lot 13, all of Lot 14, and Lot 15, NCB 161, said portion of Lot 13 being a portion of the same acre tract of land conveyed to San Antonio Water Supply Company in Volume 707, Page 233 Deed Records of Bexar County, Texas, and said Lot 14, and Lot 15 being the same acre tract of land conveyed to the Water Works Company in Volume 154, Page 461 Deed Records of Bexar County, Texas: said 1.021 acre tract being more particularly described as follows:

COMMENCING, at a found monument at the intersection of the southerly right-of-way line of West Market Street (R.O.W. varies), with the easterly right-of-way line of South Presa Street (R.O.W. varies), same being the northeasterly corner of said Lot 8;

THENCE, N 75°44'07" E, along the southerly right-of-way line of West Market Street (R.O.W. varies), a distance of 214.16 feet to a set ½ inch iron rod with BPI cap for the POINT OF BEGINNING, of herein described tract;

THENCE, N 75°44'07" E, along the southerly right-of-way line of West Market Street (R.O.W. varies), a distance of 183.40 feet to a set ½ inch iron rod with BPI cap on the westerly line of the San Antonio River, for the northeasterly corner of said Lot 15;

THENCE, leaving the southerly right-of-way line of West Market Street (R.O.W. varies), along the common line of the easterly line of Lot 15, and the westerly line of the San Antonio River, the following courses:

S 20°41'53" E, a distance of 127.60 feet to a set ½ inch iron rod with BPI cap;

S 24°14'53" E, a distance of 30.00 feet to a set ½ inch iron rod with BPI cap;

S 04°21'07" W, a distance of 36.00 feet to a set ½ inch iron rod with BPI cap;

S 00°48'07" W, a distance of 80.00 feet to a set ½ inch iron rod with BPI cap for the southeasterly corner of said Lot 15, same being the intersection of the westerly line of the San Antonio River with the northerly line of the San Antonio River;

THENCE, N 80°52'53" W, along the northerly line of the San Antonio River, a distance of 185.88 feet to a set ½ inch iron rod with BPI cap for the southwesterly corner of herein described tract.

THENCE, N 14°15'53" W, crossing said Lot 13, a distance of 193.94 feet to the POINT OF BEGINNING, containing an area of 1.021 acres of land, more or less.

## EXHIBIT D

### SAWS Plans Specifications

1. The Rear Access must be designed and constructed for a load bearing capacity equal to or better than AASHTO (American Association of State Highway and Transportation) HS20-44. The HS20-44 designation allows for the safe accommodation of 3-4 axle vehicles, such as a large semi-truck and trailer. The design loading shall bear a three axle truck with front axle weight of 8 kips (35 kN; 4 kips or 17.5 kN per wheel) and two rear axles of 32 kips (145 kN; 16 kips or 72.5 kN per wheel).
2. The existing slab of concrete serving as a cap at the location of former Well No. 2 may be brought down to grade level, if desired.
3. Work related to an existing vault in the area between the Pavilion and the Patio must be completed.
4. Landscaping shall be low maintenance/low irrigation and consistent with a Spanish theme.
5. An acequia demonstration area is to be constructed near the San Antonio River, incorporating signage and educational features memorializing the historical sources of water for the City of San Antonio; the cost to construct this area shall not exceed \$50,000 unless additional funds are provided by SAWS.

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

National Western Art Foundation, a Texas non-profit corporation (IRS 501(c)(3))

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; *or*

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); *or*

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; *or*

List lobbyists or public relations firms: Fulbright & Jaworski L.L.P.

NOTE: All foundatoin board members have served in a pro-bono capacity.

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Fulbright & Jaworski L.L.P.	See attached list.		

