

AN ORDINANCE 2008-01-31-0077

**AUTHORIZING THE CITY TO LEASE APPROXIMATELY 1,258 SQUARE FEET OF SPACE AT 3226 NOGALITOS FROM RSV, INC. FOR A DISTRICT 5 CONSTITUENT OFFICE, WITH A TWO-YEAR TERM AND MONTHLY RENT OF \$900.00 DURING THE FIRST YEAR AND \$1,000 DURING THE SECOND, WITH THE POSSIBILITY OF RENEWAL**

\* \* \* \* \*

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

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

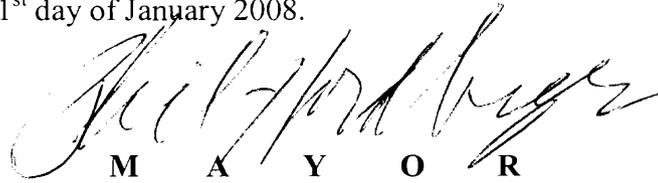
**SECTION 2.** Funding for this ordinance is available in Fund 11001000 General Fund, Cost Center 105020001 Constituent Office, General Ledger 5206010 Rental of Facilities, as part of the FY08 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to RSV, Inc. or its order and should be encumbered with a purchase order.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance becomes effective 10 days after passage unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

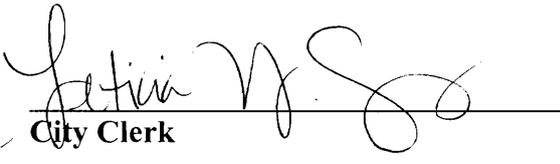
**PASSED AND APPROVED** this 31<sup>st</sup> day of January 2008.



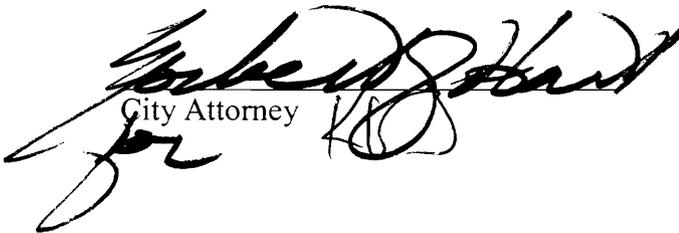
M A Y O R

**PHIL HARDBERGER**

**Attest:**

*for*   
City Clerk

**Approved As To Form:**

  
City Attorney

<b>Agenda Item:</b>	19 ( in consent vote: 7, 9, 10, 11, 13A, 13B, 13C, 13D, 14, 15, 17, 19, 20, 22, 24, 26, 27, 30, 33, 34A, 34B, 34D, 34E, 34F, 34G, 34H, 34I, 34J, 34K, 34L, 34M, 34N, 36 )						
<b>Date:</b>	01/31/2008						
<b>Time:</b>	10:24:15 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the City to lease approximately 1,258 square feet of space at 3226 Nogalitos from RSV, Inc. for a District 5 Constituent Office, with a two-year term and monthly rent of \$900.00 during the first year and \$1,000 during the second, with the possibility of renewal. [Sharon De La Garza, Assistant to the City Manager; Mark Gretchen, Interim Director, Asset Management]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1	x					
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x			x	
Louis E. Rowe	District 9		x				x
John G. Clamp	District 10		x				

**Attachment I**

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**Office Lease  
(District 5 Constituent Office Lease)**

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**1. Basic Information, Definitions.**

**Effective Date:** 10 days after the effective date of the Authorizing Ordinance

**Authorizing Ordinance:**

**Landlord:** RSV, Inc.

**Landlord’s Address:** c/o Rohde Ottmers Siegal Commercial & Investment Realtors, 85 N.E. Loop 410, Suite 100, San Antonio, Texas 78216

**Tenant:** City of San Antonio

**Tenant’s Address:** P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Asset Management Department)

**Premises:** 1,258 square feet, more or less, known as Suite 102 of a building ("Building") located at 3226 Nogalitos in the City of San Antonio, the Building being located on Lots 16-22, Block 4, New City Block 6062, San Antonio, Bexar County, Texas. The Premises are the vacant space next to SA Town Wireless as depicted on **Exhibit A**, which is incorporated into this lease by reference for all purposes as if fully set forth.

**Permitted Use:** General office use

**No. of Parking Spaces:** Tenant and its employees and invitees have non-exclusive use of all parking spaces provided at the Building

**Commencement Date:** February 1, 2008

**Initial Term:** Two years

**Rent:** As provided in paragraph 3.

**Address for Payment of Rent:** RSV, Inc., c/o Rohde Ottmers Siegal Commercial & Investment Realtors, 85 N.E. Loop 410, Suite 100, San Antonio, Texas 78216

**Security Deposit:** None

**Asbestos Survey Deadline:** January 1, 2008

**Building Operating Hours:** 8:00 A.M. to 6:00 P.M. Monday through Friday, except holidays

**Common Areas:** All facilities and areas of the Building and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all Building tenants. Landlord has exclusive control over and right to manage the Common Areas.

**Essential Services:** (a) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment) during Building Operating Hours; (b) hot and cold water for lavatories and drinking; (c) electricity for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (d) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

## **2. Grant.**

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of the Lease, Landlord must reserve for Tenant the number of parking spaces indicated above.

### **3. Rent.**

3.01. Rent is \$900 monthly during the first 12 months of the lease term. It is \$1,000 monthly during the second 12 months of the lease term.

3.02. Tenant must pay Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. If Tenant is delinquent in payment of any amount for more than 10 days after the date due, Tenant must pay to Landlord upon demand a late charge equal to five percent of the delinquent sum. Interest and late charges are in addition to all Landlord's other rights and remedies.

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

3.04. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant must not abate Rent.

### **4. Term, Renewal.**

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease. Tenant may terminate this lease at any time without cause by delivering 30-days prior written notice to Landlord.

4.02. If Landlord and Tenant can reach agreement on rent during a renewal term, Tenant may renew this Lease for one additional 2-year term by giving Landlord six months prior written notice before expiration of the Initial Term.

### **5. Tenant's Affirmative Promises.**

Tenant promises that it will:

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

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

5.03. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

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

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

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

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

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

5.09. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

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

## **6. Tenant's Negative Promises.**

Tenant promises that it will not:

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

6.02. Create a nuisance.

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

6.04. Permit waste.

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

6.06. Change Landlord's lock system.

6.07. Alter the Premises.

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

6.09. Assign this lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.

## **7. Landlord's Affirmative Promises.**

Landlord promises that it will:

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

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

7.03. Provide the Essential Services.

7.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls (e) HVAC, wiring, and plumbing, except for the first \$500 in such charges to be incurred in a lease year, (f) other structures or equipment serving the Premises.

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

7.06. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

7.07. Allow Tenant to apply vinyl letter to the door or store front as a sign to notify of the public of Tenant's presence. Tenant must obtain Landlord's approval of the sign, but Landlord's approval must not be unreasonably withheld.

#### **8. Landlord's Negative Promises.**

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

#### **9. Alterations.**

9.01. Tenant may install new carpet or tile in the Premises.

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

#### **10. Insurance.**

10.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

10.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 80% of their actual cash value.

#### **11. Release of Claims/Subrogation.**

**The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or**

loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance (“Covered Claims”). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, waive subrogation against each other for Covered Claims.

## **12. Casualty/Total or Partial Destruction.**

12.01. If the Premises are damaged by casualty, Landlord must notify Tenant, no later than 30 days after Tenant notifies Landlord of the casualty, whether Landlord intends to restore the Premises. If Landlord decides not to restore the premises, Tenant may terminate this lease by notifying Landlord within ten days. If Landlord rebuilds, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration by both parties must be to substantially the same condition existing before the casualty.

12.02. If Landlord’s work is not or cannot reasonably be completed within 135 days from the start date required above, Tenant may terminate this lease by written notice delivered to Landlord. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

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

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

## **13. Condemnation/Substantial or Partial Taking.**

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

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

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

## **14. Holdover.**

14.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent during a hold

over is the same as the rent for the term being held over, and all other terms of this Lease apply. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Asset Management deems the holdover beneficial.

14.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

14.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

## **15. Default.**

15.01. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

15.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within thirty days after default, terminate this lease.

15.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

15.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, Tenant to reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

## **16. Intentionally Omitted.**

Intentionally omitted.

## **17. Warranty Disclaimer.**

**There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.**

## **18. Environmental.**

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

storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

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

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

18.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

18.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

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

18.07. Landlord represents and warrants that, (y) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (i) the Property violates any Environmental Law; (ii) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (iii) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (iv) the Property is subject to a lien under any Environmental Laws; and (z) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property,

Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

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

### **19. Appropriations.**

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

### **20. Dispute Resolution.**

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

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

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

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

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

20.06. Mediator fees must be borne equally.

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

## 21. Prohibited Interests in Contracts.

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

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

21.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

21.03. Landlord acknowledges that City’s reliance on the above warranties and certifications is reasonable.

## 22. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

### **23. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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

**Tenant**

**Landlord**

**City of San Antonio**, a Texas  
municipal corporation

**RSV, Inc.**, a Texas corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

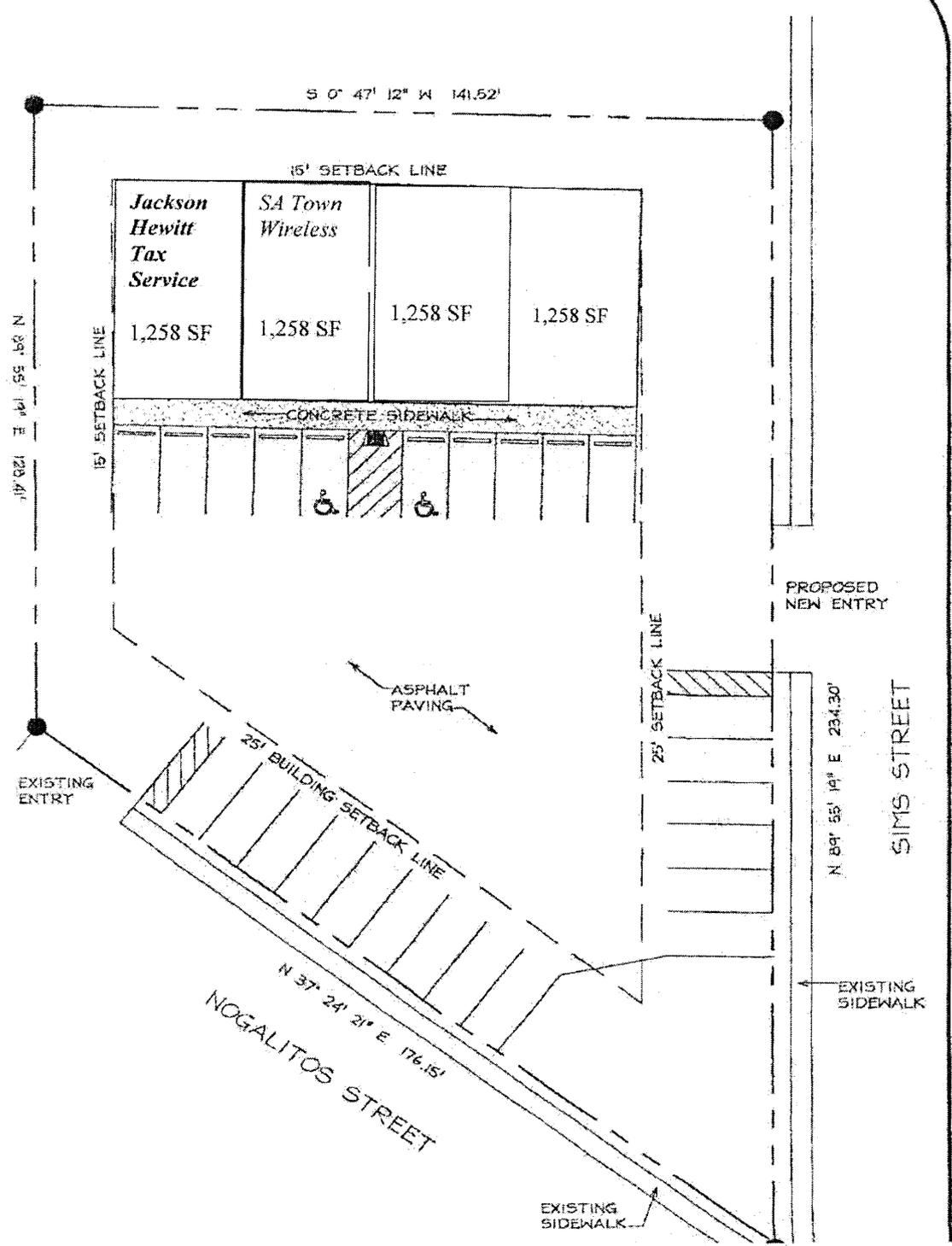
**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

Exhibit A





CMS or Ordinance Number: OR00000200801310077

TSLGRS File Code: 1000-05

Document Title:

ORD - 3226 Nogalitos

Looking long text for more detail

**Ordinance Date:**  
**1/31/2008**

Am



CMS or Ordinance Number: CN4600006935

TSLGRS File Code:1000-25

Document Title:

CONT - 3226 Nogalitos

Looking long text for more detail

**Commencement Date:**

**2/8/2008**

**Expiration Date:**

**1/1/2010**

3/25/2008

**Office Lease**  
(District 5 Constituent Office Lease)

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**1. Basic Information, Definitions.**

**Effective Date:** 10 days after the effective date of the Authorizing Ordinance

**Authorizing Ordinance:** 2008-01-31-0077

**Landlord:** RSV, Inc.

**Landlord's Address:** c/o Rohde Ottmers Siegal Commercial & Investment Realtors, 85 N.E. Loop 410, Suite 100, San Antonio, Texas 78216

**Tenant:** City of San Antonio

**Tenant's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Asset Management Department)

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**Premises:** 1,258 square feet, more or less, known as Suite 102 of a building ("Building") located at 3226 Nogalitos in the City of San Antonio, the Building being located on Lots 16-22, Block 4, New City Block 6062, San Antonio, Bexar County, Texas. The Premises are the vacant space next to SA Town Wireless as depicted on **Exhibit A**, which is incorporated into this lease by reference for all purposes as if fully set forth.

**Permitted Use:** General office use

**No. of Parking Spaces:** Tenant and its employees and invitees have non-exclusive use of all parking spaces provided at the Building

**Commencement Date:** February 1, 2008

**Initial Term:** Two years

**Rent:** As provided in paragraph 3.

**Address for Payment of Rent:** RSV, Inc., c/o Rohde Ottmers Siegal Commercial & Investment Realtors, 85 N.E. Loop 410, Suite 100, San Antonio, Texas 78216

**Security Deposit:** None

**Asbestos Survey Deadline:** January 1, 2008

**Building Operating Hours:** 8:00 A.M. to 6:00 P.M. Monday through Friday, except holidays

**Common Areas:** All facilities and areas of the Building and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all Building tenants. Landlord has exclusive control over and right to manage the Common Areas.

**Essential Services:** (a) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment) during Building Operating Hours; (b) hot and cold water for lavatories and drinking; (c) electricity for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (d) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

## **2. Grant.**

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of the Lease, Landlord must reserve for Tenant the number of parking spaces indicated above.

## **3. Rent.**

3.01. Rent is \$900 monthly during the first 12 months of the lease term. It is \$1,000 monthly during the second 12 months of the lease term.

3.02. Tenant must pay Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. If Tenant is delinquent in payment of any amount for more than 10 days after the date due, Tenant must pay to Landlord upon demand a late charge equal to five percent of the delinquent sum. Interest and late charges are in addition to all Landlord's other rights and remedies.

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

3.04. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant must not abate Rent.

## **4. Term, Renewal.**

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease. Tenant may terminate this lease at any time without cause by delivering 30-days prior written notice to Landlord.

4.02. If Landlord and Tenant can reach agreement on rent during a renewal term, Tenant may renew this Lease for one additional 2-year term by giving Landlord six months prior written notice before expiration of the Initial Term.

## **5. Tenant's Affirmative Promises.**

Tenant promises that it will:

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

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility

companies serving or insurance companies covering the Premises or Building; and  
(c) any rules and regulations for the Building and Common Areas adopted by  
Landlord.

5.03. Obtain and pay for all utility services used by Tenant and not provided  
by Landlord.

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

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

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

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

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

5.09. On request, execute an estoppel certificate that states the  
Commencement Date and Termination Date of the lease, identifies any amendments  
to the lease, describes any rights to extend the Term or purchase rights, lists defaults  
by Landlord, and provides any other information reasonably requested. Tenant need  
not sign any certificate that purports to modify Tenant's obligations in any respect,  
except for a change in the address for notice or payment of rent.

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

## **6. Tenant's Negative Promises.**

Tenant promises that it will not:

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

6.02. Create a nuisance.

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

6.04. Permit waste.

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

6.06. Change Landlord's lock system.

6.07. Alter the Premises.

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

6.09. Assign this lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.

## **7. Landlord's Affirmative Promises.**

Landlord promises that it will:

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

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

7.03. Provide the Essential Services.

7.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls (e) HVAC, wiring, and plumbing, except for the first \$500 in such charges to be incurred in a lease year, (f) other structures or equipment serving the Premises.

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

7.06. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

7.07. Allow Tenant to apply vinyl letter to the door or store front as a sign to notify of the public of Tenant's presence. Tenant must obtain Landlord's approval of the sign, but Landlord's approval must not be unreasonably withheld.

## **8. Landlord's Negative Promises.**

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

## **9. Alterations.**

9.01. Tenant may install new carpet or tile in the Premises.

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

## **10. Insurance.**

10.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

10.02. Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 80% of their actual cash value.

## **11. Release of Claims/Subrogation.**

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

## **12. Casualty/Total or Partial Destruction.**

12.01. If the Premises are damaged by casualty, Landlord must notify Tenant, no later than 30 days after Tenant notifies Landlord of the casualty, whether Landlord intends to restore the Premises. If Landlord decides not to restore the premises, Tenant may terminate this lease by notifying Landlord within ten days. If Landlord rebuilds, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration by both parties must be to substantially the same condition existing before the casualty.

12.02. If Landlord's work is not or cannot reasonably be completed within 135 days from the start date required above, Tenant may terminate this lease by written notice delivered to Landlord. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

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

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

## **13. Condemnation/Substantial or Partial Taking.**

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

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

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

## **14. Holdover.**

14.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right, and it need not hold over all of the allowable six months. The rent

during a hold over is the same as the rent for the term being held over, and all other terms of this Lease apply. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of Asset Management deems the holdover beneficial.

14.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

14.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

## **15. Default.**

15.01. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

15.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within thirty days after default, terminate this lease.

15.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

15.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, Tenant to reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

## **16. Intentionally Omitted.**

Intentionally omitted.

