

AN ORDINANCE **2006-06-15-0713**

APPROVING A 22 MONTH GROUND LEASE WITH VISTANA, LTD. IN A TOTAL AMOUNT OF \$36,765.00 PAYABLE TO THE CITY, FOR THE USE OF APPROXIMATELY 36 PARKING STALLS AT THE JESSE JAMES LEIJA GYM PARKING LOT, LOCATED AT NORTH SANTA ROSA ST. AND WEST TRAVIS ST. IN DISTRICT 1, WITH ONE RENEWAL OPTION.

* * * * *

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

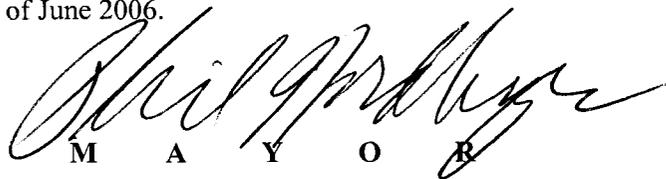
SECTION 1. The City Manager or her designee is hereby authorized and directed to execute and deliver on behalf of the City a lease agreement in substantially for the form attached as **Attachment I**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City Manager and her designee should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to non-material changes to its terms.

SECTION 2. The proceeds of this agreement shall be deposited into Fund 53004000 entitled, "Parking Revenue Fund," Internal Order 22400000092 entitled "Parking Meters Off Street," and General Ledger Account 4403145 entitled, "Parking Service Charge Parking Lot Fiesta Rentals."

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio for the 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 4. This ordinance becomes effective June 25, 2006.

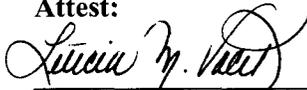
PASSED AND APPROVED this 15th day of June 2006.



M A Y O R

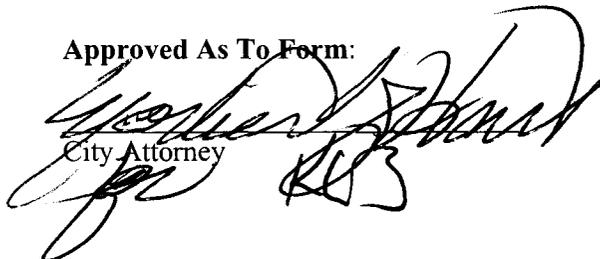
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Attachment I

Ground Lease

(San Fernando Parking Lot)

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Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Address for Rent Payment: P.O. Box 839966, San Antonio, Texas 78283-3966

Tenant: Vistana, Ltd.

Tenant's Address: 100 Sandau, Suite 300, San Antonio, Texas 78216

Premises: A facility containing approximately 36 parking stalls located at North Santa Rosa St. and West Travis St., San Antonio, Bexar County, Texas, more particularly described on **Exhibit A**, which is incorporated herein for all purposes.

Permitted Use: Placement of temporary bank building for retail banking and bank drive-thru operations.

Lease Commencement: June 1, 2006 or thereafter depending on acceptance of

Date: property but no later than September 1, 2006. Tenant must execute and deliver a memorandum setting out the commencement date.

Initial Term: 22 months

Lump Sum Rent: \$36,765

Month-to-Month Rent: \$2,000

Hold-over Percentage 200%

1. Demise of Premises.

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements; rights, and privileges of Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Landlord as owner of the Premises by reason of the closing of any street, sidewalk, or alley.

2. Lease Term.

Fixed Beginning and Termination Date

2.01. The Initial Term is as stated above.

Right to Extend

2.02. Tenant may extend this lease on a month-to-month basis for up to 6 months by giving Landlord written notice of Tenant's intention to do so. Tenant must give Landlord a 30-day written notice before the end of the term. Rent will be at the defined month-to-month rate.

Termination

2.03. Unless renewed, this lease terminates without further notice when the Initial Term expires. If renewed, it terminates without further notice when the renewed term expires. Tenant's holding over expiration is not a renewal of the lease and does not give Tenant rights under the Lease in or to the Premises.

Holdover

2.04. If Tenant holds over and continues in possession of the Premises after the Initial Term (or any extension) expires, Tenant's occupancy will be at will and subject to all the terms of this lease. Rent during any holdover will be the rent for the last period before the holdover multiplied times the Holdover Percentage.