**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

*This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.*

<b>Signature:</b> 	<b>Title:</b> Director  <b>Company or D/B/A:</b> National Western Art Foundation	<b>Date:</b> 8/29/06
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<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

## Fulbright & Jaworski L.L.P. Texas Committee

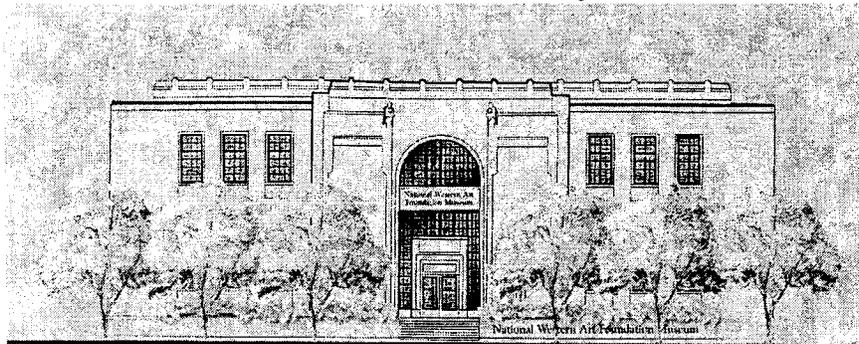
NAME	DATE	AMOUNT	CHECK	POSITION	PAYABLE
Julian Castro	12/23/2004	500.00	FJ # 5880	Mayor, San Antonio (running for) [City council, San Antonio, District 7]	Julian Castro Campaign
Julian Castro	02/15/2005	250.00	FJ # 5896	Mayor, San Antonio (running for) [City council, San Antonio, District 7]	Julian Castro Campaign
Julian Castro	05/18/2005	1,000.00	FJ # 5938	Mayor, San Antonio (running for) [City council, San Antonio, District 7]	Julian Castro Campaign
Edward Garza	12/29/2004	1,000.00	F& # 5883	Mayor, City of San Antonio	Ed Garza Campaign
Carroll Schubert	08/02/2004	1,000.00	FJ # 5722	Mayor, San Antonio (running for)	Carroll Schubert Campaign
Roger Flores, Jr.	04/12/2005	250.00	FJ # 5924	City Council, San Antonio District 1	Roger Flores Campaign
Roger Flores, Jr.	06/05/2006	500.00	FJ # 6216	City Council, San Antonio District 1 r	Roger Flores Campaign
Joel Williams	03/11/2005	250.00	FJ # 5904	City Council, San Antonio District 2	Joel Williams Campaign
Art Hall	04/12/2006	500.00	FJ # 6194	City Council, San Antonio Place 8	Art Hall Campaign
Chip Haass	03/29/2005	500.00	FJ # 5913	City Council, San Antonio District 10	Chip Haass Campaign
Chip Haass	07/06/2005	250.00	FJ # 5954	City Council, San Antonio District 10	Chip Haass Campaign
Chip Haass	08/02/2006	250.00	FH # 6251	City Council, San Antonio District 10	Chip Haass Campaign
Phil Hardberger	08/16/2004	1,000.00	FJ # 5745	Mayor, San Antonio (running for)	Phil Hardberger Campaign
Phil Hardberger	05/18/2005	1,000.00	FJ # 5939	Mayor, San Antonio (running for)	Phil Hardberger Campaign
Phil Hardberger	07/06/2005	1,000.00	FJ # 5955	Mayor, San Antonio	Phil Hardberger Campaign
Phil Hardberger	07/03/2006	1,000.00	FJ # 6239	Mayor, San Antonio	Phil Hardberger Campaign
Delicia Herrera	07/08/2005	250.00	FJ # 5958	City Council, San Antonio District 6 (running for)	Delicia Herrera Campaign