## **17. Warranty Disclaimer.**

**There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.**

## **18. Environmental.**

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

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

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

18.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

18.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

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

18.07. Landlord represents and warrants that, (y) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (i) the Property violates any Environmental Law; (ii) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (iii) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (iv) the Property is subject to a lien under any Environmental Laws; and (z) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

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

## **19. Appropriations.**

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

## **20. Dispute Resolution.**

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

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

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

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

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

20.06. Mediator fees must be borne equally.

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

## **21. Prohibited Interests in Contracts.**

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

- (i) a City officer or employee;

(ii) his parent, child or spouse;

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

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

21.02. Landlord warrants and certifies as follows:

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

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

21.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **22. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

### **23. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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

**Tenant**

**Landlord**

City of San Antonio, a Texas  
municipal corporation

RSV, Inc., a Texas corporation

Signature: *Sharon De La Garza*

Signature: *Randy S. Vail*

Printed  
Name: Sharon De La Garza

Printed  
Name: RANDY S. VAIL

Title: Assistant to the  
City Manager

Title: PRESIDENT

Date: \_\_\_\_\_ Date: 12-19-07

Attest:

*Leticia M. Vail*  
City Clerk

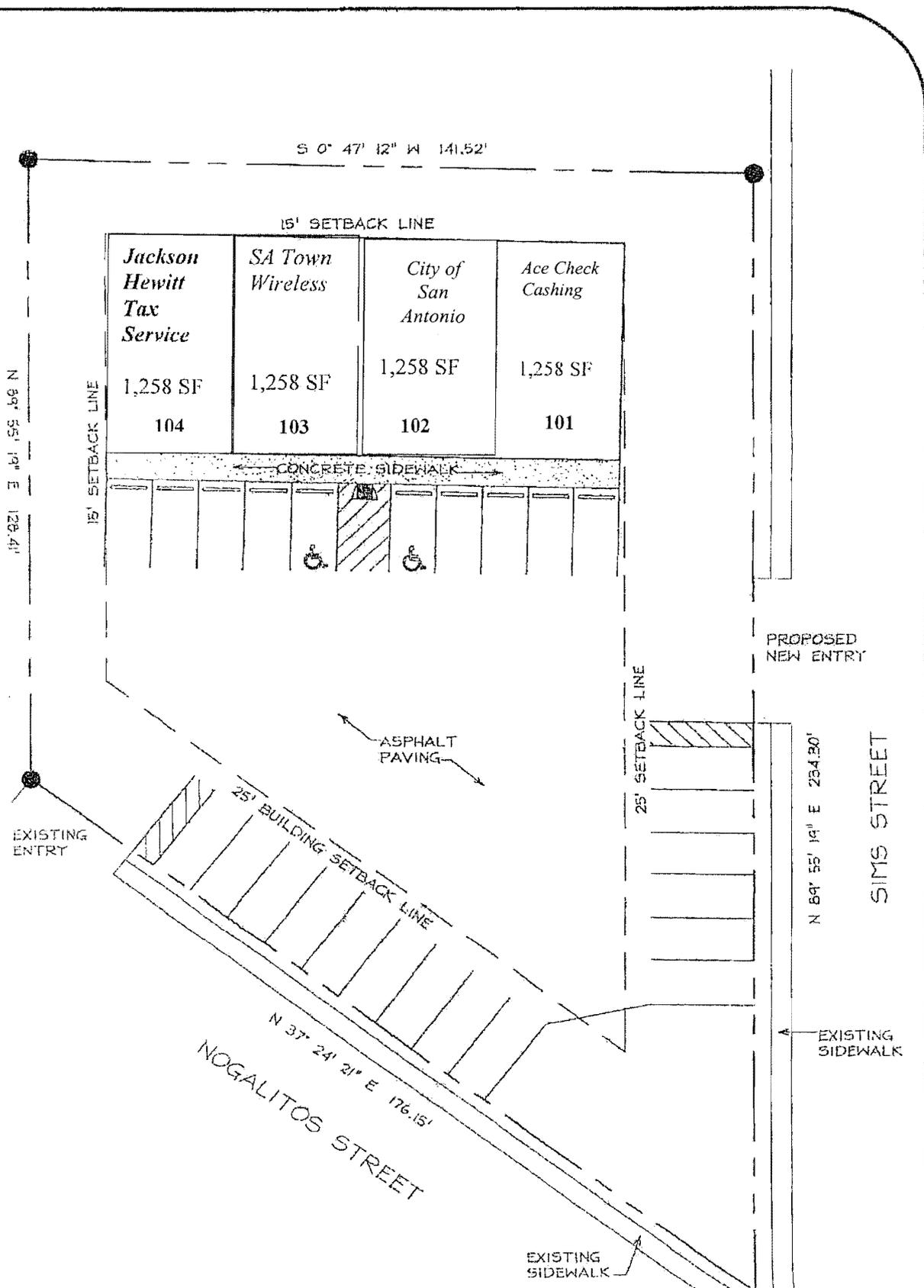


Approved as to Form:

*[Signature]*  
City Attorney *KD*

# EXHIBIT A

## SITE PLAN



**CITY OF SAN ANTONIO  
DEPARTMENT OF ASSET MANAGEMENT  
INTERDEPARTMENTAL CORRESPONDENCE SHEET**

---

**TO:** City Manager's Office  
**FROM:** Mark Gretchen, Interim Director, Department of Asset Management  
**COPIES:** File  
**SUBJECT:** Lease Agreement with RSV, Inc.  
**DATE:** February 6, 2008

**PROJECT TYPE:** Lease Agreement – City Council District 5  
**ORDINANCE:** 2008-01-31-0077  
**ORDINANCE DATE:** January 31, 2008

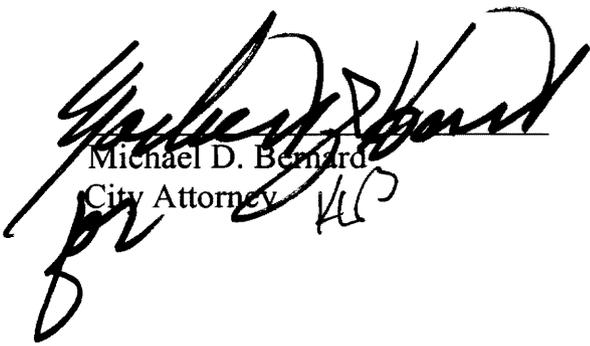
**BACKGROUND:**

This Ordinance authorized a lease between the City of San Antonio and RSV, Inc. and the City of San Antonio, for 1,258 square feet of office space located at 3226 Nogalitos, Suite 102, located in Council District 5, for use by Councilwoman Lourdes Galvan to meet constituents, with a two-year term effective February 1, 2008 for the monthly rental amount of \$900.00 during the first year and \$1,000 during the second year of the lease term, with the option to renew for one, two-year term. A copy of Ordinance No. 2008-01-31-0077 is attached.

**POLICY ANALYSIS:**

This action is consistent with the City's policy to provide a constituent office within each council district for each councilperson to conduct business and meet constituents.

  
\_\_\_\_\_  
Mark Gretchen, Interim Director,  
Department of Asset Management

  
\_\_\_\_\_  
Michael D. Bernard  
City Attorney

## Attachment I

### SHOPPING CENTER LEASE

This Shopping Center Lease (this "Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2008, pursuant to City of San Antonio Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2008, by and between Covington Dellview Acquisition 1, LLC, Covington Dellview Acquisition 2, LLC, Covington Dellview Acquisition 3, LLC, Covington Dellview Acquisition 4, LLC, Covington Dellview Acquisition 5, LLC, Covington Dellview Acquisition 6, LLC, Covington Dellview Acquisition 7, LLC, Covington Dellview Acquisition 8, LLC, Covington Dellview Acquisition 9, LLC, Covington Dellview Acquisition 10, LLC, Covington Dellview Acquisition 11, LLC, Covington Dellview Acquisition 12, LLC, Covington Dellview Acquisition 13, LLC, Covington Dellview Acquisition 14, LLC, Covington Dellview Acquisition 15, LLC, Covington Dellview Acquisition 16, LLC, Covington Dellview Acquisition 17, LLC, Covington Dellview Acquisition 18, LLC, Covington Dellview Acquisition 19, LLC, and Covington Dellview Acquisition 20, LLC, Covington Dellview Acquisition 21, LLC, Covington Dellview Acquisition 22, LLC, each a Delaware Limited Liability Company, (collectively, "Landlord"), and City of San Antonio ("Tenant").

This Lease consists of this paragraph, the Basic Lease Provisions, the Supplemental Lease Provisions and each exhibit, rider, schedule and addendum attached to the Basic Lease Provisions and Supplemental Lease Provisions. Each capitalized term used, but not defined, in the Supplemental Lease Provisions shall have the meaning assigned to such term in the Basic Lease Provisions.

#### BASIC LEASE PROVISIONS

1. Shopping Center: The property known as **Dellview Marketplace** Shopping Center and described in Exhibit B attached hereto, as said property may be enlarged, reduced or reconfigured from time to time, together with all improvements now or hereafter constructed thereon. As of the date of this Lease, the leasable area of all buildings in the Shopping Center is approximately 122,800 square feet. Notwithstanding anything to the contrary contained herein, the term "Shopping Center" does not include anything outside of the boundaries of the land described in Exhibit B attached hereto, it being understood that the site plan attached hereto as Exhibit A may depict more than the Shopping Center.

2. Premises: An area in the Shopping Center containing approximately 1,700 square feet in area (computed from measurements to the exterior of outside walls of the building and to the center of the interior walls), being known as Suite 401, located at **1803 Vance Jackson**, San Antonio, Texas 78213, and being described or shown on Exhibit A-1 attached to this Lease. The parties agree that such exhibit is attached solely for the purpose of locating the Premises within the Shopping Center and that no representation, warranty or covenant is to be implied by any other information shown on the exhibit. If any discrepancy exists between the location of the Premises as shown on Exhibit A and the location of the actual demising walls of the Premises (as such walls presently exist or as they are hereafter constructed in accordance with the terms hereof), the location of the demising walls shall control.

3. Minimum Rent:

<u>Rental Period</u>	<u>Annual Rate Per Square Foot</u>	<u>Annual Minimum Rent</u>	<u>Monthly Minimum Rent</u>
Lease Months 1-36 \$1,700.00	\$12.00	\$20,400.00	

For purposes hereof, the first "Lease Month" shall begin on the Commencement Date and extend until the last day of the first full calendar month thereafter, and each succeeding Lease Month shall be each calendar month thereafter.

4. Percentage Rent Rate: N/A %.

- 5. Initial Tenant's Pro Rata Share: NA%.
- 6. Term: Thirty-six (36) months; provided that if the Commencement Date is a date other than the first day of a calendar month, the Term shall be extended for the number of days remaining in the calendar month in which the Commencement Date occurs in addition to said number of months so that the expiration date of the Term (the "Expiration Date") shall be the last day of a calendar month.
- 7. Commencement Date: The earlier of (i) 30 days following the effective date of the ordinance authorizing this lease or (ii) the date upon which Tenant opens for business in the Premises.
- 8. Security Deposit: None.
- 9. Prepaid Rent: None.
- 10. Tenant's Broker: Dan Gostylo (such broker is represented by Providence Commercial Real Estate Services).
- 11. Permitted Use: District 1 City Council City Office only and for no other purpose without the prior written consent of Landlord.
- 12. Tenant's Trade Name: NA
- 13. All payments shall be sent to Landlord in care of HPI Real Estate Management, Inc. ("Property Manager") at 3600 Capital of TX Hwy, Building B, Suite 250, Austin, TX 78746, or such other place as Landlord may designate from time to time. All payments shall be in the form of check until otherwise designated by Landlord, provided that payment by check shall not be deemed made if the check is not duly honored with good funds.

14. Addresses for notices due under this Lease:  
Landlord:

Covington Asset Management, LLC.  
Attn: Ms. Berdine Weiner, Vice President  
30 S. Wacker Drive, Suite 2750  
Chicago, IL 60606

Dept)

Tenant:

City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
(Attention: Director, Asset Management

AND IF NOTICE OF DEFAULT, COPY TO:

J. Bradley Jones, Esq.  
Pulman, Cappuccio & Pullen, LLP  
2161 NW Military Hwy, Suite 400  
San Antonio, Texas 78213

City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
(Attention: Councilmember, District 1)

- 15. Initial monthly Rent payment: The following schedule is provided as an estimate of Tenant's initial monthly payment broken down into its components. This schedule does not supersede the specific provisions contained elsewhere in this Lease.

Initial Minimum Rent: \$1,700.00  
(see Item 3 above)

References to the "Basic Lease Provisions" are references to the information set out above. If a conflict exists between the Basic Lease Provisions and the provisions set forth in the Supplemental Lease Provisions, the provisions in the Supplemental Lease Provisions will control.

- 16. Landlord will take the Premises off the market for sixty (60) days, beginning with the date the Landlord delivers a Landlord executed Lease. If, after sixty (60) days, the Lease has not been approved and Tenant executed, Landlord will market the Premise again.

SUPPLEMENTAL LEASE PROVISIONS

**ARTICLE I. TERM AND POSSESSION.**

SECTION 1.1 LEASE OF PREMISES, COMMENCEMENT AND EXPIRATION.

- 1.101 Lease of Premises. In consideration of the mutual covenants herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all the terms and conditions of this Lease, the portion of the Shopping Center (as described in Item 1 of the Basic Lease Provisions) described as the Premises in Item 2 of the Basic Lease Provisions.
- 1.102 Leasable Area. The leasable area of the Premises is hereby stipulated to be the leasable area of the Premises set forth in Item 2 of the Basic Lease Provisions. The leasable area of all of the buildings in the Shopping Center on the date of this Lease is hereby stipulated to be the leasable area of such buildings set forth in Item 1 of the Basic Lease Provisions.
- 1.103 Initial Term and Commencement. The initial Term of this Lease shall be the period of time specified in Item 6 of the Basic Lease Provisions. The initial Term shall commence on the Commencement Date set forth in Item 7 of the Basic Lease Provisions (as such Commencement Date may be adjusted pursuant to the Work Letter attached hereto as Exhibit C) and, unless sooner terminated pursuant to the terms of this Lease, the initial Term of this Lease shall expire, without notice to Tenant, on the Expiration Date (herein so called) set forth in Item 6 of the Basic Lease Provisions.
- 1.104 Asbestos. Landlord must deliver to Tenant an Asbestos Survey of the Premises and the Building not later than 15 days before the Commencement Date, in accordance with the provisions of § 6-293 of the City code of the City of San Antonio, Texas.
- 1.105 Early Termination. This Lease is granted for use as a City Council District constituent office. If the current officeholder does not continue in office, officeholder's successor may but need not step into officeholder's shoes in occupying the Premises for any Term of this Lease. The successor's occupancy, if any, will be on the same terms and conditions as the current officeholder, and the successor will be presumed to continue this Lease unless Tenant gives written notice of termination as provided for herein. If the boundaries of the District are modified for any reason such that the Premises are no longer included within its boundaries, then this Lease will terminate on 30 days' prior written notice by Tenant to Landlord. Both Tenant and Landlord will thereupon be relieved of any further obligations hereunder, except for sums owing or liabilities incurred for the period before termination and any obligations that expressly survive the termination of this Lease.

SECTION 1.2 INSPECTION AND DELIVERY OF PREMISES, CONSTRUCTION OF LEASE SPACE IMPROVEMENTS AND POSSESSION.

- 1.201 Delivery. Tenant acknowledges that Tenant has inspected the Premises and the Common Areas (as hereinafter defined) and, except for latent defects discovered and reported to Landlord by Tenant within 90 days from the Commencement Date, hereby (i) accepts the Common Areas in "AS IS" condition for all purposes and (ii) subject to Landlord's completion of its obligations under the Work Letter, if any, Tenant hereby accepts the Premises (including the suitability of the Premises for the Permitted Use) for all purposes. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED "AS IS", WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY LANDLORD EXCEPT AS EXPRESSLY SET FORTH HEREIN. LANDLORD HAS NOT MADE (EXCEPT AS EXPRESSLY SET FORTH HEREIN) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY, HABITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ENVIRONMENTAL CONDITION OR COMPLIANCE WITH ENVIRONMENTAL OR OTHER APPLICABLE LAWS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ITS OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT TENANT HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES PRIOR TO THE EXECUTION OF THIS LEASE.** If this Lease is executed before the Premises becomes vacant, or if any present tenant or occupant of the Premises holds over and Landlord cannot acquire possession of the Premises prior to the Commencement Date of this Lease, Landlord shall not be deemed to be in default under this Lease; and in such event Tenant agrees to accept possession of the Premises at such time as Landlord is able to tender the same. In such event, Landlord will waive the payment of rent and other charges covering any period prior to Landlord's tender of possession of the Premises to Tenant.
- 1.202 Completion. Tenant will perform or cause to be performed the work and/or construction of Tenant's Improvements (as defined in the Work Letter) in accordance with the terms of the Work Letter and will use reasonable efforts to Substantially Complete (as defined in the Work Letter) Tenant's Improvements by the Commencement Date. Occupancy of the Premises by Tenant prior to the Commencement Date, at Landlord's election, shall be subject to all of the terms and provisions of this Lease other than the obligation to pay Rent.
- 1.203 Failure of Tenant to Open. Intentionally Deleted

SECTION 1.3 REDELIVERY OF THE PREMISES.

- 1.301 Obligation to Redeliver. Upon the expiration or earlier termination of this Lease or upon the exercise by Landlord of its right to re-enter the Premises without terminating this Lease, Tenant shall immediately deliver to Landlord the Premises free of offensive odors and in a safe, clean, neat, sanitary and operational condition, together with all keys and access cards. Tenant shall, by the Expiration Date or, if this Lease is earlier terminated, within seven (7) days after the termination or re-entry by Landlord, at the sole expense of Tenant: (i) remove from the Premises any equipment, machinery, trade fixtures and personal property installed or placed in the Premises by or on behalf of Tenant and (ii) if requested by Landlord, (a) remove from the Premises all or any part of the improvements (other than Tenant's Improvements and other improvements approved by Landlord without the requirement that same be removed upon expiration or earlier termination of the Lease) made to the Premises by or on behalf of Tenant. All removals and work described above shall be accomplished in a good and workmanlike manner and shall be conducted so as not to damage the Premises or the Shopping Center or the plumbing, electrical lines or other utilities serving the Shopping Center. Tenant shall, at its

expense, promptly repair any damage caused by any such removal or work. If Tenant fails to deliver the Premises in the condition aforesaid, then Landlord may restore the Premises to such a condition at Tenant's expense. All property required to be removed pursuant to this Section not removed within time period required hereunder shall thereupon be conclusively presumed to have been abandoned by Tenant and Landlord may, at its option, take over possession of such property and either (a) declare the same to be the property of Landlord by written notice to Tenant at the address provided herein or (b) at the sole cost and expense of Tenant, remove and store and/or dispose of the same or any part thereof in any manner that Landlord shall choose without incurring liability to Tenant or any other person.

- 1.302 Failure to Deliver. Notwithstanding any provision or inference to the contrary herein contained, in the event that Tenant fails to deliver to Landlord (and surrender possession of) all of the Premises upon the expiration or earlier termination of this Lease (or the applicable portion of the Premises if this Lease expires or terminates as to only a portion of the Premises) on the date of expiration or earlier termination, then Landlord may, without judicial process and without notice of any kind, immediately enter upon and take absolute possession of the Premises or applicable portion thereof, expel or remove Tenant and any other person or entity who may be occupying the Premises or applicable portion thereof, change the locks to the Premises or applicable portion thereof (in which event, Tenant shall have no right to any key for the new locks), limit elevator access to the Premises or applicable portion thereof, and take any other actions as are necessary for Landlord to take absolute possession of the Premises or applicable portion thereof. The foregoing rights are without prejudice and in addition to, and shall not in any way limit Landlord's rights under, Section 1.4 below.

SECTION 1.4 HOLDING OVER. In the event Tenant or any party under Tenant claiming rights to this Lease, retains possession of the Premises after the expiration or earlier termination of this Lease, such possession shall constitute and be construed as a tenancy at will only, subject, however, to all of the terms, provisions, covenants and agreements on the part of Tenant hereunder; such parties shall be subject to immediate eviction and removal and Tenant or any such party shall pay Landlord as rent for the period of such holdover an amount equal to one hundred fifty percent (150%) times the Minimum Rent in effect immediately preceding expiration or termination, as applicable, prorated on a daily basis. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend the Term of this Lease; no payments of money by Tenant to Landlord after the expiration or earlier termination of this Lease shall reinstate, continue or extend the Term of this Lease; and no extension of this Lease after the expiration or earlier termination thereof shall be valid unless and until the same shall be reduced to writing and signed by both Landlord and Tenant.