3. Rent.

Initial Rent

3.01. The Lump Sum, due upon execution of the Lease, and Month-to-Month Rent are as stated above.

Time and Manner of Payment

3.02. Tenant must pay rent to Landlord monthly in advance on the first calendar day of each month. Payments must be in lawful money of the United States to the Address for Rent Payment, unless Landlord notifies Tenant to make payment to some other address.

Interest on Delinquent Payments.

3.03. Rent installments unpaid for 30 days bear interest at the rate of 18% per annum until paid, beginning on the day after each such installment was due.

4. Taxes.

Payment by Tenant

4.01. Although Landlord's fee ownership is tax exempt, Tenant may have to pay real estate ad valorem taxes on its leasehold interest. In addition, Tenant must pay all taxes on any structures it builds or moves to the Premises, whether real or personal property. As a part of the rent due under this lease, Tenant must pay and discharge all taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Landlord or to Tenant. Tenant must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency. Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Tenant may, in good faith at its own expense (in its own name or in that of Landlord, or both), contest taxes, charges, and assessments. But it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

Payment by Landlord

4.02. If taxes, special assessments, or governmental charges remain unpaid and uncontested later than 15 days before delinquency, Landlord may give written notice to default, specifying the default. If Tenant continues to fail to pay the taxes, special assessments, or governmental charges, or to timely contest them in good faith, before delinquency, Landlord may pay the items specified in the notice. Tenant must then reimburse Landlord on demand for amounts paid or expended for such purpose, with interest at 18% per annum from the date of Landlord's payment until Tenant's reimbursement.

5. Utilities.

Tenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the lease term, including any connection fees.

6. Use of Premises.

Permitted and Prohibited Use of Premises

6.01. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

Illegal Use Not Permitted

6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation. Tenant is not considered to have violated this provision unless:

- a. Landlord has notified Tenant in writing specifying the alleged violation;
- b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, rule or regulation; and
- c. Tenant has had a reasonable time after final adjudication to cure the specified violation.

7. Construction by Tenant.

General Conditions

7.01. Tenant may erect and maintain minor improvements to the Premises, subject to the following:

- a. Tenant bears the cost of the work.
- b. Tenant keeps the Premises free of mechanics' and materialmen's liens.
- c. Except for routine maintenance of existing buildings and improvement, Tenant notifies Landlord, before work begins, of the time that the work will begin and the general nature of the work.
- d. Tenant has secured Landlord's approval of all plans in the manner provided for later in this Lease.

Prefabricated Structure

7.02. Tenant expects to place a prefabricated structure on the Premises from which it will conduct business. Whether or not it is affixed to the ground, the structure is and remains personal property and should be taxed as such. Subject to Landlord's rights if Tenant fails to timely remove the structure at termination, Landlord will have no rights in the structure.

Landlord's Approval of Plans

7.03. The following rules govern Landlord's approving construction of buildings or other improvements on the Premises:

- a. **Written Approval Required.** No building or other improvement may be constructed on the Premises unless the plans, specifications, and proposed location of the building or other improvement has received Landlord's written approval. All buildings or other improvements must comply with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Landlord.
- b. **Submission of Plans.** Tenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing any buildings or improvements that require Landlord's approval under Subsection (a) above. Tenant must submit one copy of detailed working drawings, plans, and specifications for all improvements for Landlord's approval no later than 30 days before construction is to begin. If Tenant wishes to construct any other buildings or improvements or make any additions or alterations to buildings or improvements for which Landlord's approval is required under Subsection (a) above, Tenant must submit copies of detailed working drawings, plans, and specifications for Landlord's approval before the project begins.
- c. **Landlord's Approval.** Landlord will promptly review and approve all plans submitted to it or note in writing any required changes or corrections. Tenant must comply with changes or corrections required by Landlord, and Tenant must resubmit plans showing the changes and corrections within days 15 after the corrections or changes have been noted. Landlord's failure to object to the resubmitted plans and specifications within 15 days constitutes its approval. Minor changes in work or materials not affecting the general character of the building project may be made at any

time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

d. Exception to Landlord's Approval. The following items do not require submission to, and approval by, Landlord

i. Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.