## Fulbright & Jaworski L.L.P. Texas Committee

NAME	DATE	AMOUNT	CHECK	POSITION	PAYABLE
Elena Guajardo	12/15/2005	250.00	FJ # 6091	City Council, San Antonio District 7	Elena Guajardo Campaign
Elena Guajardo	06/27/2006	250.00	FJ # 6236	City Council, San Antonio District 7	Elena Guajardo Campaign
Elena Guajardo	07/03/2006	250.00	FJ # 6241	City Council, San Antonio District 7	Elena Guajardo Campaign
Ray Lopez	04/22/2005	250.00	FJ # 5929	City Council, San Antonio District 7 (running for)	Ray Lopez Campaign
Ron Segovia	02/15/2005	250.00	FJ # 5899	City Council, San Antonio District 3	Ron Segovia Campaign
Ron Segovia	05/05/2005	250.00	FJ #5936	City Council, San Antonio District 3	Ron Segovia Campaign
Richard Perez	07/30/2004	250.00	FJ # 5719	City Council, San Antonio District 3	Richard Perez Campaign
Noel A. Suniga	04/12/2005	250.00	FJ # 5922	City Council, San Antonio District 7 (running for)	Noel A. Suniga Campaign
Kevin Wolff	08/06/2004	500.00	FJ # 5728	City Council, San Antonio Place 9 (running for)	Kevin Wolff Campaign
Kevin Wolff	09/13/2005	500.00	FJ # 6011	City Council, San Antonio Place 9	Kevin Wolff Campaign
Kevin Wolff	07/03/2006	500.00	FJ # 6240	City Council, San Antonio Place 9	Kevin Wolff Campaign
Philip A. Cortez	05/15/2006	250.00	FJ # 6211	City Council, San Antonio Place 4 (running for)	Philip A. Cortez Campaign

# LEASE AGREEMENT

National Western Art Foundation,  
City of San Antonio and  
San Antonio Water System

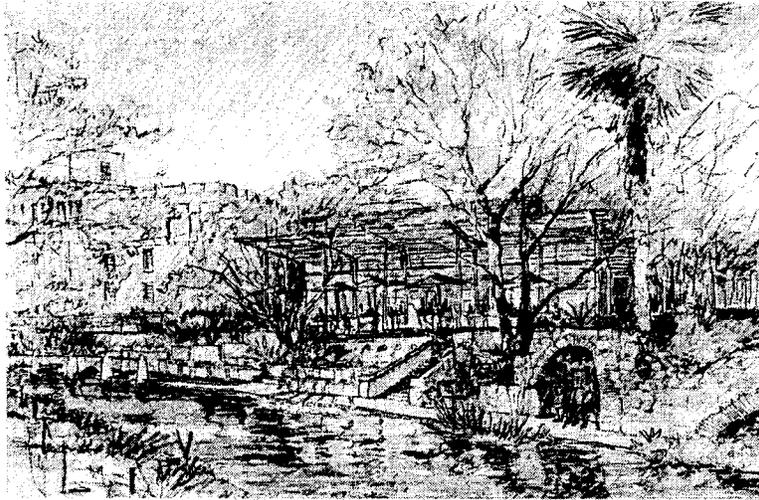


1

## INTRODUCTION

- National Western Art Foundation (NWAFF) is a 501(c)(3) organization
- NWAFF proposed a private/public project with COSA and SAWS
- This project will:
  - Invest approximately \$16 million in private dollars to revitalize the Hertzberg building
  - Create a world class western art museum
  - Create a Library History Center Portal
  - Create a destination venue for downtown
- Proposed Lease Agreement will formalize partnership

2



NATIONAL WESTERN ART FOUNDATION MUSEUM

3

## Background

- City Council approved MOU with NWF on May 19, 2005
- Library Board approved concept & business terms of Lease Agreement on July 26, 2006
- SAWS Board agreed on August 15, 2006 to allow NWF to use adjacent property
- Staff negotiated a lease agreement with NWF for Council consideration

4

## Lease Agreement

National Western Art Foundation will:

- Pay all capital costs for renovation of the Hertzberg building
- Pay all capital costs for improvements and amenities on adjacent property
- Pay all operational and maintenance costs
- Pay all utilities, including utilities for Library History Center Portal
- Pay all taxes or other impositions
- Pay market rate rent for patio area
- Meet insurance requirements

5

## Lease Agreement

National Western Art Foundation will:

- Award construction contracts through open and competitive process
- Seek grants to allow free or reduced entrance fees
- Allow COSA to use Pavilion for 6 events per year at 50% of rental fee
- Allow SAWS to use Pavilion for 4 events per year at 50% of reduced fee
- Maintain 501(c)(3) status for duration of Lease Agreement
- Will hold an annual fundraising event with Library Board to benefit the operations of the Portal

6

## Lease Agreement

City of San Antonio will:

- Release building to NWAFF once planning phase is complete
- Approve all building and improvement plans
- Provide \$500K from 2003 bond funds for stabilization project
- Provide all furnishings, equipment, and exhibits for the History Center Portal
- Staff and operate the History Center Portal
- Own all improvements at end of agreement, except museum exhibits

7

## Lease Agreement

San Antonio Water System will:

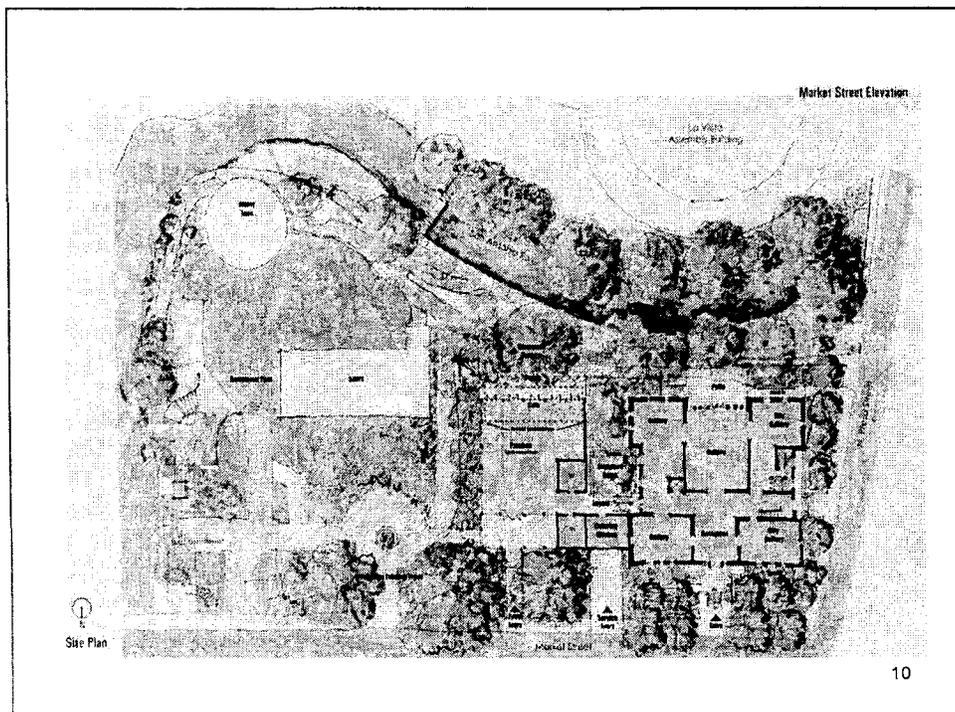
- Retain full access to SAWS facilities
- Allow NWAFF use of adjacent property to Hertzberg building for construction of Pavilion and Patio
- Approve all improvement plans on SAWS property

8

## PROPOSED IMPROVEMENTS

- Renovation of Hertzberg building
- Creation of Library History Center Portal
- Establish a Western Art Museum
- Enclosed Pavilion with café and outdoor seating area
- Establish a patio area

9



## TIMELINE

- Planning phase began May 29, 2005 and will be completed when:
  - Proposed plans are approved
  - Funding or financing goal is achieved
  - All permits are issued
- Planning phase must be completed by May 29, 2008
- Build-out phase is to be completed within three years
- Lease Term is 25 yrs plus three, five year renewals

11

## FISCAL IMPACT

- \$500K from 2003 bond funds
- \$1.6M one-time cost for finish out & FFE
- \$144K Annual Operating

12

## RECOMMENDATION

- Library Board, SAWS, and Staff recommend approval of Lease Agreement
- Quality of Life Committee was briefed on August 17, 2006 and voted to endorse this project