## ARTICLE 2. RENT

SECTION 2.1 MINIMUM RENT. Tenant shall pay to Landlord as annual rent for the Premises the applicable Annual Minimum Rent shown in Item 3 of the Basic Lease Provisions ("Minimum Rent"). The annual Minimum Rent shall be payable in monthly installments equal to the applicable monthly Minimum Rent shown in Item 3 of the Basic Lease Provisions in advance, without demand, offset or deduction, which monthly installments shall commence on the Commencement Date and shall continue on the first (1st) day of each calendar month thereafter. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, the monthly Minimum Rent for such partial month shall be prorated.

### 2.3 TENANT'S RESPONSIBILITY FOR TAXES, INSURANCE AND COMMON AREA EXPENSES

- 2.301 Personal Property Taxes. Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Premises; provided, however, and notwithstanding the foregoing, Tenant represents to Landlord that Tenant is a governmental entity and is immune from property taxes. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by

inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes attributable to such personal property and fixtures. Before paying the taxes, Landlord must promptly notify Tenant, and give Tenant at least thirty (30) days to notify the taxing authority of the ownership of the property improperly being assessed and protest the taxation.

2.302 Additional Rent. Intentionally Deleted.

SECTION 2.5 RENT DEFINED AND NO OFFSETS. Minimum Rent, Percentage Rent, Additional Rent and all other sums (whether or not expressly designated as rent) required to be paid to Landlord by Tenant under this Lease (including, without limitation, any sums payable to Landlord under any addendum, exhibit, rider or schedule attached hereto) shall constitute rent and are sometimes collectively referred to as "Rent". Each payment of Rent shall be paid by Tenant when due, without prior demand therefor and without deduction or setoff. If Tenant fails in two consecutive months to make Rent payments within ten (10) days after due, Landlord, in order to reduce its administrative costs, may require, by giving written notice to Tenant (and in addition to any late charge or interest accruing pursuant to Section 2.6 and Section 15.10 hereof, as well as any other rights and remedies accruing pursuant to Section 13.2 below, or any other provision of this Lease or at law), that Minimum Rent be paid quarterly in advance instead of monthly and/or that all future rent payments be made on or before the due date by cash, cashiers check, or money order and that the delivery of Tenant's personal or corporate check will no longer constitute a payment of rent as provided in this Lease. Any acceptance of a monthly rent payment or of a personal or corporate check thereafter by Landlord shall not be construed as a subsequent waiver of such rights.

SECTION 2.6 LATE CHARGES. If any installment of Minimum Rent, Percentage Rent, or Additional Rent or any other payment of Rent under this Lease shall not be paid when due, a "Late Charge" of \$50.00 per late payment may be charged by Landlord to defray Landlord's administrative expense incident to the handling of such overdue payments. Each Late Charge shall be payable on demand. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. The parties hereby agree that any late charge imposed pursuant to this Lease does not represent interest, but rather represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Landlord's acceptance of any such late charge shall not constitute a waiver of any default by Tenant with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. If any rent is paid by check that is returned for insufficient funds, Tenant shall immediately make the required payment to Landlord in good funds.

### **ARTICLE 3. SECURITY DEPOSIT**

**Intentionally Deleted.**

### **ARTICLE 4. OCCUPANCY AND USE**

#### SECTION 4.1 USE OF PREMISES.

4.101 General. The Premises shall, subject to the remaining provisions of this Section, be used solely for the Permitted Use (herein so called) specified in Item 11 of the Basic Lease Provisions. Without in any way limiting the foregoing, Tenant will not use, occupy or permit the use or occupancy of the Premises for any purpose (and the Permitted Use shall not include any use) which is forbidden by or in violation of any law, ordinance or governmental or municipal regulation, order, or certificate of occupancy, or which may be dangerous to life, limb or property; or permit the maintenance of any public or private nuisance; or do or permit any other thing which may disturb the quiet enjoyment of any other tenant of the Shopping Center; or keep any substance or carry on or permit any operation which might emit offensive odors or conditions from the Premises; or commit or suffer or permit any waste in or upon the Premises;

or use any apparatus which might make undue noise or set up vibrations in the Shopping Center; or permit anything to be done which would increase the fire and extended coverage insurance rate on the Shopping Center or Shopping Center contents and, if there is any increase in such rate by reason of acts of Tenant, then Tenant agrees to pay such increase upon demand therefor by Landlord. Payment by Tenant of any such rate increase shall not be a waiver of Tenant's duty to comply herewith. Tenant shall keep the Premises neat and clean at all times. Tenant shall comply with, and promptly correct any violation of, each and every governmental law, rule or regulation relating to the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which imposes any duty upon Tenant or Landlord with respect to the Premises or with respect to the occupancy or use thereof.

- (a) Tenant shall commence business operations in the Premises on or immediately after the Commencement Date and shall operate its business in an efficient, high class and reputable manner. Tenant shall not at anytime leave the Premises vacant, but shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Premises the type of business for which the Premises is leased. Tenant shall, except during reasonable periods for repairing, cleaning and decorating, keep the Premises open to the public for business with adequate personnel in attendance on days the City of San Antonio is open for business.
- (b) The Premises may be used only for the purpose or purposes specified in Item 11 of the Basic Lease Provisions, and for no other purpose, it being understood and acknowledged that Landlord has entered into this Lease in large part because it believes that such use will benefit the Shopping Center as a whole.
- (d) Tenant shall take good care of the Premises, shall keep the Premises secure and shall keep the same free from waste at all times. Tenant shall not overload the floors in the Premises, nor deface or injure the Premises. Tenant shall keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, ice or snow at all times. Tenant shall store all trash and garbage within the Premises or in a trash dumpster or similar container approved by Landlord as to type, location and screening. Except as provided in Section 15.5, Tenant shall arrange for the regular pick-up of such trash and garbage at Tenant's expense. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner, and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center.
- (e) Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows, exterior electric signs and exterior lighting under any canopy in front of the Premises lit from dusk until 11:00 p.m., everyday, including Sundays and holidays (or any other hours established by Landlord for the Shopping Center).

4.102 Prohibited Uses. Tenant shall not use or permit the Premises to be used for any purpose that conflicts with any existing leases or restrictions affecting the Shopping Center or for any other use Landlord finds offensive or disruptive to other tenants in the Shopping Center. Tenant shall not conduct within the Premises any fire, auction, bankruptcy, "going-out-of-business," "lost-our-lease" or similar sale; nor shall Tenant operate within the Premises a "wholesale" or "factory outlet" store, a cooperative store, a "second hand" store, a "surplus" store or a store commonly referred to as a "discount house." The purpose for this restriction is the maintenance of a first-class shopping center image, not price regulation; therefore, Landlord agrees that items may be sold, and on occasion be advertised as being sold, at discounted prices as long as Tenant complies with all Applicable Laws (hereinafter defined) and maintains an image consistent with a first-class shopping center. Further, in no event shall Tenant use the Premises for any of the uses set forth on Exhibit F attached hereto. Tenant shall not permit any objectionable noises or odors to emanate from the Premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the building; nor place any antenna, equipment, awning or other projection on the exterior of the Premises; nor take any other action that would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; nor

permit any unlawful or immoral practice to be carried on or committed in the Premises; nor do anything that would tend to injure the reputation of the Shopping Center.

#### SECTION 4.2 COMPLIANCE WITH LAWS AND RULES AND REGULATIONS

**4.201 Tenant shall use and maintain the Premises in compliance with all laws, ordinances, building codes, rules and regulations, present or future, of all federal, state, municipal and other governmental authorities and their authorized agencies, including all of the foregoing pertaining to health, safety, disabled persons and the environment ("Applicable Laws"). Without limiting the foregoing, Tenant shall be responsible for determining that its proposed use of the Premises is permitted by Applicable Laws and Tenant shall procure at its sole expense any permits and licenses required for its use of the Premises. At Landlord's request, Tenant shall deliver to Landlord copies of all such permits and licenses and proof of Tenant's compliance with all Applicable Laws.**

- (a) Tenant represents that Tenant's intended use of the Premises will not violate any Applicable Laws pertaining to health or the environment ("Applicable Environmental Laws"). Tenant shall not knowingly incorporate into, or use or otherwise place or dispose of any hazardous or toxic materials at or on the Premises or the Shopping Center except for use and storage of cleaning and office supplies used in the ordinary course of Tenant's business and then only if (i) such materials are in small quantities, properly labeled and contained, (ii) such materials are handled and disposed of in accordance with the highest accepted industry standards for safety, storage, use and disposal, (iii) notice of and a copy of the current material safety data sheet is provided to Landlord for each such hazardous or toxic material and (iv) such materials are used, transported, stored, handled and disposed of in accordance with all Applicable Laws. Tenant shall not cause or permit the Premises or Tenant to be in violation of, or do anything or permit anything to be done that will subject the Landlord or the Premises or the Shopping Center to any remedial obligations under, any Applicable Environmental Laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises, the Shopping Center and Tenant. Tenant shall promptly notify Landlord in writing of any existing, pending or, to the knowledge of Tenant, threatened investigation or inquiry by any governmental authority in connection with any violation of Applicable Environmental Laws by Tenant or the Premises. Tenant shall take all steps necessary to determine during the Term of this Lease that no hazardous substances or solid wastes are being disposed of or otherwise released on or to or from the Premises. Landlord may enter upon the Premises at any reasonable time to verify compliance with this subsection if Landlord believes in good faith that a violation of this subsection may have occurred or be threatened. Any violation of this subsection by Tenant shall constitute an "event of default" under this Lease that cannot be cured.
- (b) Tenant shall cause its owners, officers, managers, and employees to park their cars, trucks, and other vehicles only in parking areas designated by Landlord for employee parking in the Employee Parking Guidelines promulgated by Landlord from time to time. Landlord shall have the right to tow vehicles parked in violation of the Employee Parking Guidelines at the expense of the owner of the vehicle, and to fine Tenant up to \$100 per violation of Landlord's parking policy by Tenant and/or its owners, officers, managers, and employees, and any such fine shall be considered additional rent hereunder. Tenant shall furnish Landlord the state automobile license numbers assigned to Tenant's car or cars and the cars of Tenant's employees within 5 days of Landlord's request and shall thereafter notify Landlord of any changes within five (5) days after such changes occur.

#### SECTION 4.3 SIGNS AND AWNINGS.

4.301 Landlord's Approval Rights. Tenant shall not, without Landlord's prior written consent, (a) make any changes to the store front, or (b) install any exterior lighting, decorations, paintings, awnings, canopies or the like, or (c) erect or install any signs, window or door lettering, placards, awnings, decorations, banners, portable signs or advertising media of any type that can be viewed from the exterior of the Premises, except only dignified displays of customary type for its display windows. All signs, lettering, placards, awnings, decorations and advertising media (including, without limitation, the sign required by Section 4.302 below) shall conform in all respects to the criteria established by Landlord for the Shopping Center from time to time in the exercise of its sole discretion and shall be subject to Landlord's requirements as to construction, method of attachment, size, shape, height, lighting, color and general appearance (provided, Tenant's initial sign shall not be subject to future changes in Landlord's sign criteria or requirements unless such sign is modified or replaced). The present form of the sign criteria applicable to the Shopping Center is attached to this Lease as Exhibit D.

4.302 Installation of Tenant's Sign. Subject to Section 4.301 above, Tenant agrees to install, on or prior to the Commencement Date, a first-class sign on the front of the Premises and to maintain such sign in good condition and proper operating order at all times during the Term of this Lease. If generally all of the leased premises in the Shopping Center have awnings, canopies or the like attached to the front of the leased premises; Tenant likewise agrees to install, on or prior to the Commencement Date, similar first-class awnings or canopies (subject to Section 4.301 above) on the front and, if applicable, sides of the Premises and to maintain such awnings or canopies in good condition during the Term of this Lease (specifically, Tenant agrees to renew or replace such awnings as determined by landlord so that they present a first-class appearance at all times). If Tenant does not maintain or replace such awnings as provided above, Landlord shall have the right, after giving Tenant thirty (30) days written notice, to repair, replace or renovate such awnings, as Landlord reasonably deems necessary, and to charge the reasonable cost of same to the Tenant, which cost shall be considered additional rent and shall be payable by Tenant on demand. If Landlord directs Tenant to do business with specific providers for any lease-related amenities, Tenant need not spend more on such amenities than it can lawfully spend without going through statutorily mandated procurement procedures. Tenant's signs may be as large as permitted by the City of San Antonio; provided, however Tenant's signage shall at all times comply with Landlord's sign criteria attached hereto as Exhibit D.

SECTION 4.4 RULES AND REGULATIONS. Tenant will comply with such rules and regulations (the "Rules and Regulations") generally applying to tenants in the Shopping Center as may be adopted from time to time by Landlord for the management, safety, care and cleanliness of, and the preservation of good order and protection of property in, the Premises and the Shopping Center. All such Rules and Regulations are hereby made a part hereof. The Rules and Regulations in effect on the date hereof are attached hereto as Exhibit E. All changes and amendments to the Rules and Regulations sent by Landlord to Tenant in writing and conforming to the foregoing standards shall be carried out and observed by Tenant. Landlord hereby reserves all rights necessary to implement and enforce the Rules and Regulations and each and every provision of this Lease. Landlord shall not be liable to Tenant for the failure of any other tenant or other person to comply with the Rules and Regulations.

SECTION 4.5 ACCESS. Without being deemed guilty of an eviction of Tenant and without abatement of Rent, Landlord and its authorized agents shall have the right to enter the Premises, upon reasonable notice (except in an emergency), to inspect the Premises, to show the Premises to prospective lenders, purchasers or tenants and to fulfill Landlord's obligations or exercise its rights (including without limitation Landlord's Reserved Right [as hereinafter defined]) under this Lease. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock the doors to and within the Premises, excluding Tenant's vaults and safes. Landlord shall have the right to use any and all means which Landlord may deem proper to enter the Premises in an emergency without liability therefor.

SECTION 4.6 QUIET POSSESSION. Provided Tenant timely pays Rent and observes and performs all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have the quiet possession of the Premises for the entire Term hereof, subject to all of the provisions of this Lease and all laws and restrictive covenants to which the Shopping Center is subject.

SECTION 4.7 PERMITS. Tenant shall obtain the certificate of occupancy, if any, required for occupancy of the Premises following construction of Tenant's Improvements. Tenant shall pay for the cost of any such certificate of occupancy, provided that Tenant shall be entitled to have such cost funded from the Landlord Contribution, if any, provided for in the Work Letter. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant, at its expense, shall procure and thereafter maintain such license or permit. Additionally, if Tenant's Improvements or any subsequent alteration or improvement made to the Premises by Tenant or Tenant's use of the Premises require any modification or amendment of any certificate of occupancy for the Shopping Center or the issuance of any other permit of any nature whatsoever, Tenant shall, at its expense, take all actions to procure any such modification or amendment or additional permit.

## **ARTICLE 5. UTILITIES AND TELECOMMUNICATION EQUIPMENT**

SECTION 5.1 UTILITIES. Landlord agrees to cause to be provided to the Shopping Center the necessary mains, conduits and other facilities necessary to supply water, gas (if deemed appropriate by Landlord), electricity, telephone service and sewerage service to the building in which the Premises are located. Tenant shall pay all utility charges incurred by it in the use of the Premises whether supplied by Landlord or directly to Tenant by a utility company. If any such charges are not paid when due, Landlord may pay the same and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant. Regardless of whether Landlord supplies Tenant with any utility services, Landlord shall not be responsible for any problems whatsoever with respect to the quality, quantity or interruption of such services, and failure or interruption of services shall not entitle Tenant to terminate this Lease or to any abatement or reduction of Rent.

SECTION 5.2 TELECOMMUNICATION EQUIPMENT. In the event that Tenant wishes at any time to utilize the services of a telephone or telecommunications provider whose equipment is not then servicing the Shopping Center, no such provider shall be permitted to install its lines or other equipment within the Shopping Center without first securing the prior written approval of the Landlord, which approval shall include, without limitation, approval of the plans and specifications for the installation of the lines and/or other equipment within the Shopping Center. Landlord's approval shall not be deemed any kind of warranty or representation by Landlord, including, without limitation, any warranty or representation as to the suitability, competence, or financial strength of the provider. Without limitation of the foregoing standard, unless all of the following conditions are satisfied to Landlord's satisfaction, it shall be reasonable for Landlord to refuse to give its approval: (i) Landlord shall incur no expense whatsoever with respect to any aspect of the provider's provision of its services, including without limitation, the costs of installation, materials and services; (ii) prior to commencement of any work in or about the Shopping Center by the provider, the provider shall supply Landlord with such written indemnities, insurance, financial statements, and such other items as Landlord determines to be necessary to protect its financial interests and the interests of the Shopping Center relating to the proposed activities of the provider; (iii) the provider agrees to abide by such rules and regulations, building and other codes, job site rules and such other requirements as are determined by Landlord to be necessary to protect the interests of the Shopping Center, the tenants in the Shopping Center and Landlord, in the same or similar manner as Landlord has the right to protect itself and the Shopping Center with respect to proposed alterations as described in Section 6.303 of this Lease; (iv) Landlord determines that there is sufficient space in the Shopping Center for the placement of all of the provider's equipment and materials; (v) the provider agrees to abide by Landlord requirements, if any, that provider use existing Shopping Center conduits and pipes or use Shopping Center contractors (or other contractors approved by Landlord); (vi) Landlord receives from the provider such compensation as is determined by Landlord to compensate it for space used in the Shopping Center for the storage and maintenance of the provider's equipment, for the fair market value of a provider's access to the Shopping Center, and the costs which may reasonably be expected to be incurred by Landlord; (vii) the provider agrees to deliver to Landlord detailed "as built" plans immediately after the installation of the provider's equipment is complete; and (viii) all of the foregoing matters are documented in a written license agreement between Landlord and the provider, the form and content of which are reasonably satisfactory to Landlord.

## ARTICLE 6. MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

SECTION 6.1 LANDLORD'S OBLIGATION TO MAINTAIN AND REPAIR. Landlord shall (subject to Section 7.1, Article 8 below and Landlord's rights under Section 2.3 above and except for ordinary wear and tear) keep the foundation, the exterior walls (except plate glass; windows, doors and other exterior openings; window and door frames, molding, closure devices, locks and hardware; special store fronts; lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installations, equipment and fixtures; signs, placards, decorations or other advertising media of any type; and interior painting or other treatment of interior walls, which items shall be the responsibility of Tenant) and roof (subject to the second sentence in Section 1.201 of the Premises in good repair. Landlord, however, shall not be required to repair any damage occasioned by any act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires (including, but not limited to, roof leaks resulting from Tenant's installation of air conditioning equipment or any other roof penetration), except and to the extent such damage is covered by the insurance required to be carried by Landlord under this Lease (provided, in any event, Tenant shall be responsible for the payment of any deductible applicable to the insurance coverage for such damage). Landlord shall not be liable to Tenant for any damage to merchandise, trade fixtures or personal property of Tenant in the Premises caused by water leakage from roof, water lines, sprinkler or heating and cooling equipment, **unless caused by the negligent, intentional, willful, or reckless conduct of Landlord or Landlord's agents, contractors, employees, representatives or other persons acting on Landlord's behalf.** If the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall have a reasonable time after receipt by Landlord of such written notice, in which to make such repairs. Notwithstanding the foregoing, Landlord shall not have to make any repairs required of it by this Lease until Tenant gives Landlord written notice of the need therefor. Furthermore, except with respect to those items to be repaired by Landlord as set forth in the first sentence of this Section, Landlord shall not be required to repair any damage to the Premises caused by burglary, robbery, vandalism or other criminal activity.