ii. Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements to comply with legal requirements.

e. Effect of Approval. Landlord's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises, and Landlord may not unreasonably withhold approval. It does not excuse Tenant from any governmental permits, licenses, or other requirements of general applicability. Further, Landlord's approval does not constitute approval of the architectural or engineering design. By approving the plans and specifications, Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Buildings, Improvements, and Fixtures

7.04. Any buildings, improvements, additions, alterations, and fixtures (except for prefabricated structures, furniture, and trade fixtures) constructed, placed, or maintained on any part of the Premises during the lease term become part of the real property of the Premises and must remain on the Premises and become Landlord's property when the lease terminates.

Right to Remove Improvements

7.05. Tenant may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any prefabricated structures, furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant in, under, or on the Premises. Before the lease terminates, Tenant must repair any damage to any buildings or improvements on the Premises resulting from removal. Any such items not removed by termination become Landlord's property.

8. Encumbrance of Leasehold Estate.

Tenant's Right to Encumber

8.01. Tenant may not encumber its leasehold interest without obtaining Landlord's consent, and no such encumbrance is or can be a lien on Landlord's fee title. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this lease and to all Landlord's rights under this lease. References in this lease to "Lender" refer to any person to whom Tenant has encumbered its leasehold interest.

Notices to Lender

8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Tenant's leasehold interest, Lender may notify Landlord in writing that the mortgage or deed of trust has been given. On Lender's request, Landlord will deliver duplicate notices under this Lease to Lender at an address or agent it specifies.

Lender's Consent Required for Modification

8.03. Landlord and Tenant will neither modify nor terminate this lease by mutual consent without Lender's written consent.

Lender's Right to Prevent Forfeiture

8.04. Lender may do any act required of Tenant to prevent forfeiture of Tenant's leasehold interest. All such acts are as effective to prevent a forfeiture of Tenant's rights under this lease as if done by Tenant.

Lender's Right to Foreclose

8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Tenant's title to the leasehold estate created by this lease to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Tenant's interest under this lease by virtue of a foreclosure sale. Lender will not be or become liable to Landlord as an assignee of this lease or otherwise, unless it assumes such liability in writing. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Tenant under which the buyer at foreclosure or grantee acquires Tenant's rights and interest under this lease. Any buyer at a foreclosure sale, including Lender, becomes obligated to Landlord as the Tenant under the lease.

9. Repairs, Maintenance, and Restoration.

Tenant's Duty to Maintain and Repair

9.01. Tenant must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Tenant's own expense.

Damage or Destruction

9.02. If any building or improvement placed or constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Tenant must, within one month from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement. Tenant must pursue the repair, reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty.

10. Mechanic's Liens.

Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action to do so at Tenant's sole expense. If Tenant contests the lien, Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Tenant loses the contest, Tenant must cause the lien to be discharged and removed before any judgment is executed.

11. Insurance

Allocation of Claims

11.01. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Tenant.

Required Insurance

11.02. Tenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A- (vii) or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

| Type: | Amount: |
|--|--|
| 1. Worker's Compensation | Statutory, with a Waiver of subrogation in favor of Landlord |
| 2. Employer's Liability | \$500,000/\$500,000/\$500,000 with a Waiver of Subrogation in favor of Landlord |
| 3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following: | For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage |
| (a) Premises/Operations | |
| (b) Independent Contractors | |
| (c) Products/Completed Operations | |
| (d) Contractual Liability | |
| (e) Personal Injury Liability | |
| (f) Broad-Form Property Damage, to include Fire Legal Liability | Coverage for replacement cost of Tenant's improvements |
| (g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises | |
| (f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises | |
| 4. Business Automobile Liability to include coverage for: | Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000.00 per occurrence |
| (a.) Owned/Leased Automobiles | |
| (b.) Non-owned Automobiles | |
| (c) Hired Automobiles | |
| 5. Property Insurance for physical damage to the property of the Tenant, including improvements and betterments | Coverage for replacement cost of Tenant's improvements. |

Required Clauses

12.04. Each insurance policy required by this Lease must contain the following clauses:

"This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

Department of Asset Management
City of San Antonio
P.O. Box 839966

San Antonio, Texas 78283-3966
Attention: Department Director

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

Required Deliveries

12.05. Tenant must require its insurance carrier(s) to deliver to Landlord's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Landlord. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will provide 30 days' prior notice to Tenant and an opportunity to discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof.