### SECTION 6.2 TENANT'S OBLIGATION TO MAINTAIN AND REPAIR.

- 6.201 Tenant's Obligation. Tenant shall keep the Premises in good, clean and habitable condition and shall at its sole cost and expense keep the Premises free of insects, rodents, vermin and other pests and make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of Section 6.1, Section 7.1 and Article 8. Without limiting the previous sentence, it is understood that Tenant's responsibilities shall include the repair of all lighting, heating, air conditioning, plumbing (including fire protection equipment and systems), and other electrical, mechanical and electromotive installations, equipment and fixtures within and serving only the Premises, and all signage and awnings and also include all utility repairs in ducts, conduits, pipes and wiring, and any sewer stoppage located in, under and above the Premises, regardless of when or how the defect or other cause for repair or replacement occurred or became apparent. Tenant shall be responsible for preventive maintenance on the heating, ventilation and air conditioning equipment (HVAC) for the Premises. Without limiting the generality of the immediately preceding sentence: (a) Tenant shall replace all filters in the HVAC system at least once every six weeks; and (b) Tenant shall have the entire heating, ventilation and air conditioning equipment inspected by a qualified or licensed HVAC contractor at least once a year. The inspection specified in item (b) immediately above shall be completed between March 1st and May 31st of each year. Tenant shall provide Landlord with a copy of the invoice or report from the inspecting company, giving evidence that the system has been inspected. If Landlord has not received from Tenant by June 15th of each year a copy of the inspection report, then Landlord shall have the right to have the heating, ventilation and air conditioning equipment inspected by a company to be selected by Landlord. Landlord shall bill Tenant for the cost of this inspection.
- 6.202 Rights of Landlord. Landlord shall have the same rights with respect to repairs performed by Tenant as Landlord has with respect to improvements and alterations performed by Tenant under

subsection 6.303 below. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in good order, condition and repair, or otherwise satisfy its repair and replacement obligations under subsection 6.201 above, Landlord shall have the right to perform such maintenance, repairs and replacements at Tenant's expense. Tenant shall pay to Landlord within ten (10) days after demand any such cost or expense incurred by Landlord, together with interest thereon at the rate specified in Section 15.10 below from the date of demand until paid.

### SECTION 6.3 IMPROVEMENTS AND ALTERATIONS.

- 6.301 Landlord's Construction Obligation. Landlord's sole construction obligation under this Lease is as set forth in the Work Letter.
- 6.302 Alteration of Shopping Center. Landlord hereby reserves the right and at all times shall have the right to repair, change, redecorate, alter, improve, modify, renovate, enclose or make additions to any part of the Shopping Center (including, without limitation, structural elements and load bearing elements within the Premises) and to enclose and/or change the arrangement and/or location of driveways or parking areas or landscaping or other Common Areas of the Shopping Center, all without being held guilty of an actual or constructive eviction of Tenant or breach of the implied warranty of suitability and without an abatement of Rent (the "Reserved Right"). Without in any way limiting the generality of the foregoing, Landlord's Reserved Right shall include, but not be limited to, the right to do any of the following: (i) erect and construct scaffolding, pipe, conduit and other structures on and within and outside of the Premises where reasonably required by the nature of the changes, alterations, improvements, modifications, renovations and/or additions being performed, (ii) perform within and outside of the Premises all work and other activities associated with such changes, alterations, improvements, modifications, renovations and/or additions being performed, (iii) repair, change, renovate, remodel, alter, improve, modify or make additions to the arrangement, appearance, location and/or size of entrances or passageways, doors and doorways, corridors, elevators, elevator lobbies, stairs, toilets or other Common Areas, (iv) temporarily close any Common Area and/or temporarily suspend Shopping Center services and facilities in connection with any repairs, changes, alterations, modifications, renovations or additions to any part of the Shopping Center, (v) repair, change, alter or improve plumbing, pipes and conduits located in the Shopping Center, including without limitation, those located within the Premises, the Common Areas, and the service corridors of the Shopping Center and (vi) repair, change, modify, alter, improve, renovate or make additions to the Shopping Center central heating, ventilation, air conditioning, electrical, mechanical or plumbing systems. When exercising the Reserved Right, Landlord will interfere with Tenant's use and occupancy of the Premises as little as is reasonably practicable.
- 6.303 Alterations, Additions, Improvements and Installations by Tenant. Tenant shall not, without the prior written consent of Landlord, make any changes, modifications, alterations, additions or improvements (other than Tenant's Improvements under the Work Letter) to, or install any equipment or machinery (other than office equipment and unattached personal property) on, the Premises (all such changes, modifications, alterations, additions, improvements (other than Tenant's Improvements under the Work Letter) and installations approved by Landlord are herein collectively referred to as "Installations") if any such Installations would (i) affect any structural or load bearing portions of the Shopping Center, (ii) affect areas of the Premises which can be viewed from Common Areas, (iii) require greater or more difficult cleaning work (e.g., kitchens, reproduction rooms and interior glass partitions), or (vi) violate any provision in Article 4 above. As to Installations not covered by the preceding sentence, Tenant will not perform same without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. All Installations shall be at Tenant's sole cost and expense. Without in any way limiting Landlord's consent rights, Landlord shall not be required to give its consent until (a) Landlord approves the contractor or person making such Installations and approves such contractor's insurance coverage to be provided in connection with the work, (b) Landlord approves final and complete plans and specifications for the work and (c) the appropriate governmental agency, if any, has approved the plans and specifications for such work. All work performed by Tenant or its contractor relating to the Installations shall conform to Applicable Laws. Upon completion of the Installations, Tenant shall deliver to Landlord "as built" plans. All Installations that constitute

improvements constructed within the Premises shall be surrendered with the Premises at the expiration or earlier termination of this Lease, unless Landlord requests that same be removed pursuant to Section 1.3 above. All Installations performed by or on behalf of Tenant will be performed diligently and in a first-class workmanlike manner and in compliance with all Applicable Laws. Landlord will have the right, but not the obligation, to inspect periodically the work on the Premises and may require changes in the method or quality of the work.

- 6.304 Approvals. Any approval by Landlord (or Landlord's architect and/or engineers) of any of Tenant's contractors or Tenant's drawings, plans or specifications which are prepared in connection with any construction of improvements (including without limitation, Tenant's Improvements) in the Premises shall not in any way be construed as or constitute a representation or warranty of Landlord as to the abilities of the contractor or the adequacy or sufficiency of such drawings, plans or specifications or the improvements to which they relate, for any use, purpose or condition.

## **ARTICLE 7. INSURANCE, FIRE AND CASUALTY**

**SECTION 7.1 TOTAL OR PARTIAL DESTRUCTION OF THE SHOPPING CENTER OR THE PREMISES.** In the event that the Shopping Center should be totally destroyed by fire or other casualty or in the event the Shopping Center (or any portion thereof) should be so damaged that rebuilding or repairs cannot be completed, in Landlord's reasonable opinion, within one hundred eighty (180) days after commencement of repairs to the Shopping Center, Landlord may, at its option, terminate this Lease, in which event Minimum Rent, Percentage Rent and Additional Rent shall be abated during the unexpired portion of this Lease effective with the date of such damage. Landlord shall exercise the termination right pursuant to the preceding sentence, if at all, by delivering written notice of termination to Tenant within ten (10) days after determining that the repairs cannot be completed within such one hundred eighty (180) day period. In the event that the Premises should be so damaged by fire or other casualty that rebuilding or repairs cannot be completed, in Landlord's reasonable opinion, within one hundred eighty (180) days after the commencement of repairs to the Premises, Tenant may, at its option terminate this Lease, in which event Minimum Rent, Percentage Rent and Additional Rent shall be abated during the unexpired portion of this Lease, effective the date of termination. Tenant shall exercise the termination right pursuant to the preceding sentence, if at all, by delivering written notice of termination to Landlord within ten (10) days after being advised by Landlord that the repairs cannot be completed within such one hundred eighty (180) day period. In the event the Shopping Center or the Premises should be damaged by fire or other casualty and, in Landlord's reasonable opinion, the rebuilding or repairs can be completed within one hundred eighty (180) days after the commencement of repairs to the Shopping Center or Premises, as applicable, or if the damage should be more serious but neither Landlord nor Tenant elect to terminate this Lease pursuant to this Section, in either such event Landlord shall, within sixty (60) days after receipt of insurance proceeds, commence (and thereafter pursue with reasonable diligence) repairing the Shopping Center and the Premises, but only to the extent of insurance proceeds actually received by Landlord for such repairs, to substantially the same condition which existed immediately prior to the happening of the casualty. In no event shall Landlord be required to rebuild, repair or replace any part of the furniture, equipment, fixtures, inventory, supplies or any other personalty or any other improvements (except Tenant's Improvements to the extent set forth in the preceding sentence), which may have been placed by Tenant within the Shopping Center or at the Premises. Landlord shall allow Tenant a fair diminution of Minimum Rent and Additional Rent during the time the Premises are unfit for occupancy; provided, that if such casualty was caused by Tenant, its agents, employees, licensees or invitees, Minimum Rent and Additional Rent shall be abated only to the extent Landlord is compensated for such Minimum Rent and Additional Rent by loss of rents insurance, if any. Notwithstanding Landlord's restoration obligation, in the event any mortgagee under a deed of trust, security agreement or mortgage on the Shopping Center should require that the insurance proceeds be used to retire or reduce the mortgage debt or if the insurance company issuing Landlord's fire and casualty insurance policy fails or refuses to pay Landlord the proceeds under such policy, Landlord shall have no obligation to rebuild and this Lease shall terminate upon notice by Landlord to Tenant. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Shopping Center or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control.

**SECTION 7.2 TENANT'S INSURANCE.**

Types of Coverage. Self-Insurance Coverage. As a Texas municipal corporation, Tenant is self insured and has the right to remain so during the term of this Lease.

SECTION 7.3 LANDLORD'S INSURANCE.

7.301 Types of Coverage. Landlord covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Landlord will carry and maintain, at its sole cost and expense, the insurance set forth in paragraphs (a) and (b) of this subsection.

(a) Commercial General Liability Insurance. Commercial General Liability Insurance covering the Shopping Center and all Common Areas, but excluding the Premises, insuring against claims for personal or bodily injury or death or property damage occurring upon, in or about the Shopping Center or Common Areas to afford protection to the limit of not less than \$3,000,000.00 combined single limit in respect to injury or death to any number of persons and property damage arising out of any one (1) occurrence.

(b) Fire and Extended Coverage Insurance. Landlord shall at all times during the Term hereof maintain in effect a policy or policies of all risk extended coverage insurance covering the Shopping Center (excluding property required to be insured by Tenant) endorsed to provide full replacement cost coverage and providing protection against perils included within the standard Texas form of fire and extended coverage insurance policy, together with insurance against sprinkler damage, vandalism, malicious mischief and such other risks as Landlord may from time to time determine and with any such deductibles as Landlord may from time to time determine.

7.302 Self Insurance. Any insurance provided for in subsection 7.301 above may be effected by self-insurance or by a policy or policies of blanket insurance covering additional items or locations or assureds, provided that the requirements of this Section 7.3 are otherwise satisfied.

SECTION 7.4 WAIVER OF SUBROGATION. Notwithstanding any provision to the contrary contained herein, each party hereto hereby releases any and every claim which arises or may arise in favor and against the other party hereto and/or such party's officers, directors, employees and agents during the Term or any extension or renewal thereof for any and all loss of or damage to any of its property (**REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS THE RESULT OF OR CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE RELEASED PARTY OR ANY STRICT LIABILITY**) arising from any cause that (a) would be insured against under the terms of any property insurance required to be carried hereunder, or (b) is insured against under the terms of any property insurance actually carried, regardless of whether it is required hereunder. 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 property of the parties hereto. If Landlord carries applicable insurance, it agrees immediately to give to each insurance company which has issued to it policies of property insurance written notice of the terms of said mutual waivers, if necessary, and to have said insurance policies property endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers. Tenant is self-insured.

SECTION 7.5 INDEMNITY. Intentionally Omitted.

**ARTICLE 8. CONDEMNATION**

SECTION 8.1 CONDEMNATION RESULTING IN CONTINUED USE NOT FEASIBLE. If the Shopping Center or any portion thereof that, in Landlord's reasonable opinion, is necessary to the continued efficient and/or economically feasible use of the Shopping Center shall be taken or condemned in whole or in part for public purposes, or sold to a condemning authority in lieu of taking, then the Term of this Lease shall, at the option of Landlord, forthwith cease and terminate.

SECTION 8.2 TOTAL CONDEMNATION OF PREMISES. In the event that all or substantially all of the Premises is taken or condemned or sold in lieu thereof or Tenant will be unable to use a substantial portion of the Premises for a period of one hundred eighty (180) consecutive days by reason of a temporary

taking, either Landlord or Tenant may terminate this Lease by delivering written notice thereof to the other within ten (10) business days after the taking, condemnation or sale in lieu thereof.

**SECTION 8.3 CONDEMNATION WITHOUT TERMINATION.** If upon a taking or condemnation or sale in lieu of the taking of all or less than all of the Shopping Center which gives either Landlord or Tenant the right to terminate this Lease pursuant to Section 8.1 or 8.2 above and neither Landlord nor Tenant elect to exercise such termination right, or if such taking does not allow termination of this Lease, then this Lease shall continue in full force and effect, provided that, if the taking, condemnation or sale includes any portion of the Premises, the Minimum Rent and Additional Rent shall be redetermined on the basis of the remaining square feet of leasable area of the Premises. Landlord, at Landlord's sole option and expense, shall restore and reconstruct the Shopping Center to substantially its former condition to the extent that the same may be reasonably feasible, but such work shall not be required to exceed the scope of the work done by Landlord in originally constructing the Shopping Center, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation or damages (over and above amounts going to the mortgagee of the property taken) for the part of the Shopping Center or the Premises so taken.

**SECTION 8.4 CONDEMNATION PROCEEDS.** Landlord shall receive the entire award (which shall include sales proceeds) payable as a result of a condemnation, taking or sale in lieu thereof. Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in and to any such award. Tenant shall, however, have the right to recover from such authority through a separate award which does not reduce Landlord's award, any compensation as may be awarded to Tenant on account of moving and relocation expenses and depreciation to and removal of Tenant's physical property.

## **ARTICLE 9. LIENS**

Tenant shall keep the Premises and the Shopping Center free from all liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant. In the event that Tenant shall not, within ten (10) days following notification to Tenant of the imposition of any such lien, cause the same to be released of record by payment or the posting of a bond in amount, form and substance acceptable to Landlord, Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of or defense against the claim giving rise to such lien. All amounts paid or incurred by Landlord in connection therewith shall be paid by Tenant to Landlord on demand and shall bear interest from the date of demand until paid at the rate set forth in Section 15.10 below. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Shopping Center or the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Landlord in the Shopping Center or the Premises.

## **ARTICLE 10. TAXES ON TENANT'S PROPERTY**

Tenant shall be liable for and shall pay, prior to their becoming delinquent, any and all taxes and assessments levied against, and any increases in Real Estate Taxes as a result of, any personal property or trade or other fixtures placed by Tenant in or about the Premises and any improvements (other than Tenant's Improvements) constructed in the Premises by or on behalf of Tenant. In the event Landlord pays any such additional taxes or increases, Tenant will, within ten (10) days after demand, reimburse Landlord for the amount thereof. **Tenant represents to Landlord that Tenant is a Texas municipal corporation and, as such, is immune from the assessment of taxes, such as real property taxes and personal property taxes.**

## ARTICLE 11. SUBLETTING AND ASSIGNING

SECTION 11.1 SUBLEASE AND ASSIGNMENT. Tenant shall not (either voluntarily or by operation of law) assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Premises or any part thereof or grant any license, concession or other right of occupancy of any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. In determining whether or not to grant its consent, Landlord may take into consideration such factors as Landlord deems appropriate, including Landlord's desired tenant mix, the reputation and net worth of the proposed transferee, the experience of the proposed transferee in operating retail stores, and the then current market conditions (including market rents).

SECTION 11.2 TENANT'S CONTINUING OBLIGATIONS. Without limiting Landlord's consent rights and as a condition to obtaining Landlord's consent, (i) each assignee must assume all obligations under this Lease and (ii) each sublessee must confirm that its sublease is subject and subordinate to this Lease. In addition, each assignee and sublessee shall agree to cause the Premises to comply at all times with all requirements of all Applicable Laws, including, but not limited to, obligations arising out of or associated with such assignee's or subtenant's use of or activities or business operations conducted within the Premises. No assignee or sublessee of the Premises or any portion thereof may assign or sublet the Premises or any portion thereof. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and/or sublettings. Tenant shall deliver to Landlord a copy of each assignment or sublease entered into by Tenant promptly after the execution thereof, whether or not Landlord's consent is required in connection therewith. Any assignment made by Tenant shall be in recordable form and shall contain a covenant of assumption by the assignee running to Landlord. All reasonable legal fees and expenses incurred by Landlord in connection with any assignment or sublease proposed by Tenant will be the responsibility of Tenant and will be paid by Tenant within five (5) days of receipt of an invoice from Landlord. In addition, Tenant will pay to Property Manager an administrative overhead fee of \$500.00 in consideration for Landlord's review of any requested assignment or sublease.

### SECTION 11.3 LANDLORD'S RIGHTS.

#### 11.301 Landlord's Termination and Consent Rights.

(a) If Tenant desires to sublease any portion of the Premises or assign this Lease, Tenant shall submit to Landlord (a) in writing the name of the proposed subtenant or assignee, the nature of the proposed subtenant's or assignee's business and, in the event of a sublease, the portion of the Premises which Tenant desires to sublease (if the proposed sublease space is less than all of the Premises, such portion is herein referred to as the "Proposed Sublease Space"), (b) a current balance sheet and income statement for such proposed subtenant or assignee, (c) a copy of the proposed form of sublease or assignment, and (d) such other information as Landlord may reasonably request (collectively, the "Required Information").

(b) Landlord shall, within fifteen (15) days after Landlord's receipt of the Required Information deliver to Tenant a written notice (each such notice, a "Landlord Response") in which Landlord either (i) denies the proposed subtenant or assignee, if Tenant desires to sublease all of the Premises or assign this Lease, (ii) denies the proposed subtenant or assignee only as to the Proposed Sublease Space, if the Proposed Sublease Space is less than the entire Premises, (iii) consents to the proposed sublease or assignment, or (iv) withholds its consent to the proposed sublease or assignment.

(c) If Landlord does not timely exercise its termination right with respect to the proposed sublease or assignment within the required fifteen (15) days period, then Landlord shall be deemed to have waived its right to terminate this Lease with respect to the applicable assignment or sublease, but Landlord shall have the right to consent or withhold its consent to the applicable proposed assignment or sublease, by delivering written notice thereof to Tenant within such fifteen (15) day period. If Landlord does not exercise its right to consent or withhold its consent

in respect of a proposed assignment or sublease within the required fifteen (15) day period, then Landlord shall be deemed to have withheld its consent to the proposed assignment or sublease.

- 11.302 Effect of Termination. If Landlord timely exercises its option to terminate this Lease as to the entire Premises as provided in subsection 11.201, then this Lease shall terminate on a date specified by Landlord in the Landlord Response (the "Specified Termination Date"), which Specified Termination Date shall not be sooner than 30 days after the date of Landlord's Response, nor later than 90 days after the date of Landlord's Response, and the Minimum Rent, Percentage Rent and Additional Rent shall be paid and apportioned to the Specified Termination Date. If Landlord timely exercises its option to terminate this Lease as to only the Proposed Sublease Space, then (i) this Lease shall end and expire with respect to the Proposed Sublease Space on the applicable Specified Termination Date, (ii) from and after the applicable Specified Termination Date, the Basic Rent shall be reduced by the amount of Basic Rent that was being paid in respect of the Proposed Sublease Space as of the applicable Specified Termination Date, (iii) Tenant's Pro Rata Share shall be recalculated based on the square feet of rentable area included in the Premises (exclusive of such Proposed Sublease Space), (iv) Tenant's estimated payments of Additional Rent shall be recalculated on the basis of the revised Tenant's Pro Rata Share, and (v) if the Proposed Sublease Space adjoins another portion of the Premises, Tenant shall, at Tenant's sole cost and expense, construct and finish such demising walls as are necessary to physically separate the Premises from the Proposed Sublease Space, and (vi) if the Proposed Sublease Space is part of a floor which is fully included in the Premises, then Landlord shall have the right, at Tenant's sole cost and expense, (a) to construct and finish in accordance with Shopping Center standards or to cause Tenant to construct and finish in accordance with Shopping Center standards such demising walls as are necessary (x) to construct a public corridor so as to convert the floor to a multi-tenant floor and (y) to convert the restrooms on such floor (including access thereto) to restrooms which will serve the entire floor, as opposed to only the Premises, and (b) to make such revisions, if any, are necessary, to properly light, heat, cool and ventilate the public corridor and public restrooms. The alterations performed by Tenant pursuant to this paragraph shall be deemed Installations and therefore subject to the provisions of subsection 6.303.

SECTION 11.4 LANDLORD'S RIGHTS RELATING TO ASSIGNEE OR SUBTENANT. To the extent the rentals or income derived from any sublease or assignment exceed the rentals due hereunder, such excess rentals (the "Excess Sublease Rentals") shall be the property of and paid over to Landlord in consideration for Landlord's consent to the applicable assignment or sublease. Landlord may at its option collect directly from such assignee or sublessee all rents becoming due to Tenant under such assignment or sublease. Tenant hereby authorizes and directs any such assignee or sublessee to make such payments of rent direct to Landlord upon receipt of notice from Landlord and Tenant agrees that any such payments made by an assignee or sublessee to Landlord shall, to the extent of the payments so made, be a full and complete release and discharge of rent owed to Tenant by such assignee or sublessee. No direct collection by Landlord from any such assignee or sublessee shall be construed to constitute a novation or a release of Tenant or any guarantor of Tenant from the further performance of its obligations hereunder. Receipt by Landlord of rent from any assignee, sublessee or occupant of the Premises or any part thereof shall not be deemed a waiver of the above covenant in this Lease against assignment and subletting or a release of Tenant under this Lease. In the event that, following an assignment or subletting, this Lease or Tenant's right to possession of the Premises is terminated for any reason, including without limitation in connection with default by or bankruptcy of Tenant (which, for the purposes of this Section 11.3, shall include all persons or entities claiming by or through Tenant), Landlord may, at its sole option, consider this Lease to be thereafter a direct lease to the assignee or subtenant of Tenant upon the terms and conditions contained in this Lease, in which event all rentals payable under such lease after the termination of this Lease or Tenant's right to possession of the Premises shall be deemed the property of Landlord.

#### SECTION 11.5 ASSIGNMENT AND BANKRUPTCY.

- 11.501 Assignments after Bankruptcy. If, pursuant to applicable bankruptcy law (as hereinafter defined in Section 13.104), Tenant (or its successor in interest hereunder) is permitted to assign this Lease in disregard of the restrictions contained in this Article 11 (or if this Lease shall be assumed by a trustee for such person), the trustee or assignee shall cure any default under this Lease and shall

provide adequate assurance of future performance by the trustee or assignee, including (i) the source of payment of Minimum Rent and performance of other obligations under this Lease (for which adequate assurance shall mean the deposit of cash security with Landlord in an amount equal to the sum of one (1) year's Minimum Rent, Percentage Rent, Additional Rent and other Rent then reserved hereunder for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the Term as security for the full and faithful performance of all of the obligations under this Lease on the part of Tenant yet to be performed and that any such assignee of this Lease shall have a net worth exclusive of good will, computed in accordance with the generally accepted accounting principles, equal to at least ten (10) times the aggregate of the Minimum Rent reserved hereunder); and (ii) that the use of the Premises shall be in accordance with the requirements of Article 4 hereof and, further, shall in no way diminish the reputation of the Shopping Center as a first-class office Shopping Center or impose any additional burden upon the Shopping Center or increase the services to be provided by Landlord. If all defaults are not cured and such adequate assurance is not provided within sixty (60) days after there has been an order for relief under applicable bankruptcy law, then this Lease shall be deemed rejected, Tenant or any other person in possession shall immediately vacate the Premises, and Landlord shall be entitled to retain any Minimum Rent, Percentage Rent, Additional Rent and any other Rent, together with any security deposit previously received from the Tenant, and shall have no further liability to Tenant or any person claiming through Tenant or any trustee.

- 11.502 Bankruptcy of Assignee. If Tenant assigns this Lease to any party and such party or its successors or representatives causes termination or rejection of this Lease pursuant to applicable bankruptcy law, then, notwithstanding any such termination or rejection, Tenant (i) shall remain fully liable for the performance of all covenants, agreements, terms, provisions and conditions contained in this Lease, as though the assignment never occurred and (ii) shall, without in any way limiting the foregoing, in writing ratify the terms of this Lease, as same existed immediately prior to the termination or rejection.

## **ARTICLE 12. TRANSFERS BY LANDLORD, SUBORDINATION AND ESTOPPEL**

SECTION 12.1 SALE OF THE SHOPPING CENTER. In the event of any transfer of title to the Shopping Center, the transferor shall automatically be relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, provided that if a Security Deposit has been made by Tenant, Landlord shall not be released from liability with respect thereto unless Landlord transfers the Security Deposit to the transferee.

SECTION 12.2 SUBORDINATION, ATTORNMEN AND NOTICE. This Lease is subject and subordinate to (i) any lease wherein Landlord is the tenant and to the liens of any and all mortgages and deeds of trust, regardless of whether such lease, mortgage or deed of trust now exists or may hereafter be created with regard to all or any part of the Shopping Center, (ii) any and all advances (including interest thereon) to be made under any such lease, mortgage or deed of trust and (iii) all modifications, consolidations, renewals, replacements and extensions of any such lease, mortgage or deed of trust; provided that the foregoing subordination in respect of any mortgage or deed of trust placed on the Shopping Center after the date hereof shall not become effective until and unless the holder of such mortgage or deed of trust delivers to Tenant a non-disturbance agreement (which may include Tenant's agreement to attorn as set forth below) permitting Tenant, if Tenant is not then in default under, or in breach of any provision of, this Lease, to remain in occupancy of the Premises in the event of a foreclosure of any such mortgage or deed of trust. Tenant also agrees that any lessor, mortgagee or trustee may elect (which election shall be revocable) to have this Lease superior to any lease or lien of its mortgage or deed of trust and, in the event of such election and upon notification by such lessor, mortgagee or trustee to Tenant to that effect, this Lease shall be deemed superior to the said lease, mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said lease, mortgage or deed of trust. Tenant shall, in the event of the sale or assignment of Landlord's interest in the Premises (except in a sale-leaseback financing transaction), or in the event of the termination of any lease in a sale-leaseback financing transaction wherein Landlord is the lessee, attorn to and recognize such purchaser, assignee or mortgagee as Landlord under this

Lease. Tenant shall, in the event of any proceedings brought for the foreclosure of, or in the event of the exercise of the power of sale under, any mortgage or deed of trust covering the Premises, attorn to and recognize purchaser at such sale, assignee or mortgagee, as the case may be, as Landlord under this Lease. The above subordination and attornment clauses shall be self-operative and no further instruments of subordination or attornment need be required by any mortgagee, trustee, lessor, purchaser or assignee. In confirmation thereof, Tenant agrees that, upon the request of Landlord, or any such lessor, mortgagee, trustee, purchaser or assignee, Tenant shall execute and deliver whatever instruments may be required for such purposes and to carry out the intent of this Section 12.2.

**SECTION 12.3 TENANT'S ESTOPPEL CERTIFICATE.** Tenant shall, within thirty (30) days after receipt of a request of Landlord or any mortgagee of Landlord, without additional consideration, deliver an estoppel certificate, consisting of reasonable statements required by Landlord, any mortgagee or purchaser of any interest in the Shopping Center, which statements may include but shall not be limited to the following: this Lease is in full force and effect with rent paid through a specified date; this Lease has not been modified or amended; Landlord is not in default and Landlord has fully performed all of Landlord's obligations hereunder; and such other statements as may reasonably be required by the requesting party. If Tenant is unable to make any of the statements contained in the estoppel certificate because the same is untrue, Tenant shall with specificity state the reason why such statement is untrue. Tenant shall, if requested by Landlord or any such mortgagee, deliver to Landlord a fully executed instrument in form reasonably satisfactory to Landlord evidencing the agreement of Tenant to the mortgage or other hypothecation by Landlord of the interest of Landlord hereunder.

## **ARTICLE 13: DEFAULT**

**SECTION 13.1 DEFAULTS BY TENANT.** The occurrence of any of the events described in subsections 13.101 through 13.108 shall constitute a default by Tenant under this Lease.

- 13.101 Failure to Pay Rent. With respect to the first two payments of Rent not made by Tenant when due in any twelve (12) month period, the failure by Tenant to make either such payment to Landlord within three (3) business days after Tenant receives written notice specifying that the payment was not made when due. With respect to any other payment of Rent, the failure by Tenant to make such payment of Rent to Landlord when due, no notice of any such failure being required.
- 13.102 Failure to Perform. Except for a failure covered by subsection 13.101 above, 13.103 below or 13.106 below, any failure by Tenant to observe and perform any provision of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice to Tenant, provided that if such failure cannot be cured within said thirty (30) day period, Tenant shall not be in default hereunder so long as Tenant commences curative action within such thirty (30) day period, diligently and continuously pursues the curative action and fully and completely cures the failure within sixty (60) days after such written notice to Tenant.
- 13.103 Continual Failure to Perform. The third failure by Tenant in any twelve (12) month period to perform and observe a particular provision of this Lease to be observed or performed by Tenant (other than the failure to pay Rent, which in all instances will be covered by subsection 13.101 above), no notice being required for any such third failure.
- 13.104 Bankruptcy, Insolvency, Etc. Tenant or any guarantor of Tenant's obligations hereunder (hereinafter called "Guarantor", whether one (1) or more), (i) cannot meet its obligations as they become due, (ii) becomes or is declared insolvent according to any law, (iii) makes a transfer in fraud of creditors according to any applicable law, (iv) assigns or conveys all or a substantial portion of its property for the benefit of creditors or (v) Tenant or Guarantor files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (collectively, "applicable bankruptcy law"); a receiver or trustee is appointed for Tenant or Guarantor or its property; the interest of Tenant or Guarantor under this Lease is levied on under execution or under other legal process; any involuntary petition is filed against Tenant or Guarantor under applicable bankruptcy law; or any action is taken to reorganize or modify Tenant's or Guarantor's capital structure if either Tenant or Guarantor be a corporation or other entity (provided that no such levy, execution, legal process or

petition filed against Tenant or Guarantor shall constitute a breach of this Lease if Tenant or Guarantor shall vigorously contest the same by appropriate proceedings and shall remove or vacate the same within ninety (90) days from the date of its creation, service or filing).

- 13.105 Abandonment. The abandonment of the Premises by Tenant.
- 13.106 Vacation. If Tenant shall fail to move into or take possession of the Premises within ten (10) days after the date on which Rent is to commence under the terms of this Lease or if Tenant fails to comply with the terms of Section 4.101(a) of this Lease.
- 13.107 Loss of Right to do Business. If Tenant is a corporation, limited liability company, or limited partnership, Tenant fails to maintain its right to do business in the State of Texas or fails to pay any applicable annual franchise taxes as and when same become finally due and payable.
- 13.108 Dissolution or Liquidation. If Tenant is a corporation, limited liability company, or general or limited partnership, Tenant dissolves or liquidates or otherwise fails to maintain its corporate or partnership structure, as applicable.

With respect to the defaults described in subsections 13.103 through 13.108, Landlord shall not be obligated to give Tenant notices of default and Tenant shall have no right to cure such defaults.

#### SECTION 13.2 REMEDIES OF LANDLORD.

- 13.201 Termination of the Lease. Upon the occurrence of a default by Tenant hereunder, Landlord may, without judicial process, terminate this Lease by giving written notice thereof to Tenant (whereupon all obligations and liabilities of Landlord hereunder shall terminate) and, without further notice, demand or liability, enter upon the Premises or any part thereof, take absolute possession of the same, by picking or changing locks if necessary, and lockout, and expel or remove Tenant and any other person or entity who may be occupying the Premises. Landlord shall be entitled to recover all loss and damage Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, including without limitation, the following (without duplication of any element of damages):

(a) accrued Rent to the date of termination and Late Charges, plus interest thereon at the rate established under Section 15.10 below from the date due through the date paid or date of any judgment or award by any court of competent jurisdiction, the unamortized cost of Tenant's Improvements, brokers' fees and commissions, attorneys' fees, moving allowances and any other costs incurred by Landlord in connection with making or executing this Lease, the cost of recovering the Premises and the costs of reletting the Premises (including, without limitation, advertising costs, brokerage fees, leasing commissions, reasonable attorneys' fees and refurbishing costs and other costs in readying the Premises for a new tenant);

(b) the present value of the Rent (discounted at a rate of interest equal to eight percent [8%] per annum [the "Discount Rate"]) that would have accrued under this Lease for the balance of the Lease Term but for such termination, reduced by the present value (discounted at the Discount Rate) of the reasonable fair market rental value of the Premises for such balance of the Lease Term;

(c) plus any other costs or amounts necessary to compensate Landlord for its damages.

If such termination is caused by the failure to pay Rent and/or the abandonment of all or any substantial portion of the Premises, Landlord may elect, by sending written notice thereof to Tenant, to receive liquidated damages in an amount equal to Minimum Rent payable hereunder for the month during which this Lease is terminated times the lesser of (A) eighteen (18) or (B) the number of full calendar months remaining in the Term at the time of such termination. Such liquidated damages shall be in lieu of the payment of loss and damage Landlord may suffer by reason of such termination as provided above but which shall not be in lieu of or reduce in any way any amount (including accrued Rent) or damages due to breach of covenant (whether or not

- liquidated) payable by Tenant to Landlord which accrued prior to the termination of this Lease. Nothing contained in this Lease shall limit or prejudice the right of Landlord to provide for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.
- 13.202 Repossession and Re-Entry. Upon the occurrence of a default by Tenant hereunder, Landlord may, without judicial process, immediately terminate Tenant's right of possession of the Premises (whereupon all obligations and liability of Landlord hereunder shall terminate), but not terminate this Lease, and, without notice, demand or liability, enter upon the Premises or any part thereof, take absolute possession of the same, by picking or changing locks if necessary, and lockout, and expel or remove Tenant and any other person or entity who may be occupying the Premises. If Landlord terminates Tenant's possession of the Premises under this subsection 13.202, (i) Landlord shall have no obligation whatsoever to tender to Tenant a key for new locks installed in the Premises, (ii) Tenant shall have no further right to possession of the Premises and (iii) Landlord will have the right to relet the Premises or any part thereof on such terms as Landlord deems advisable, taking into account the factors described in subsection 13.206. Any rent received by Landlord from reletting the Premises or a part thereof shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord (in such order as Landlord shall designate), second, to the payment of any cost of such reletting, including, without limitation, refurbishing costs, reasonable attorneys' fees, advertising costs, brokerage fees and leasing commissions and third, to the payment of Rent due and unpaid hereunder (in such order as Landlord shall designate), and Tenant shall satisfy and pay to Landlord any deficiency upon demand therefor from time to time. Landlord shall not be responsible or liable for any failure to relet the Premises or any part thereof or for any failure to collect any rent due upon any such reletting. No such re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such termination is given to Tenant pursuant to subsection 13.201 above. If Landlord relets the Premises, either before or after the termination of this Lease, all such rentals received from such lease shall be and remain the exclusive property of Landlord and Tenant shall not be, at any time, entitled to recover any such rental. Landlord may at any time after a reletting elect to terminate this Lease.
- 13.203 Cure of Default. Upon the occurrence of a default hereunder by Tenant, Landlord may, without judicial process and without having any liability therefor, enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, **INCLUDING DAMAGES CAUSED BY THE NEGLIGENCE OF LANDLORD OR STRICT LIABILITY.**
- 13.204 Continuing Obligations. No repossession of or re-entering upon the Premises or any part thereof pursuant to subsection 13.202 or 13.203 above or otherwise and no reletting of the Premises or any part thereof pursuant to subsection 13.202 above shall relieve Tenant or any Guarantor of its liabilities and obligations hereunder, all of which shall survive such repossession or re-entering. In the event of any such repossession of or re-entering upon the Premises or any part thereof by reason of the occurrence of a default, Tenant will continue to pay to Landlord Rent required to be paid by Tenant.
- 13.205 Cumulative Remedies. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy set forth herein or otherwise available to Landlord at law or in equity and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to the other remedies provided in this Lease and without limiting the preceding sentence, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling

performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity.

13.206 Mitigation of Damages. With respect to the laws of the State of Texas which require that Landlord use reasonable efforts to relet the Premises, it is understood and agreed that:

- (a) Landlord may elect to lease other available space in the Shopping Center, if any, before reletting the Premises.
- (b) Landlord may decline to incur out-of-pocket costs to relet the Premises, other than customary leasing commissions and legal fees for the negotiation of a lease with a new tenant.
- (c) Landlord may decline to relet the Premises at rental rates below then prevailing market rental rates.
- (d) Before reletting the Premises to a prospective tenant, Landlord may require the prospective tenant to demonstrate the same financial wherewithal that Landlord would require as a condition to leasing other space in the Shopping Center to the prospective tenant.
- (e) Landlord may elect to consent to an assignment or sublease by an existing tenant of the Shopping Center before reletting the Premises.
- (f) Landlord may decline to relet the Premises to a prospective tenant, the nature of whose business may have an adverse impact upon the manner in which the Shopping Center is operated or with the high reputation of the Shopping Center even though in each of said circumstances such prospective tenant may have a good credit rating.
- (g) Landlord may decline to relet the Premises to a prospective tenant if the nature of such prospective tenant's business is not consistent with the tenant mix of the Shopping Center or with any other tenant leases containing provisions against the Landlord leasing space in the Shopping Center for certain uses.
- (h) Listing the Premises with a broker in a manner consistent with parts (a) through (g) above constitutes reasonable efforts on the part of Landlord to relet the Premises.

13.207 Intentionally Deleted (Defining Percentage Rent Calculation)

SECTION 13.3 DEFAULTS BY LANDLORD. Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after Tenant delivers written notice thereof to Landlord (to each of the addresses required by this Section) and each mortgagee who has a lien against any portion of the Shopping Center and whose name and address has been provided to Tenant, provided that if such failure cannot reasonably be cured within said thirty (30) day period; provided, however, Landlord shall not be in default hereunder if the curative action is commenced within said thirty (30) day period and is thereafter diligently pursued until cured. In no event shall (i) Tenant claim a constructive or actual eviction or that the Premises have become unsuitable hereunder or (ii) a constructive or actual eviction or breach of the implied warranty of suitability be deemed to have occurred under this Lease, prior to the expiration of the notice and cure periods provided under this Section 13.3. Any notice of a failure to perform by Landlord shall be sent to Landlord at the addresses and to the attention of the parties set forth in the Basic Lease Provisions. Any notice of a failure to perform by Landlord not sent to Landlord at all addresses and/or to the attention of all parties required under this Section and to each mortgagee who is entitled to notice or not sent in compliance with Article 14 below shall be of no force or effect.

SECTION 13.4 LANDLORD'S LIABILITY.

13.401 Tenant's Rights in Respect of Landlord Default. Tenant is granted no contractual right of termination by this Lease, except to the extent and only to the extent set forth in Sections 7.1 and 8.2 above. If Tenant shall recover a money judgment against Landlord, such judgment shall be

satisfied only out of the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered and Landlord shall not be liable for any deficiency. If Landlord is found to be in default hereunder by reason of its failure to give a consent that it is required to give hereunder, Tenant's sole remedy will be an action for specific performance or injunction. The foregoing sentence shall in no event be construed as mandatorily requiring Landlord to give consents under this Lease. In no event shall Landlord be liable to Tenant for consequential or special damages by reason of a failure to perform (or a default) by Landlord hereunder or otherwise. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided.