Additional Insurance for Improvement Work

12.06. If Tenant makes leasehold improvements, Tenant must further provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Landlord's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase. Also, payment and performance bonds naming Landlord as indemnitee must be provided by Tenant or its contractors or subcontractors. If the construction is minor, Tenant may send a written request to the City's Director of Asset Management to waive the requirements in this Section, but a waiver may be granted only by Landlord's Risk Manager, whose decision is final.

Certificates

12.07. Within 30 days after the Commencement Date, Tenant must deliver certificates to Landlord's Risk Manager and the City Clerk from Tenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

Address for Delivery

12.08. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancellation.

Liability Not Limited

12.09. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees under this Lease.

Waiver of Claims Against Landlord

12.10. Landlord and its agents and employees are not liable, and Tenant waives all claims, for any damage to persons or property sustained by Tenant or any person claiming through Tenant, that may occur on the Premises, or for the loss of or damage to any property of Tenant or of others by theft or otherwise, whether caused by other tenants or persons in the Building or in the Premises or by occupants of adjacent property or the public, except where Landlord's negligence is the sole active cause.

13. Indemnification

Indemnity

13.01. Tenant must indemnify Landlord and its agents, officials, and employees and hold them harmless of and from any and all loss, cost, liability, or expense arising from or related to either Tenant's or Landlord's activities on or regarding the Premises or the building. Tenant's indemnity of Landlord includes the acts or omissions of those whose presence is through Tenant.

Governmental Immunity

13.02. Nothing in this lease waives any governmental immunity available to Landlord under Texas Law, and nothing in this lease waives any defenses of the parties to claims by third parties under applicable law.

No Third Party Beneficiaries

13.03. This indemnification is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Notice

13.04. Tenant must promptly deliver written notice to Landlord of any claim or demand subject to this indemnity. Tenant must investigate and defend such claim or demand at its sole cost. Notwithstanding any condition imposed by an insurance policy in which Tenant and Landlord are named, Landlord retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Tenant without relieving Tenant of any of its indemnity.

Landlord's Negligence

13.05. This indemnity expressly covers the consequences of Landlord's own negligence.

14. Assignment and Subletting

Assignment to Sterling Bank

14.01. Tenant may assign this lease to Sterling Bank if:

- (a) Tenant delivers 30-days' prior written notice to Landlord;

(b) Tenant and Sterling Bank execute and deliver to Landlord a consent to assignment form satisfactory to Landlord; and

(c) Landlord timely receives the assignment fee prescribed in the City Code.

Other Assignment

14.02. Except for that, any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent, is void and terminates the Lease. Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Landlord's notice to Tenant.

Limitations on Consent

14.03. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

15. Default and Remedies.

Termination on Default

15.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 10 days after receipt of written notice to Tenant and any lender, notice to whom is required by this lease, Landlord may terminate this lease. Landlord or its agent or attorney may resume possession of the Premises and relet them for the remainder of the term at the best rent obtainable for the account of Tenant, who must make good any deficiency. For the purpose of posting the notice required by Property Code Section 93.002(f), the "front door" of the Premises is the front door of the largest structure Tenant places on the Premises.

Other Remedies

15.02. Termination of this lease does not relieve Tenant from paying (A) money owing to Landlord under the lease at the time of termination, or (B) any claim for damages against Tenant under this lease. Termination does not prevent Landlord from enforcing payment by any remedy provided for by law or from recovering from Tenant for any default. Landlord's rights, options, and remedies under this lease are cumulative, and no one of them is exclusive of the other. Landlord may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Landlord of a breach of any covenant or condition of this lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this lease.

Subleases Not Affected

15.03. Landlord's exercising any remedy does not affect the existence of subleases entered into according to this lease.

16. General Protective Provisions.

No Partnership or Joint Venture

16.01. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

Termination on Bankruptcy

16.02. Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.