- 13.402 Certain Limitations on Landlord's Liability. **UNLESS CAUSED BY LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, LANDLORD SHALL NOT BE LIABLE TO TENANT FOR ANY CLAIMS, ACTIONS, DEMANDS, COSTS, EXPENSES, DAMAGE OR LIABILITY OF ANY KIND** (i) arising out of the use, occupancy or enjoyment of the Premises by Tenant or any person therein or holding under Tenant or by or through the acts or omissions of any of their respective employees, officers, agents, invitees or contractors, (ii) caused by or arising out of fire, explosion, falling sheetrock, gas, electricity, water, rain, snow or dampness, or leaks in any part of the Premises, (iii) caused by or arising out of damage to the roof, pipes, appliances or plumbing works or any damage to or malfunction of heating, ventilation or air conditioning equipment, (iv) caused by tenants or any persons either in the Premises or elsewhere in the Shopping Center or by occupants of property adjacent to the Shopping Center or Common Areas or by the public or by the construction of any private, public or quasi-public work or (v) caused by any act, neglect or negligence of Tenant. In no event shall Landlord be liable to Tenant for any loss of or damage to property of Tenant or of others located in the Premises or any other part of the Shopping Center by reason of theft or burglary.

#### SECTION 13.5 WAIVER OF TEXAS DECEPTIVE TRADE PRACTICES ACT

**TENANT HEREBY WAIVES ALL ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ. OF THE TEXAS BUSINESS AND COMMERCE CODE (THE "DTPA"), A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.**

SECTION 13.6 LANDLORD'S LIEN WAIVER. Landlord waives all common law and statutory liens to which it would otherwise be entitled against Tenant's personal property situated in the Premises.

#### ARTICLE 14. NOTICES

Any notice or communication required or permitted in this Lease shall be given in writing, sent by (a) personal delivery, with proof of delivery, (b) expedited delivery service, with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as provided in Item 14 of the Basic Lease Provisions and Section 13.3 above or to such other address or to the attention of such other person as shall be designated from time to time in writing by the applicable party and sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

#### ARTICLE 15. MISCELLANEOUS PROVISIONS

SECTION 15.1 SHOPPING CENTER NAME AND ADDRESS. In no event shall Tenant acquire any rights in or to the name of the Shopping Center. Landlord shall have the right at any time to change the name, number or designation by which the Shopping Center is known.

SECTION 15.2 TENANT'S CONTRIBUTION. Tenant acknowledges that Tenant's monetary contribution to Landlord (in the form of rents) and Tenant's general contribution to commerce within the Shopping Center (also important in Landlord's determination to execute this Lease with Tenant) will be

substantially reduced if, during the Term of this Lease, either Tenant or any person, corporation, or other entity, directly or indirectly controlling, controlled by or under common control with Tenant shall directly or indirectly operate, manage, conduct or have any interest in any establishment within commercial proximity of the Shopping Center. Accordingly, Tenant agrees that if during the Term of this Lease, either Tenant or any person, corporation, or other entity, directly or indirectly controlling, controlled by or under common control with Tenant (and also, in the event Tenant is a corporation or other entity, if any officer or director thereof or shareholder or other owner owning more than ten percent of the outstanding stock or other ownership thereof, or any parent, subsidiary or related or affiliated corporation) either directly or indirectly commences operation of any store selling or otherwise sells or offers for sale any merchandise or services of the type to be sold by Tenant in the Premises as provided in Item 3 of the Basic Lease Provisions or similar or related items, or in any manner competes with the business provided herein to be conducted by Tenant at the Premises, within three miles of the Shopping Center measured from the nearest outside boundary of the Shopping Center, which Tenant acknowledges is a reasonable area for the purpose of this provision, then in such event, the rent payable by Tenant hereunder shall be adjusted as follows: (i) thereafter the Minimum Rent shall be one hundred ten percent (110%) of the amount stipulated in Section 2.1 of the Basic Lease Provisions; and, (ii) thereafter the Percentage Rent shall be computed as if twenty-five percent (increased to fifty percent, if the other store is within a two-mile radius, and seventy-five percent, if the other store is within a one-mile radius), of all amounts that would be "Gross Sales" (as defined in Section 2.201(c) of this Lease) if the merchandise had been sold, services rendered or business conducted at or from the Premises (in lieu of at or from such other store) were, in fact, "Gross Sales" (as so defined) and the provisions of Section 2.2 "gross sales" will likewise apply to the other store. The above adjustment in rent reflects the estimate of the parties as to the damages that Landlord would be likely to incur by reason of the diversion of business and customer traffic from the Premises and Shopping Center to such other store within such radius, as the proximate result of the establishment of such other store. This provision shall not apply to any existing store presently being operated by Tenant as of the date hereof, provided there is no increase in the size, change in merchandise mix or trade name of such commercial establishment.

SECTION 15.3 NO WAIVER. No waiver by Landlord or by Tenant of any provision of this Lease shall be deemed to be a waiver by either party of any other provision of this Lease. No waiver by Landlord of any breach by Tenant shall be deemed a waiver of any subsequent breach by Tenant of the same or any other provision. No waiver by Tenant of any breach by Landlord shall be deemed a waiver of any subsequent breach by Landlord of the same or any other provision. The failure of Landlord or Tenant to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. Tenant's consent to or approval of any act by Landlord requiring Tenant's consent or approval shall not be deemed to render unnecessary the obtaining of Tenant's consent to or approval of any subsequent act of Landlord. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless done in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of this Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach. The payment of Rent by Tenant following a breach of this Lease by Landlord shall not constitute a waiver by Tenant of any such breach or any other breach. No waiver by Landlord or Tenant of any provision of this Lease shall be deemed to have been made unless such waiver is expressly stated in writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy which may be available to Landlord.

SECTION 15.4 APPLICABLE LAW. This Lease shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 15.5 COMMON AREAS. The term "Common Areas" is defined for all purposes of this Lease as that part of the Shopping Center intended for the common use of all tenants, including among other facilities (as such may be applicable to the Shopping Center), parking areas, private streets and alleys, landscaping, curbs, loading area, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, and the like, but excluding (i) space in buildings (now or hereafter existing) designated for rent for commercial purposes, as the same may exist from time to time, (ii) streets and alleys maintained by a public authority, (iii) areas within the Shopping Center which may from time to time not be owned by Landlord (unless subject to a cross-access agreement benefiting the area which includes the Premises), and (iv) areas leased to a single-purpose user (such as a bank or fast-food restaurant) where access is restricted. In addition, although the roof(s) of the building(s) in the Shopping Center are not literally part of the Common Area, they will be deemed to be so included for purposes of (i) Landlord's ability to prescribe rules and regulations regarding same and (ii) their inclusion for purposes of Common Area Expenses. Landlord reserves the right to alter from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, parking areas, streets, drives, alleys, signs or other improvements in the Shopping Center. This Lease does not guarantee, nor does Landlord make any representation or warranty to Tenant as to, the configuration of the Shopping Center and the Common Areas, and any reference herein made to any site plan setting forth the general layout of buildings, parking areas, streets, drives, alleys and other improvements shall not be deemed to be a warranty or representation.

Tenant and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have a license to use the Common Area (excluding roofs of buildings in the Shopping Center) as constituted from time to time, such use to be in common with Landlord, other tenants in the Shopping Center and other persons permitted by Landlord to use the same, and subject to all Applicable Laws and such reasonable rules and regulations governing use as Landlord may from time to time prescribe. Landlord shall at all times during the Term of this Lease be entitled to control the Common Areas, and may restrain any use or occupancy thereof as authorized by this Lease and by the Rules and Regulations for the use of such areas. Tenant shall keep the Common Areas free and clear of any obstructions created by Tenant or resulting from Tenant's operations in the Premises. If, in the opinion of Landlord, unauthorized persons are using any of the Common Areas because of the presence of Tenant in the Shopping Center, Tenant shall restrain such unauthorized use by appropriate legal proceedings. Nothing herein shall affect the right of Landlord to prohibit the use of any of the Common Areas by unauthorized persons. Landlord may temporarily close any part of the Common Areas for such periods of time as may be necessary to make repairs, alterations or improvements or to prevent the public from obtaining prescriptive rights. Landlord shall be responsible for the operation, management and maintenance of the Common Area, the manner of maintenance and the expenditures therefore to be in the sole discretion of Landlord, but to be generally in keeping with similar shopping centers within the same geographical area as the Shopping Center. Without limiting the generality of the immediately preceding sentence, Tenant acknowledges that LANDLORD MAKES AND HAS MADE NO REPRESENTATION OR WARRANTY THAT LANDLORD WILL PROVIDE OR CONTINUE TO PROVIDE SECURITY SERVICES.

**If Landlord finds it necessary or desirable to furnish a form of trash disposal for the common use of more than one tenant, including Tenant, the cost of said trash disposal shall be allocated on the basis determined by Landlord to those using it, and Tenant will pay its share. If Landlord does not provide trash disposal for use by Tenant and other tenants, it shall be Tenant's responsibility to provide, at Tenant's expense, a trash dumpster or some other method of trash disposal meeting the approval of the applicable municipality in which the Premises are located. Such dumpster or other receptacle shall be located and shall be screened or enclosed as directed by Landlord.**

SECTION 15.6 SUCCESSORS AND ASSIGNS. Subject to Article 11 hereof, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

SECTION 15.7 BROKERS. Tenant represents that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the broker, if any, named in Item 10 of the Basic Lease Provisions and that it knows of no other real estate brokers or agents who are or might be entitled to a commission in connection with this Lease. Landlord has agreed to pay the fees of the broker (but only the broker) named in Item 10 of the Basic Lease Provisions to the extent that Landlord has agreed to do so pursuant to a written agreement with such broker.

SECTION 15.8 SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the application of such provisions to other persons or circumstances and the remainder of this Lease shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

SECTION 15.9 EXAMINATION OF LEASE. Submission by Landlord of this instrument to Tenant for examination or signature does not constitute a reservation of or option for lease. This Lease will be effective as a lease or otherwise only upon execution by and delivery to both Landlord and Tenant.

SECTION 15.10 INTEREST ON TENANT'S OBLIGATIONS. Any amount due from Tenant to Landlord which is not paid within ten (10) days after the date due shall bear interest at the lower of (i) eighteen percent (18%) per annum or (ii) the highest rate from time to time allowed by applicable law, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure the default.

SECTION 15.11 TIME. Time is of the essence in this Lease and in each and all of the provisions hereof. Whenever a period of days is specified in this Lease, such period shall refer to calendar days unless otherwise expressly stated in this Lease.

SECTION 15.12 DEFINED TERMS AND MARGINAL HEADINGS. The words "Landlord" and "Tenant" as used herein shall include the plural as well as singular. If more than one person is named as Tenant, the obligations of such persons are joint and several. The headings and titles to the articles, sections and subsections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

SECTION 15.13 AUTHORITY OF TENANT. Tenant and each person signing this Lease on behalf of Tenant represents to Landlord as follows: Tenant, if a corporation, is duly incorporated and legally existing under the laws of the state of its incorporation and is duly qualified to do business in the State of Texas. Tenant, if a partnership or joint venture, is duly organized under the Texas Uniform Partnership Act. Tenant, if a limited partnership, is duly organized under the applicable limited partnership act of the State of Texas or, if organized under the laws of a state other than Texas, is qualified under said Texas limited partnership act. Tenant has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to lease the Premises and to carry on its business as now conducted and as contemplated to be conducted. Each person signing on behalf of Tenant is authorized to do so. The foregoing representations in this Section 15.13 shall also apply to any corporation, partnership, joint venture or limited partnership which is a general partner or joint venturer of Tenant.

SECTION 15.14 FORCE MAJEURE. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party; provided, however, in no event shall the foregoing apply to the financial obligations of either Landlord or Tenant to the other under this Lease, including Tenant's obligation to pay Minimum Rent, Percentage Rent, Additional Rent or any other amount payable to Landlord hereunder.

SECTION 15.15 RECORDING. This Lease shall not be recorded. However, Landlord shall have the right to record a short form or memorandum hereof, at Landlord's expense, at any time during the Term hereof and, if requested, Tenant agrees (without charge to Landlord) to join in the execution thereof.

SECTION 15.16 NO REPRESENTATIONS. Landlord and Landlord's agents have made no warranties, representations or promises (express or implied) with respect to the Premises, the Building or any other part of the Shopping Center (including, without limitation, the condition, use or suitability of the Premises, the Building or the Shopping Center), except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease.

SECTION 15.17 CALCULATION OF CHARGES. Landlord and Tenant agree that each provision of this Lease for determining charges, amounts and additional rent payments by Tenant (including without limitation, Article 2 of this Lease) is commercially reasonable, and as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.004 (Assessment of Charges) of the Texas Property Code, as such section now exists or as it may be hereafter amended or succeeded.

SECTION 15.18 ATTORNEYS' FEES. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action (including, without limitation, all costs of appeal) and such amount shall be included in any judgment rendered in such proceeding.

SECTION 15.19 NO LIGHT, AIR OR VIEW EASEMENT. Any diminution or shutting off of light, air or view by any structure which may be erected on the Shopping Center or lands adjacent to the Shopping Center shall in no way affect this Lease or impose any liability on Landlord (even if Landlord is the adjacent land owner).

SECTION 15.20 RELOCATION.

15.2001. Upon written notice to Tenant (the "Relocation Notice"), Landlord shall have the right to relocate Tenant to other space in the Shopping Center (the "Substitute Premises"). The Substitute Premises must not be smaller than 1,500 square feet. Rent decreases proportionately for Substitute Premises smaller than the Premises, but it does not increase for Substitute Premises larger than the Premises. Tenant cannot lawfully pay more than approved by council in approving this lease.

15.2002. Landlord shall pay all out-of-pocket expenses of any such relocation, including the expenses of moving, including permits and certificates of occupancy, changes of stationery, business cards, computer and telecommunications rewiring, and the like, and construction of improvements substantially similar to Tenant's Work and other improvements installed with the written consent of Landlord and prior to the date of the Relocation Notice, subject to the condition that Landlord shall have the right to use all or any of Tenant's Work and such other improvements in connection with the construction of the improvements in the Substitute Premises.

15.2003. In the event of such relocation, this Lease shall continue in full force and effect without any change in the terms or other conditions, except that the Substitute Premises shall be the Premises and an Exhibit A-1 showing the Substitute Premises shall be substituted for the Exhibit A-1 attached hereto. If requested by Landlord, Tenant shall execute an amendment to this Lease evidencing the foregoing. Tenant shall have the right of refusal within 15 days upon receipt of written notice of relocation to keep the present space at the proposed replacement tenant's gross rent. In the event Tenant fails to reject Landlord's relocation of the Premises by providing written notice to Landlord within such 15 period, Tenant shall be deemed to have consented to the relocation of the Premises.

**SECTION 15.21. JURY TRIAL. TENANT AND LANDLORD BOTH KNOWINGLY AND VOLUNTARILY WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS LEASE, OR ANY OF ITS PROVISIONS. LANDLORD AND TENANT ARE EACH HEREBY AUTHORIZED BY THE OTHER TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THE FOREGOING WAIVER.**

SECTION 15.22 Intentionally Omitted.

SECTION 15.23. SURVIVAL OF INDEMNITIES. Intentionally omitted.

SECTION 15.24. ENTIRE AGREEMENT. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease and no prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

## **ARTICLE 16. APPROPRIATIONS.**

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

## **ARTICLE 17. PROHIBITED INTERESTS IN CONTRACTS.**

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

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

17.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

17.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Lease, as of the date first written in this Lease.

LANDLORD

Covington Dellview Acquisition 1, LLC, Covington Dellview Acquisition 2, LLC, Covington Dellview Acquisition 3, LLC, Covington Dellview Acquisition 4, LLC, Covington Dellview Acquisition 5, LLC, Covington Dellview Acquisition 6, LLC, Covington Dellview Acquisition 7, LLC, Covington Dellview Acquisition 8, LLC, Covington Dellview Acquisition 9, LLC, Covington Dellview Acquisition 10, LLC, Covington Dellview Acquisition 11, LLC, Covington Dellview Acquisition 12, LLC, Covington Dellview Acquisition 13, LLC, Covington Dellview Acquisition 14, LLC, Covington Dellview Acquisition 15, LLC, Covington Dellview Acquisition 16, LLC, Covington Dellview Acquisition 17, LLC, Covington Dellview Acquisition 18, LLC, Covington Dellview Acquisition 19, LLC, and Covington Dellview Acquisition 20, LLC, Covington Dellview Acquisition 21, LLC, Covington Dellview Acquisition 22, LLC, each a Delaware Limited Liability Company,

By: Covington Asset Management, LLC,  
a Delaware limited liability company,  
sole manager of each of the above-listed  
companies

By: \_\_\_\_\_  
Berdine Weiner, Vice President

TENANT:

**City of San Antonio,**  
a Texas municipal corporation

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

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

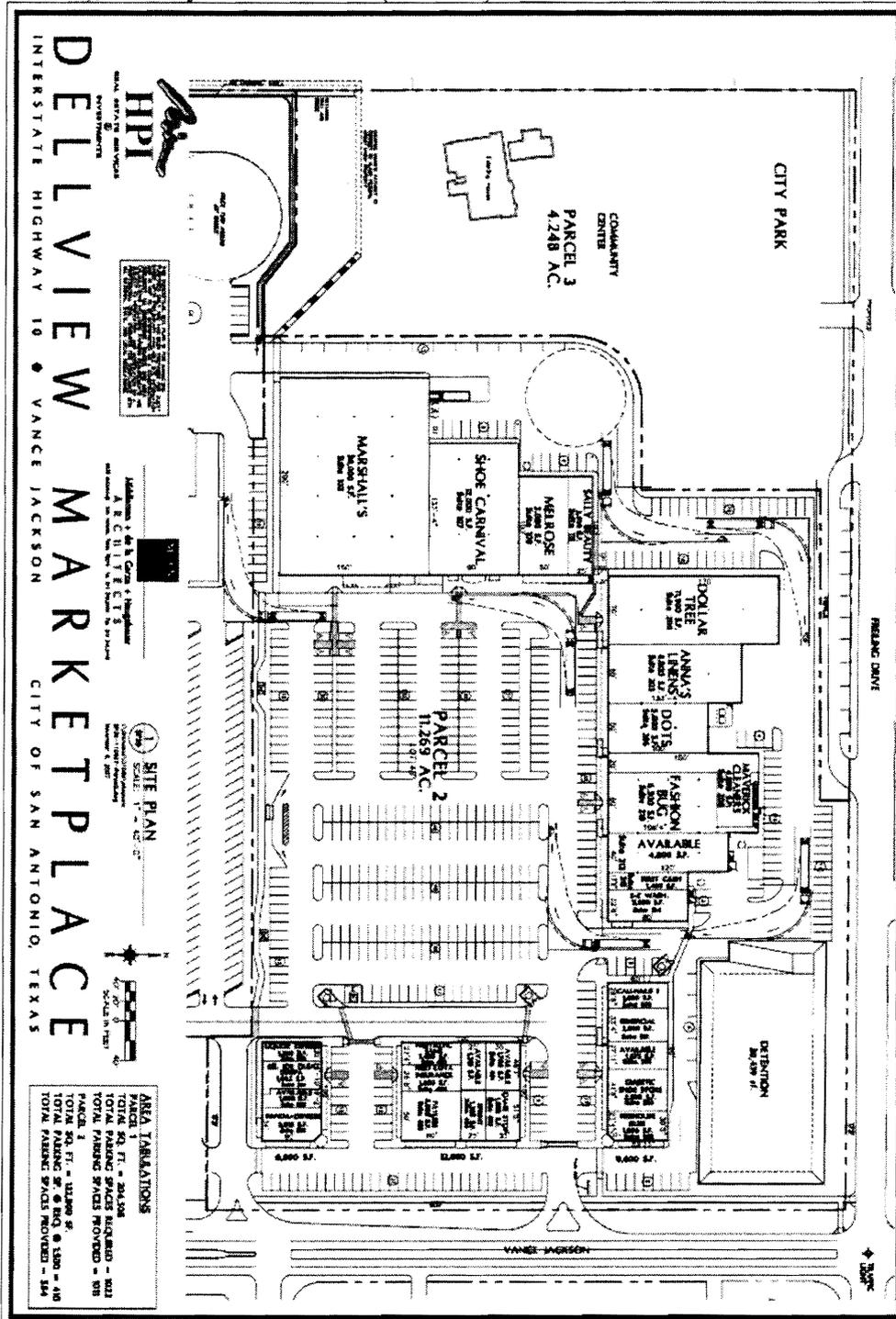
\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

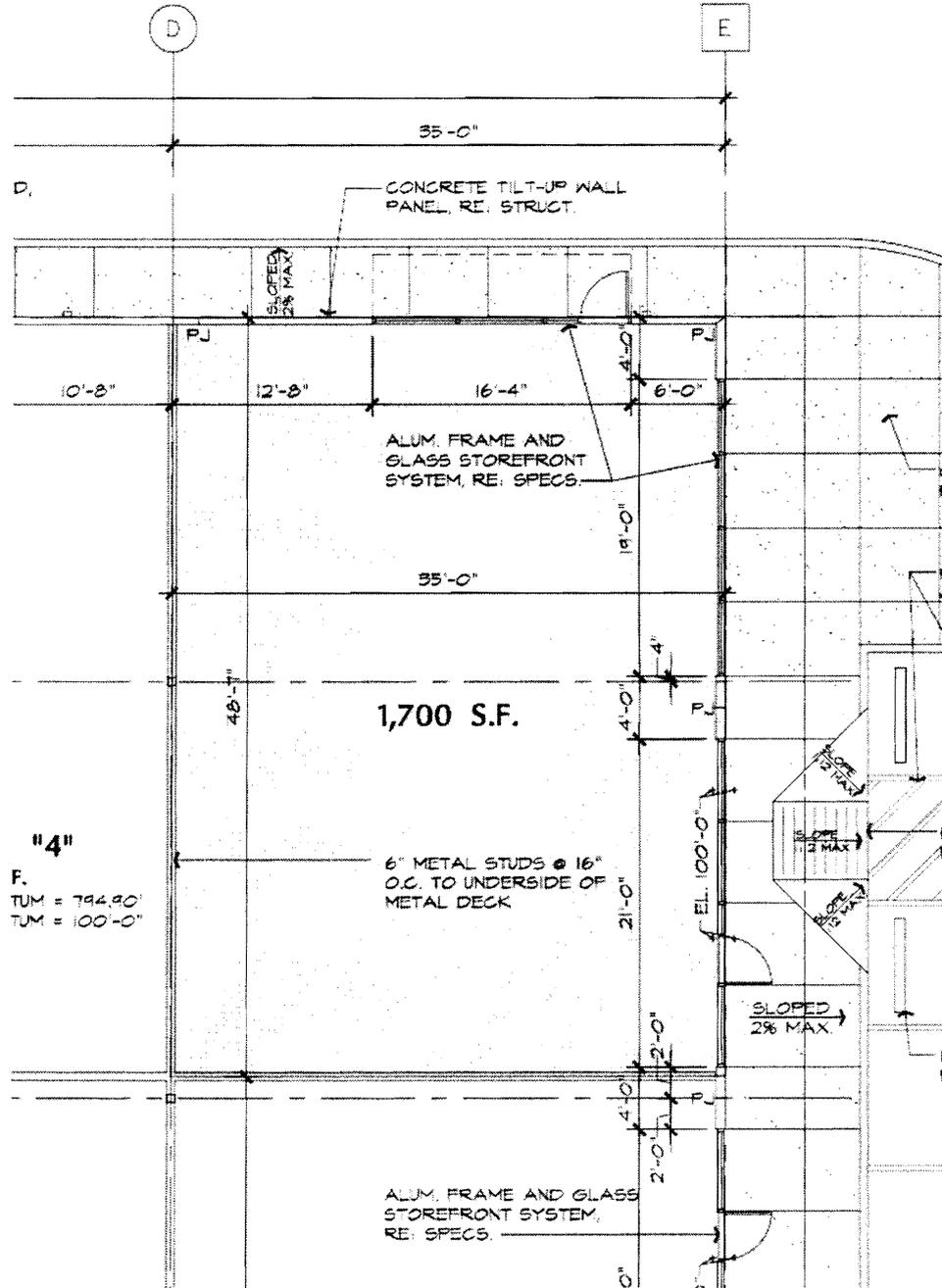
**EXHIBIT A: SITE PLAN**

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").



### EXHIBIT A-1: FLOOR PLAN FOR THE PREMISES

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").



**EXHIBIT B: LAND LEGAL DESCRIPTION**

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").

LOT FORTY-EIGHT (48), NEW CITY BLOCK 14987, CAROLINE'S CORNER SUBDIVISION, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO AMENDING PLAT THEREOF RECORDED IN VOLUME 9558, PAGE 165, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

## EXHIBIT C: Landlord's and Tenant's Workletter

("Shell")

### Gentlemen:

By execution hereof City of San Antonio, (hereinafter referred to as "Tenant") and Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), agree to simultaneously execute a lease agreement ("Lease") for space ("Premises") in Suite No. 401 located at 1803 Vance Jackson, ("Building")

These outline specifications are based on a Tenant's space and setting forth the division of responsibility regarding the construction work and materials between Landlord and Tenant under the terms and conditions of this Lease. In every instance where responsibility is not specifically vested in Landlord under the provisions of this Exhibit, the responsibility shall be that of Tenant.

### Landlord's Work:

Landlord is delivering the space "as-is". Landlord to remove fixtures relating to previous user except for two (2) full-size display cases.

### Tenant's Work:

**Tenant at Tenant's expense shall perform all work, other than Landlord's Work set forth in this Exhibit, to put the Premises in condition to permit Tenant to conduct its business therein. The cost of any work performed by Landlord's contractor at Tenant's expense shall become due and payable prior to commencement of such work. Tenant's work shall be performed in strict accordance with the provisions of the Lease and the Exhibits thereto.**

#### A. CRITERIA, JURISDICTION AND CODES:

1. The criteria and outline specifications set forth herein represent minimum standards for design, construction, finish and operation of the Premises by Tenant. Landlord reserves the right from time to time to revise these criteria and outline specifications as Landlord in its reasonable discretion deems fit.
2. This Shopping Center is being developed in and under the jurisdiction of the City of San Antonio and the State of Texas. All design and construction work shall comply with all applicable statutes, ordinances, rules, regulations and codes of the aforementioned jurisdictions, and all other, applicable regulations and requirements of the Landlord's fire insurance carriers, the requirements of any company or governmental body supplying utilities or services, all applicable federal building and safety orders, statutes, ordinances, rules regulations and codes, the requirements and regulations of any environmental protection agency, fire protection district, or quasi-governmental authority having jurisdiction over this retail development.

#### B. PERMITS AND APPROVALS:

1. Prior to commencement of construction by Tenant, Tenant shall obtain, at Tenant's expense, all necessary permits and approvals (including Tenant's signage) and post same upon the Premises as required thereby with a copy of the permit forwarded to Landlord.
2. Tenant shall be required to obtain a certificate of occupancy (CO) prior to opening the premises for business.
3. No construction within the Premises may commence without Landlord's written approval.

#### C. APPROVALS OF TENANT'S PLANS AND SPECIFICATIONS:

1. Tenant shall within 30 days from the date of this Lease, at Tenant's expense, prepare and deliver to

Landlord, and Landlord's architect for approval, two sets of complete plans and specifications (including all HVAC, plumbing, fire protection and electrical engineering as well as structural engineering, if applicable) covering all of Tenant's work concerning the Premises, in such detail as Landlord may reasonably require, in full compliance with the Lease and the Exhibits attached thereto, certified by a licensed and registered architect and, if applicable, a licensed and registered professional engineer. Landlord will provide Tenant no later than ten (10) days from the date of receipt of Tenant's plans, written notice of approval or disapproval of such plans. If Tenant has not received Landlord's written notice of approval or disapproval of Tenant's plans within said ten (10) day period, then Tenant's plans will be deemed approved by Landlord.

2. In the event Landlord shall notify Tenant that Tenant's plans and specifications are not approved, Tenant shall have 20 days from the date of Landlord's disapproval to revise the plans and specifications and resubmit them to Landlord for Landlord's approval. Landlord's written approval shall be obtained by Tenant prior to the undertaking of any construction work which deviates from or modifies in any way Tenant's approved plans and specifications or any work not explicitly shown on said plans and specifications.

**D. ARCHITECTURAL, MECHANICAL AND ELECTRICAL WORK:**

1. Design loads: The structural systems have been designed to carry the following allowable live loads, and loading imposed by any Tenant's work on a temporary or permanent basis shall not exceed the following allowable live loads:
  - (a) On-grade slabs: 200 psf.
  - (b) Roof: Tenant shall not make any installation whatsoever on the roof above the Premises or any other portion of the roof of the Shopping Center without Landlord's prior written authorization.
  - (c) Ceiling: 6 psf total for HVAC, plumbing, ceilings and other handling items.
2. Standard Project Details, as issued from time to time by Landlord's architect and as they pertain to Tenant's work, shall govern with respect to such work. Such details shall be incorporated into the working drawings and specifications for the Premises.
3. Only new, first class materials shall be used in the performance of Tenant's work.
4. Architectural Work and Finishes to be provided by Tenant.
5. Tenant to provide all insulation or other requirements to meet city regulations.

**ADDITIONAL TERMS:**

1. The Final Working Drawings are expressly subject to Landlord's prior written approval.
2. Within sixty (60) days following the full execution of the Lease, Tenant shall deliver to Landlord four (4) complete sets of the Final Working Drawings.
3. Landlord and Tenant agree to diligently pursue the approval of the Final Working Drawings and they agree to do so in good faith, with neither party unreasonably withholding or delaying any such approvals. Such approval must be manifested by both parties initialing such drawings. Note: The exact size of the Premises will be determined by the Final Working Drawings. The square footage of the Premises set forth in paragraph 2 of the basic lease provisions, the Minimum Annual Rent set forth in paragraph 3 of the basic lease provisions and all other sums payable under the Lease will be adjusted accordingly.
4. Upon approval of the Final Working Drawings by both Landlord and Tenant, and upon the buildings of which the Premises are apart being completed to such a degree to permit Tenant to construct the Tenant Improvements, Tenant agrees to commence construction of the Tenant Improvements and thereafter to diligently pursue the completion of the construction of "Tenant's Work". All work not included in the Final Working Drawings, if any, must be approved by Landlord in writing, whose timely approval shall not be unreasonably withheld. Prior to commencing construction, Tenant shall submit to Landlord a detailed line item budget for the completion of Tenant's Work together with a

complete list of all contractors and subcontractors (including addresses and telephone numbers) for Landlord's approval, which will not be unreasonably withheld or delayed.

5. It is agreed, notwithstanding the date provided in the Lease for the commencement of the term thereof, that Tenant's obligation for the payment of rental shall not commence (and the actual Commencement Date of the Lease shall not occur) until (a) the date that is 15 days following the date upon which Landlord delivers the Premises to Tenant with all of Landlord's Work completed, or (b) the date upon which Tenant opens for business, whichever date shall occur first. "Substantial Completion" shall be defined as completion of Landlord's Work and Tenant's Work subject to punch list items to be completed following Tenant's occupancy of the Premises. Tenant shall promptly notify Landlord of the completion of Tenant's Work, and Landlord shall review Tenant's Work to inspect its conformity with the approved plans and specifications. Tenant shall use all reasonable efforts to substantially complete Tenant's Work within 90 days following Delivery of the Premises to Tenant. Tenant's Work shall not be deemed complete until Landlord has inspected and approved it. Landlord agrees to make such inspection promptly. Any approval by Landlord of Tenant's Work shall in no way be deemed a representation or warranty of the quality or fitness of the Tenant's Work and/or the construction by Tenant. Any deficiency in design, materials or construction shall be solely the responsibility of Tenant, regardless of whether the Landlord had inspected and approved such work. Any deficiency or defect in the design or construction of Tenant's Work shall not be waived by Landlord's inspection of the Premises or approval of the Tenant's Work, regardless of whether the deficiency or defect had been or not been objected to by Landlord.
6. Tenant hereby assumes any and all liability, including but not limited to any liability arising out of statutory or common law, for any and all injuries to or death of any and all persons, and any liability for any and all damaged property caused by, resulting from, or arising out of any act or omission on the part of Tenant, its contractors and its or their subcontractors or employees in the performance of tenant's Work.
7. Tenant shall cause each contractor and subcontractor doing Tenant's Work to guarantee and warrant, in writing, that the work done by it shall be free from any defects in workmanship and materials for a period of not less than one year from the date of its completion and acceptance by Landlord thereof. All such warranties or guaranties with respect to Tenant's Work shall be contained in the applicable contract or subcontract, and shall provide that such guaranties or warranties shall inure to the benefit of both Landlord and Tenant, and Tenant shall provide Landlord with such contracts or other evidence of warranties or guaranties as Landlord may desire, from time to time. Tenant covenants to give Landlord such requested contracts.
8. Tenant, its contractors and subcontractors, shall remove all trash, debris and rubbish from the Premises at least once a week, and shall ensure that no trash, debris or rubbish is visible to the patrons of the project. If at any time such trash, debris or refuse or fail to remove any such trash, debris or surplus materials, Landlord may remove same at Tenant's expense, and Tenant shall reimburse Landlord for such expenses upon demand by Landlord.
9. Tenant, its contractors, employees or such others as may enter the Premises on Tenant's behalf (collectively the "Tenant's Contractors") shall not materially disturb or interfere with Landlord, Landlord's employees or other tenants or invitees of the Building. Prior to commencing construction, Tenant's Contractors shall provide Landlord with evidence reasonably satisfactory to Landlord that each is covered under such workers compensation and employers' liability, public liability, builder's risk and property damage insurance as Landlord may reasonably request for its protection.

**AGREED TO AND UNDERSTOOD** this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**LANDLORD:**

Covington Dellview Acquisition 1, LLC, Covington Dellview Acquisition 2, LLC, Covington Dellview Acquisition 3, LLC, Covington Dellview Acquisition 4, LLC, Covington Dellview Acquisition 5, LLC, Covington Dellview Acquisition 6, LLC, Covington Dellview Acquisition 7, LLC, Covington Dellview Acquisition 8, LLC, Covington Dellview Acquisition 9, LLC, Covington Dellview Acquisition 10, LLC, Covington Dellview Acquisition 11, LLC, Covington Dellview Acquisition 12, LLC, Covington Dellview Acquisition 13, LLC, Covington Dellview Acquisition 14, LLC, Covington Dellview Acquisition 15, LLC, Covington Dellview Acquisition 16, LLC, Covington Dellview Acquisition 17, LLC, Covington Dellview Acquisition 18, LLC, Covington Dellview Acquisition 19, LLC, and Covington Dellview Acquisition 20, LLC, Covington Dellview Acquisition 21, LLC, Covington Dellview Acquisition 22, LLC, each a Delaware Limited Liability Company,

By: Covington Asset Management, LLC,  
a Delaware limited liability company,  
Authorized Representative

By: \_\_\_\_\_  
Berdine Weiner, Vice President

**TENANT:**

**City of San Antonio,**  
a Texas municipal corporation

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

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

## EXHIBIT D: SIGN CRITERIA

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").

### POLICY

The following sign criteria has been established to assist tenants in complying with their lease. These basic standards have been made to govern the design, fabrication and application of tenant signage and are intended to afford all tenants with good visual identification, both day and night, and to protect against poorly designed and badly proportioned signage. This Exhibit "D" designates the type and style of standard sign on the wall above the tenant's premises, located within the sign band of the shopping center. Signs are to be installed and paid for by the tenant.

The Landlord, however, reserves the right to grant reasonable variances when considered to be beneficial to the center's appearance, on an individual basis.

### GENERAL REQUIREMENTS

- A. The tenant will submit three (3) sets of fully detailed sign drawings to the Landlord for his approval. All drawings will be reviewed and approved or rejected within thirty (30) days of receipt by the Landlord. Under no circumstances are any signs to be erected at this center without Landlord's approval. Signs installed without Landlord approval or not conforming to the sign criteria will be removed from shopping center at tenant's expense.
- B. The tenants will be responsible for having a licensed sign company obtain all permits required, at his expense.
- C. The tenant is responsible for obtaining his own licensed electrical contractor to perform any primary electrical work required to hook up service to his sign, at his expense. Coordination to be performed by the tenant.**
- D. The tenant is responsible for maintaining his sign. If sign is not maintained properly, the Landlord will have the authority to repair as required at the Tenant's expense.
- E. It is the responsibility of the Tenant and the sign company to follow all sign criteria set forth by the Landlord and any city sign ordinance.
- F. Any damage to property caused by installation or removal of signage by any contractors will be repaired at the contractor's expense. This does not include repairs to fascia, which will be performed by the Landlord after takedown of existing signage.

### BUILDING AND FASCIA SIGNS

- A. Number of Signs:  
Only one (1) sign is permitted per store, except as described as follows: When a store is located on a corner with two (2) matching fascias, one (1) sign per fascia will be permitted.
- B. Locations of Signs:  
Signs must be contained within the storefront sign band area. Signs must be centered both

horizontally and vertically in sign band area.

C. Type of Signs Permitted:

All individual signs are to be aluminum channel lit letters on a raceway mounted to building fascia sign band. No exposed wiring.

D. Size and Design Requirements:

1. The maximum overall length shall not exceed 80% of the lease frontage (i.e. a 20' frontage lease will have a maximum sign length of 16').
2. The maximum overall vertical letter height shall not exceed 36" on the fascia, with one (1) line of copy. If two lines of copy, the overall total letter height shall not exceed 36". The minimum vertical letter height shall not be less than 15".
3. Letter depth: 5" return to be painted black.  
Trim cap: 1" Jewelite to be painted dark black.
4. Letter Plexi color to be subject to landlord approval.
5. All transformers and conduits are to be contained within raceway and must be installed in a manner that will not damage fascia.
6. Raceway color to match building fascia.
7. There will be no flashing lights, animation, exposed neon, or storefront graphics allowed in the center at any time.
8. Style of Letters are to be subject to landlord approval.

## **WINDOW GRAPHICS**

- A. Glass areas of storefronts and offices shall remain free of graphics. Only the address, hours of operation and entrance and exit information will be allowed.
- B. The copy should be unobtrusive and constructed of white computer cut vinyl letters with a 2" maximum height.
- C. There may be no illuminated or painted signs behind glass areas.

## **SIGN TEXT**

Sign text shall be limited to Tenant's trade name as it appears in the lease. Landlord reserves the right to limit the use of Tenant's customary logo.

## **PROHIBITED SIGNS**

- A. Temporary trailer signs and / or trailer marquee signs.
- B. Iridescent painted signs.
- C. Temporary banners of any kind.
- D. Flags or pennants of any kind.

**Approved Sign Company:**

Aetna Sign Group, Ltd.  
4202 Dividend  
San Antonio, TX 78219  
Contact: Sylvia Bailiff  
Phone: 210-337-3900  
Fax: 210-337-1603

Comet Neon Advertising Co.  
8211 U.W. Hwy 281 North  
San Antonio, Texas 78216  
Contact: Carter Thurmond  
Phone: 210-341-7244  
Fax: 210-341-7279

## EXHIBIT E: RULES AND REGULATIONS

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").