Release of Landlord

16.03. If Landlord sells or transfers all or part of the Premises and as a part of the transaction assigns its interest in this lease, of the effective date of the assignment, Landlord has no further

liability under this lease, except with respect to matters that have accrued and are unsatisfied as of that date. Landlord's covenants and obligations under this lease will bind Landlord and its successors and assigns only during their respective, successive periods of ownership of the fee.

Joint and Several Liability

16.04. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

17. Prohibited Interests in Contracts

Prohibited Interest

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.

Tenant's Warranties

17.02. Tenant warrants and certifies as follows:

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

City's Reliance is Reasonable

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

18. Miscellaneous.

Rights and Remedies Cumulative

18.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence

18.02. Time is of the essence under this agreement.

Yielding Up

18.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted. Tenant must pay for restoring the Premises to a state as good or better than at time of the Lease commencement as set forth in **Exhibit B**. Tenant must pay rent during the reconditioning and until such time Landlord deems Tenant is in compliance with the terms of this paragraph and of Exhibit B.

Applicable Law

18.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability

18.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Successors

18.06. 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.

Integration

18.07. **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.**

Modification

18.08. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries

18.09. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices

18.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. 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 hereunder.

Captions

18.11. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

Counterparts

18.12. 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 the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances

18.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

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

City of San Antonio, a Texas
municipal corporation

Vistana, Ltd., a Texas limited
partnership, by and through its sole
general partner

Signature: _____

Vistana Management, LLC

Printed
Name: _____

Signature: _____

Title: _____

Printed
Name: _____

Date: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A

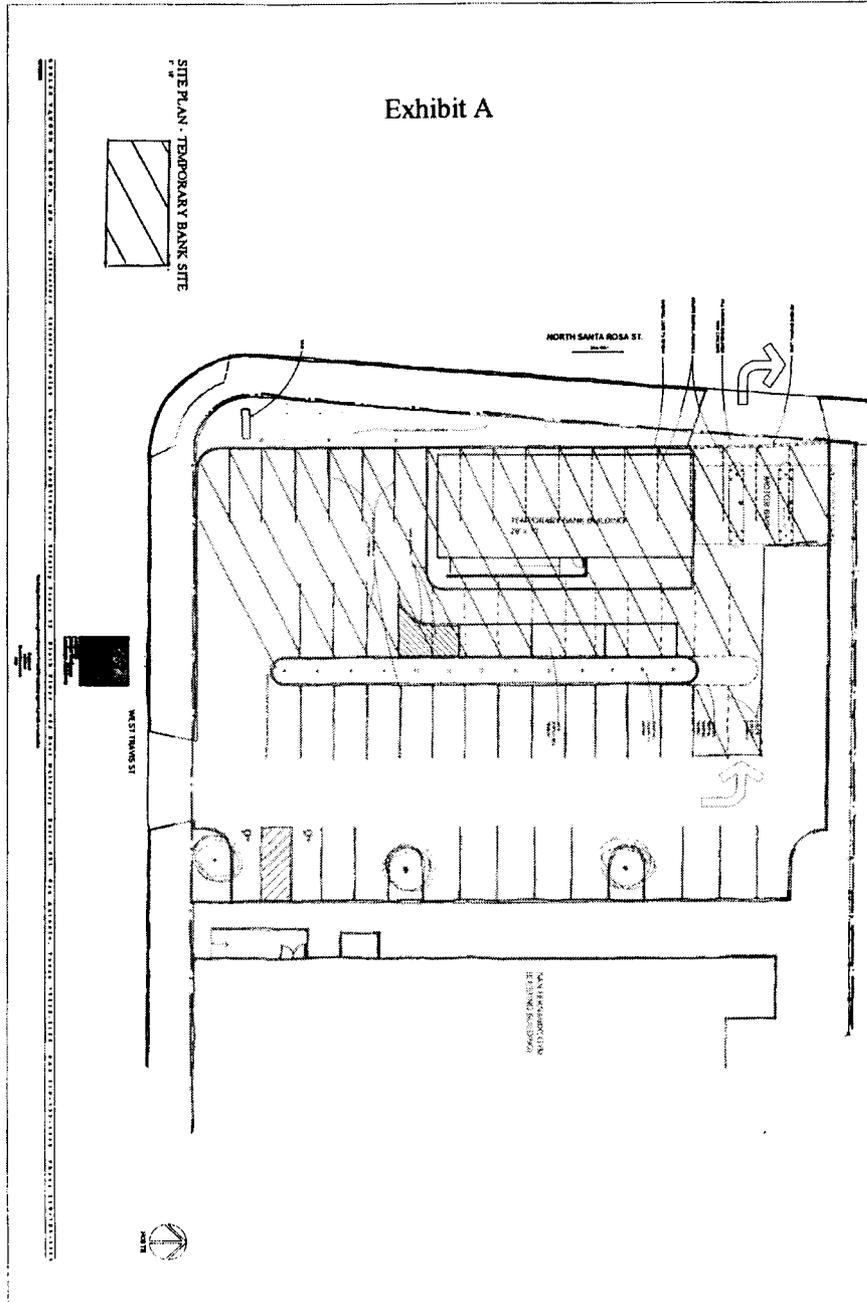


Exhibit B

Exhibit B Minimum Reconditioning Requirements

The following conditions, including but not limited to, must be completed by Tenant and approved in writing by the City of San Antonio (COSA) before the ground lease is terminated and premises returned to COSA:

1. Remove temporary bank building and any other facilities that may have been placed on the premises by Tenant.
2. Remove and/or replace any signage placed as a result of Tenant's operation.
3. Seal off or properly terminate any utility services provided to the lot for Tenant's operation.
4. Patch any penetrations to the asphalt surface.
5. Seal-coat the asphalt surface of the entire lot; to include approximately 58 parking stalls and drive areas.
6. Restore any curbs damaged or cut.
7. Restore landscaped areas that are damaged.
8. Restore any sidewalks that are damaged or cut.

COSA will perform the following after Tenant's compliance with the above-mentioned items, which will not affect the termination date of the ground lease term:

1. Reinstall any parking meter heads removed before or during the ground lease term.
2. Re-stripe the entire parking lot; to include the approximately 58 parking stalls.

Agenda Item # 20

**CITY OF SAN ANTONIO
ASSET MANAGEMENT DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager
FROM: Shawn P. Eddy, Interim Director, Department of Asset Management
SUBJECT: Ordinance approving a Ground Lease Agreement at the Jesse James Leija Gym Parking Lot, formerly known as the San Fernando Gym Parking Lot
DATE: June 15, 2006

SUMMARY AND RECOMMENDATIONS

An Ordinance approving a Ground Lease between Vistana, Ltd., as Tenant, and the City of San Antonio, as Landlord, the premises to be approximately 36 parking stalls, the term to be 22 months, the rent to be a lump sum of \$36,765, the tenant having an option to renew, and the lease pertaining to the parking lot at North Santa Rosa St. and West Travis St., located in District 1.

Staff recommends approval.

BACKGROUND INFORMATION

This ground lease of a portion of the parking lot at North Santa Rosa St. and West Travis St. (see attached exhibit) is for the temporary placement of Sterling Bank's retail branch and drive-thru operations facility, which is conveniently located one block north of their current location. Sterling Bank's current location is the site of a proposed high-rise development featuring market-rate apartments, parking and retail space. The existing bank building is to be demolished. Upon completion of the development, in approximately 22 months, Sterling Bank will move back to the current location in the new building. Tenant is responsible for all utility connections and modifications to operate in the temporary facility. At the end of the term, the tenant will repair and improve the parking lot at a condition as good or better than before occupancy.

POLICY ANALYSIS

Approval of this agreement is consistent with the City's policy to consider leases and support economic development.

FISCAL IMPACT

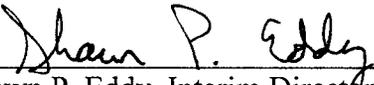
Under the terms of the Ground Lease Agreement, the City will receive \$36,765 in a lump sum for a 22-month term. Additionally, provisions were negotiated for the tenant to renew on a month-to-month basis for up to 6 months at \$2,000 per month. Should the tenant holdover beyond the allowed renewal period, the rent will increase to \$4,000 per month.

COORDINATION

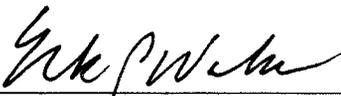
This item has been coordinated with the City Attorney's Office.