Tenant shall comply with the following rules and regulations as they may be modified or amended during the Term:

1. Tenant shall not use handbills for advertising at the Shopping Center.
2. Except to the extent otherwise provided in this Lease, no awning or other projections shall be attached to the outside walls of the Building without, in each instance, the prior consent of Landlord.
3. All garbage and refuse shall be kept in the type of container specified by Landlord, and shall be placed in the area specified by Landlord and prepared for collection in the manner or approval and at the times and places specified or approved by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost, provided such cost shall be competitive to any similar service available to Tenant. Tenant will not install or cause to be installed any automatic garbage disposal equipment without the prior consent of Landlord.
4. No external radio or television or other similar device shall be installed without, in each instance, Landlord's prior consent. No aerial or satellite dish shall be erected on the roof or exterior walls of the Building, or on the grounds without, in each instance, the prior consent of the Landlord. Any aerial so installed without such consent shall be subject to removal without notice at any time.
5. No loudspeakers, television sets, phonographs, radios, or other devices shall be used in a manner so as to be heard or seen outside of the Building without the prior consent of Landlord.
6. No sales advertised as auction, fire, bankruptcy, going out of business or selling-out sales shall be conducted on or about the Premises.
7. Tenant shall keep Tenant's display windows illuminated and the signs and exterior lights lighted during periods of darkness when Tenant is required to be open for business.
8. Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
9. Tenant shall not place or maintain any merchandise, security devices, signs or other articles outside of the Building or in the Common Areas of the Shopping Center.
10. Tenant shall not make or permit any noise or odor which Landlord deems objectionable to emanate beyond the Premises.
11. Tenant shall restrict parking by Tenant, its officers, employees, and agents to employee parking areas within the Premises. If Tenant or its employees shall fail to park their cars in the designated parking areas after Landlord shall have given notice to Tenant, Landlord shall have the right to charge Tenant Ten and No/100 Dollars (\$10.00) per day per car parked in any parking area other than those designated. Tenant shall require each of its on-Premises employees, as a condition of their employment, to acknowledge in writing each such employee's agreement to abide by all of the rules and regulations established by Landlord with respect to the Shopping Center parking lot and employee parking. Tenant shall take such action as is necessary in order to enforce such agreements on behalf of both Landlord and Tenant.
12. Tenant shall at Tenant's cost use such pest extermination contractor as Landlord may direct (or which is approved by Landlord) and at such intervals as Landlord may require, provided the cost thereof is competitive to any similar service available to Tenant.

13. Tenant shall use the Shopping Center name and logo, if any be designated by Landlord, as either may be changed from time to time, in referring to the location of the Premises in all newspaper, radio, and television or other advertising. Such logo shall be and remain in the sole property of Landlord and Landlord may revoke the license hereby granted to Tenant for the use of same at any time.
14. Tenant shall cure any default or breach of the covenants pursuant to Rules 1 through 13 immediately above promptly upon notice from Landlord and shall pay to Landlord, as additional rent, One Hundred and No/100 Dollars (\$100.00) for each day or portion thereof that Tenant fails to correct such written default or breach. If such default or breach is not cured within three (3) days of Tenant's receipt of notice and Landlord may, at its option, declare Tenant to be in default under the Lease and exercise all rights and remedies available to Landlord thereunder.

## **EXHIBIT F: PROHIBITED USES**

This Exhibit is attached to and a part of that certain Shopping Center Lease executed by and between Covington Asset Management, LLC, a Delaware Limited Liability Company ("Landlord"), and City of San Antonio ("Tenant").

No portion of the Premises shall be used or occupied for any of the following purposes: theater; movie theater, auditorium, meeting hall, library or reading room or other place of assembly; automobile sales or repairs; bar serving alcoholic beverages (except as an incident to a full service restaurant operation); massage parlor; tanning salon, gun range; off track betting establishment (except incidental sales of state lottery tickets); a so-called "flea market" or other operation selling used goods; warehouse (except incidental to a retail operation); or adult book store or similar store selling or exhibiting pornographic materials as a substantial part of its business (except that a nationally recognized book store shall be permitted to sell materials customarily sold in a majority of their stores).

No portion of the Premises shall be used for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or for any entertainment purposes such as a cinema, bar (except as incidental to a restaurant use), amusement gallery, poolroom (except as incidental to a restaurant use), health club, massage parlor, sporting event, sports or game facility (except as incidental to a restaurant use), off-track betting club or for any establishment for the sale or display of pornographic materials. Further, no portion of the Premises shall be used or occupied for any of the following purposes:

1. An auditorium, meeting hall, church or other place of public assembly;
2. A dance hall or ballroom;
3. A tavern, bar or other facility serving alcoholic beverages, except to the extent incidental to a restaurant operated primarily for on-premises consumption;
4. An off-track betting business;
5. A billiard or pool hall;
6. For bingo or similar games of chance;
7. A massage parlor or tanning salon;
8. A game arcade or video game room;
9. A bowling alley;
10. A skating rink;
11. Automobiles sales or a car wash, car repair or car rental agency;
12. A night club or discotheque;
13. An adult book or adult video tape store (which are defined as stores in which any portion of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality), or any establishment selling or exhibiting pornographic materials;
14. Hotel or other lodging facilities;
15. Flea market, or any second-hand or surplus store;

16. Manufacturing facility (other than manufacturing of food items incidental to a restaurant or catering operation);
17. Any mortuary or funeral establishment;
18. Pawn shop;
19. Any central laundry or dry cleaning plant or laundromat (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer, including nominal supporting facilities);
20. Any veterinary hospital, animal raising or facilities;
21. A convenience store or other retail store selling alcoholic beverages for off-premises consumption;
22. Any facility selling guns or firearms of any kind;
23. Any use which is a public or private nuisance as may be determined a public or private nuisance by the applicable municipal authorities;
24. Any use that is contrary to applicable zoning ordinances or private restrictions; or
25. Any abortion, drug rehabilitation or methadone clinic.

**EXHIBIT G: RENEWAL OPTIONS**

Tenant shall have the right and option to extend the term of the Lease for one (1) consecutive extended term of three (3) years, provided Tenant (a) is not then in default under the terms of the Lease beyond any applicable cure period therefore, and (b) gives written notice of its exercise of each respective option at least one hundred twenty (120) days prior to the expiration of the initial term. Notwithstanding the foregoing, Tenant shall be required to submit to Landlord written notice of such exercise requirement not more than one hundred eighty (180) days nor less than one hundred fifty (150) days prior to the expiration of the current term. The extension term shall be upon the same terms and conditions as the initial term thereof, except that the Minimum Annual Rent shall be Market Rate. For the purposes of this Exhibit G, the term "**Market Rate**" shall mean that rate (net of any improvements allowance or other tenant inducements not being granted to Tenant), which is prevailing for comparable space and comparable shopping centers located in Bexar County, Texas, taking into consideration the size of the Premises, the length of the extension term, the age of the Shopping Center and the creditworthiness of Tenant. The Market Rental Rate shall be determined or redetermined for each extension term as follows: (i) By agreement between Landlord and Tenant; or (ii) If Landlord and Tenant are unable to agree, by decision of licensed real estate appraisers ("**Appraisers**"). If Landlord and Tenant have not agreed upon the Market Rental Rate within sixty (60) days prior to the expiration of the then current term of this Lease, then Landlord and Tenant shall each appoint, by written notice to the other, one Appraiser. Each such Appraiser shall be a licensed real estate Appraiser under the laws of the State of Texas with at least five (5) years commercial retail leasing experience in the Bexar County, Texas area. If either party fails to appoint such Appraiser within ten (10) days following the end of such sixty (60) day period, then the Appraiser who was appointed shall select a second Appraiser. Such two Appraisers shall proceed to determine the fair market rental value per square foot of rentable area in the Premises in accordance with the provisions hereof. If such two Appraisers are unable to agree upon a Market Rental Rate, then they shall appoint a third Appraiser, and the Market Rental Rate shall be that agreed upon by any two of such three Appraisers, or if no such agreement is reached, the Market Rental Rate shall be the rate which represents the arithmetic average of the two (2) numerically closest rates determined by such Appraisers. Each party shall be bound by the determination of such Appraisers and shall have the responsibility for paying the Appraiser which was, or which should have been appointed by such party and each party shall pay one-half of the cost and expenses of the third Appraiser, if one is appointed. If Tenant fails to timely exercise its option to extend the Lease Term or is in default hereunder at the time of such exercise or at any time thereafter prior to the commencement of the execution term, the Tenant shall have no right to the extension term and its exercise of the option shall be null and void and of no force or effect

**AGREED TO AND UNDERSTOOD this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.**

LANDLORD

Covington Dellview Acquisition 1, LLC, Covington Dellview Acquisition 2, LLC, Covington Dellview Acquisition 3, LLC, Covington Dellview Acquisition 4, LLC, Covington Dellview Acquisition 5, LLC, Covington Dellview Acquisition 6, LLC, Covington Dellview Acquisition 7, LLC, Covington Dellview Acquisition 8, LLC, Covington Dellview Acquisition 9, LLC, Covington Dellview Acquisition 10, LLC, Covington Dellview Acquisition 11, LLC, Covington Dellview Acquisition 12, LLC, Covington Dellview Acquisition 13, LLC, Covington Dellview Acquisition 14, LLC, Covington Dellview Acquisition 15, LLC, Covington Dellview Acquisition 16, LLC, Covington Dellview Acquisition 17, LLC, Covington Dellview Acquisition 18, LLC, Covington Dellview Acquisition 19, LLC, and Covington Dellview Acquisition 20, LLC, Covington Dellview Acquisition 21, LLC, Covington Dellview Acquisition 22, LLC, each a Delaware Limited Liability Company,

By: Covington Asset Management, LLC,

a Delaware limited liability company,  
Authorized Representative

By: \_\_\_\_\_  
Berdine Weiner, Vice President

**TENANT:**

**City of San Antonio,**  
a Texas municipal corporation

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**EXHIBIT H: DECLARATION FIXING COMMENCEMENT AND TERMINATION DATES OF LEASE**

This Declaration pertains to that certain written Lease Agreement entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between Covington Asset Management, LLC, a Delaware limited liability company (hereinafter referred to as "Landlord"), and City of San Antonio (hereinafter called "Tenant"). Landlord has leased to Tenant and Tenant has leased from Landlord, the premises situated at **1803 Vance Jackson** in San Antonio, Texas, pursuant to said certain Lease Agreement.

The parties thereto agree that the Commencement Date and termination date of the Lease Term in said Lease Agreement have been determined as provided therein and are as follows, notwithstanding the dates set forth in paragraph 1.103 of the Fundamental Lease Provisions which may be different:

Commencement Date \_\_\_\_\_

Termination Date \_\_\_\_\_

**LANDLORD:**

Covington Dellview Acquisition 1, LLC, Covington Dellview Acquisition 2, LLC, Covington Dellview Acquisition 3, LLC, Covington Dellview Acquisition 4, LLC, Covington Dellview Acquisition 5, LLC, Covington Dellview Acquisition 6, LLC, Covington Dellview Acquisition 7, LLC, Covington Dellview Acquisition 8, LLC, Covington Dellview Acquisition 9, LLC, Covington Dellview Acquisition 10, LLC, Covington Dellview Acquisition 11, LLC, Covington Dellview Acquisition 12, LLC, Covington Dellview Acquisition 13, LLC, Covington Dellview Acquisition 14, LLC, Covington Dellview Acquisition 15, LLC, Covington Dellview Acquisition 16, LLC, Covington Dellview Acquisition 17, LLC, Covington Dellview Acquisition 18, LLC, Covington Dellview Acquisition 19, LLC, and Covington Dellview Acquisition 20, LLC, Covington Dellview Acquisition 21, LLC, Covington Dellview Acquisition 22, LLC, each a Delaware Limited Liability Company.

By: Covington Asset Management, LLC,  
a Delaware limited liability company,  
Authorized Representative

By: \_\_\_\_\_  
Berdine Weiner, Vice President

**TENANT:**

**City of San Antonio,**  
a Texas municipal corporation

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As to Form:**

\_\_\_\_\_  
City Attorney

Rider 1

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

THIS AGREEMENT is made and entered into as of the date set forth below by and between \_\_\_\_\_, ("Tenant"); \_\_\_\_\_, ("Landlord"); and Midland Loan Services, Inc., Master Servicer for \_\_\_\_\_ whose Trustee is \_\_\_\_\_ (collectively, "Lender"), as follows:

**RECITALS**

LENDER is now the holder of a Mortgage or Deed of Trust, which secures or will secure a Note in the original principal amount of \$ \_\_\_\_\_. The Mortgage or Deed of Trust and any other security instruments, executed by the Landlord in favor of Lender, encumber the real property, together with the buildings and improvements on that property, described as "Exhibit A", which is attached to this document; and

TENANT is the holder of a lease (the "Lease") dated \_\_\_\_\_ from Landlord, further amended by instrument(s) dated \_\_\_\_\_ (such lease, together with the amendments referenced above, are collectively referred to as "the Lease") covering certain premises more particularly described in the Lease (referred to later as the "Leased Premises"); and

TENANT, LANDLORD AND LENDER desire to confirm their understanding with respect to the Lease and the Mortgage or Deed of Trust;

ACCORDINGLY, in consideration of the mutual covenants and agreements contained in this instrument, Tenant, Landlord and Lender agree and covenant as follows:

1. Now and at all times in the future, the Lease and the rights of the Tenant shall be subject and subordinate to the above Mortgage or Deed of Trust, and to all renewals, modifications or extensions of that Mortgage. However, such renewals, modifications and extensions shall be subject and entitled to the benefits of the terms of this Agreement.

2. So long as Tenant is not in default in the payment of rent or in Tenant's performance of any of the terms, covenants or conditions of the Lease (beyond any period given Tenant to cure such default);

a) Lender shall not diminish nor interfere with Tenant's possession of the Leased Premises, or Tenant's rights and privileges under the Lease or lease renewals, modifications or extensions that may be affected in accordance with any options under the Lease.



- b) Tenant's occupancy of the Leased Premises shall not be disturbed, affected or impaired by Lender during the term of the Lease or any such renewals, modifications or extensions of the Lease.
- c) Tenant, or any leasehold mortgagee of Tenant ("Tenant's Mortgagee") shall not be named or joined in any action or proceeding brought by lender to enforce any of its rights in the event of default under the Note, Mortgage (or Deed of Trust), unless such joinder be required by law for effecting those remedies available under the security instruments. Such joinder would ONLY be for the purposes of effecting those remedies, but not for the purpose of terminating the Lease or affecting Tenant's right to possession.
- d) If the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure or other proceedings or by any other manner, and Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term remaining and for any extensions or renewals which may be effected in accordance with any option granted in the Lease, with the same force and effect as if Lender were the Landlord under the Lease. Tenant agrees to attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement immediately upon Lender succeeding to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth. The parties intent is to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length in this Agreement.

3. During the period of Lender's ownership of Landlord's interest in the Lease, Tenant and Tenant's Mortgagee shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant and Tenant's Mortgagee would have had against the Landlord if Lender had not succeeded to Landlord's interest; provided, however, that even though provisions in the Lease may be to the contrary, Lender shall not be:

(a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets, defenses or counterclaims which Tenant may have against any prior landlord arising under the Lease (including the Landlord); or,

(b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or

(c) bound by any amendment or modification of the Lease made without its consent; or,



(d) liable for any security deposited under the Lease unless such security has been physically delivered to Lender.

Provided, however, that the Lender shall not be relieved from responsibility for failure to perform any obligation under the Lease which, although such failure may have begun prior to Lender succeeding to Landlord's interest, thereafter continues. In such event, Lender's responsibility shall be determined as if the failure had first arisen upon the day Landlord's title to the Subject Property succeeds to Lender.

4. Tenant shall promptly notify Lender of any default, act or omission of Landlord which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction ("a Landlord Default"). In the event of a Landlord Default, the Tenant shall not exercise any rights available to it until it has given written notice of such Landlord Default to Lender; and Lender has failed within thirty (30) days after Lender receives such notice, to cure or remedy the Landlord Default. If the same can not be reasonably remedied within such thirty-day period, then Lender shall have a reasonable period for remedying such Landlord Default. However, in any event, Lender's time to cure such default shall not be less than the period of time the Landlord would be entitled to cure such default pursuant to the terms of the Lease. Lender shall have no obligation under this paragraph to remedy any Landlord Default.

5. The terms "holder of a mortgage" and "Lender" or any similar term in this document or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone who shall have succeeded to Landlord's interests by, through or under foreclosure of the Mortgage or Deed of Trust, or by deed in lieu of such foreclosure or otherwise.

6. The Landlord has assigned or will assign to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Note or Mortgage or Deed of Trust, the Lender may, at its option under the Rent Assignment, require that all rents and all other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender to the Landlord and the Tenant, the Landlord **HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS** the Tenant and the Tenant agrees to pay any payments due under the terms of the Lease to the Lender. Such payments shall constitute payments under the terms of the Lease and Landlord shall have no claim against Tenant by reason of such payments made to Lender. Tenant shall make such payments to Lender regardless of any right of setoff, counterclaim or other defense that Tenant may have against Landlord. Neither the Rent Assignment nor its implementation shall diminish any obligation of the Landlord under the Lease or impose any such obligations on the Lender.

7. Any notice, or request or other communication required by this Agreement to be given shall be in writing and shall be: (a) personally delivered; or, (b) sent via nationally recognized overnight courier; or, (c) transmitted by postage prepaid registered or certified mail, return receipt requested. All such notices, requests or other communications shall

be addressed to Tenant, Landlord or Lender at the addresses set forth below or such other address as the parties shall in like manner designate. All such notices and requests shall be deemed to have been given on the first to occur of: (i) the actual date received, or (ii) the date of delivery if personally delivered; or (iii) five (5) days following posting if transmitted by mail.

If to Tenant:

If to Landlord:

If to Lender:

Midland Loan Services, Inc.  
10851 Mastin, Suite 300  
Overland Park, Kansas 66210  
Attention: \_\_\_\_\_, Asset Manager

8. This Agreement may NOT be modified except by a written agreement signed by the parties or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

9. Notwithstanding anything to the contrary contained in the Lease or in this Agreement, in the event that Mortgagee shall acquire title to the Premises, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's interest, if any, in the Premises. Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises for the payment and discharge of any obligations imposed upon Mortgagee under this Agreement or under the Lease and Mortgagee is hereby released or relieved of any other liability under those documents. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises and Tenant will not collect or attempt to collect any such judgment (i) from any officer, director, shareholder, partner, employee, agent or representative of Mortgagee or (ii) out of any assets of Mortgagee other than Mortgagee's estate or interest in the Premises or the proceeds from the sale of the estate or interest.

IN RATIFICATION OF THIS AGREEMENT, the parties have placed their signatures and seals below, by and through their duly authorized officers on this date, \_\_\_\_\_, 20\_\_.

"LENDER" as Trustee for Commercial Mortgage-backed Securities Series \_\_\_\_\_ by and through its Master Servicer, Midland Loan Services, Inc.

By \_\_\_\_\_  
C. J. Sipple  
Its Servicing Officer

STATE OF KANSAS )

) ss.

COUNTY OF JOHNSON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, a Notary Public in and for the State of Kansas, personally appeared C. J. Sipple, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged that he is the Servicing Officer of Midland Loan Services, Inc., to be the free and voluntary act and deed of said company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

(seal)

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
NOTARY PUBLIC in and for the State of  
Kansas.

My appointment expires \_\_\_\_\_

"TENANT"

(print)

\_\_\_\_\_

By

\_\_\_\_\_

Its

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_, to be the free and voluntary act and deed of said \_\_\_\_\_ for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

(seal)

\_\_\_\_\_

(Print Name)

NOTARY PUBLIC in and for the State of

\_\_\_\_\_

My appointment expires \_\_\_\_\_

"LANDLORD"

(print) \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_, to be the free and voluntary act and deed of said \_\_\_\_\_ for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

(seal)

\_\_\_\_\_

(Print Name)

NOTARY PUBLIC in and for the State of

\_\_\_\_\_

My appointment expires \_\_\_\_\_