SUPPLEMENTARY COMMENTS

The required Discretionary Contract Disclosure Form is attached.



Shawn P. Eddy, Interim Director
Department of Asset Management

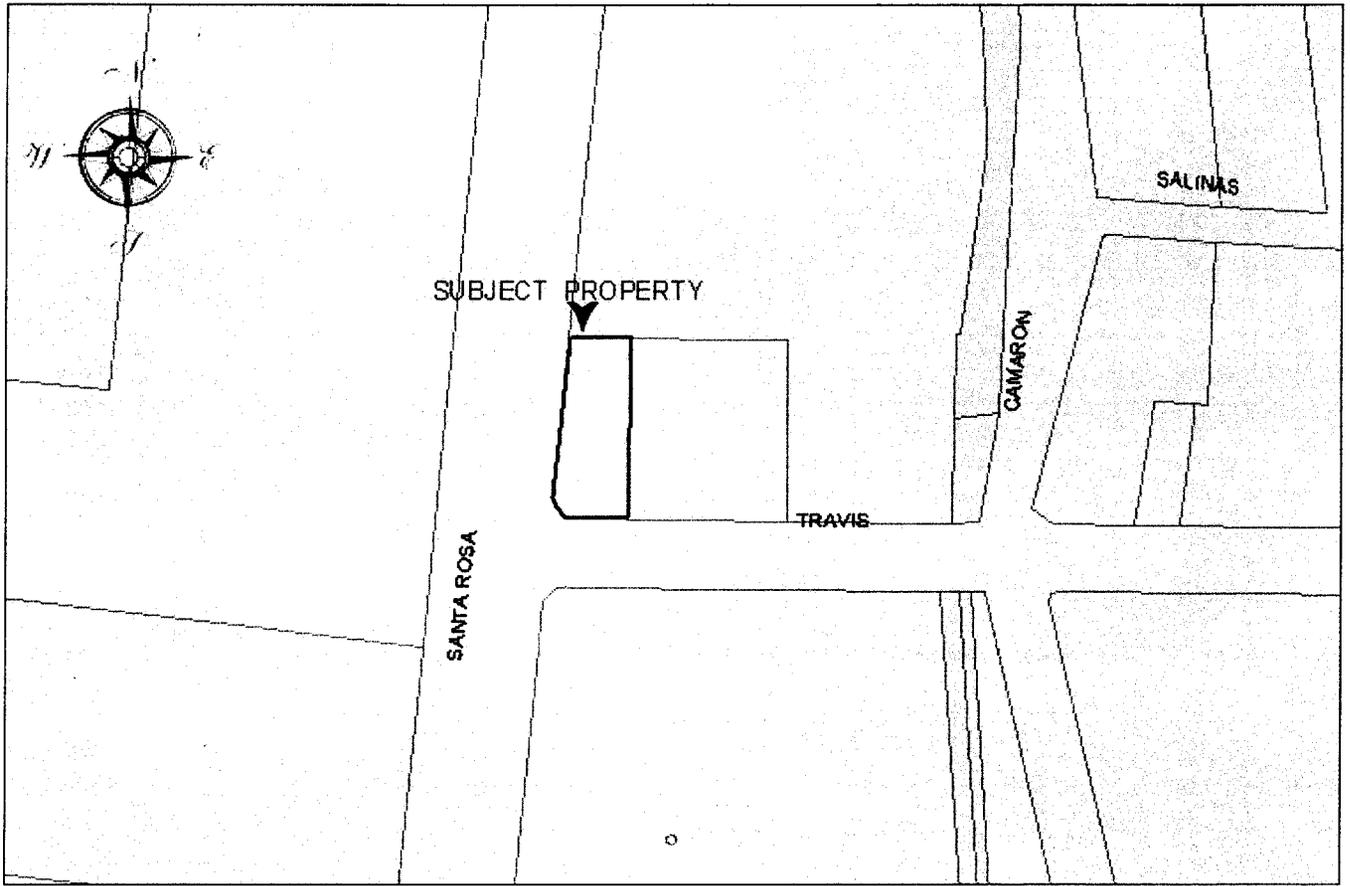


Erik J. Walsh
Assistant City Manager

Approved for Council Consideration:



Sheryl Sculley
City Manager



Exhibit