

Master Lease

(Alameda Theater Building, Casa de Mexico, Basila Pharmacy Building and Parking Adjacent to Basila Pharmacy Building)

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Exhibit A	Legal Description and Site Plan Showing the Premises
Exhibit B	Capital Improvement Funding Agreement No. 3
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Exhibit D	Construction Escrow Agreement

1. Basic Information, Definitions.

Authorizing Ordinance: _____

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Assistant Director for Real Estate, CIMS
Department)

Tenant: Alameda Theater, a Texas Non-profit Corporation

Tenant's Address: 401 E. Houston St.
San Antonio, Texas 78205

Premises: Alameda Theater and Casa de Mexico Office Building, ("Complex"); Basila Pharmacy Building and parking adjacent to Basila Pharmacy Building (all of the foregoing shall be the "Premises", as more particularly described in the attached **Exhibit A**). In addition, the City reserves the right to include within the Premises the two City-owned parking lots on Camaron Street north and south of the 300 block of West Houston Street if a sublessee acceptable to both Landlord and Tenant is presented upon terms agreeable to sublessee, Landlord, and Tenant.

Permitted Use: Immediate use of Premises for construction of improvements to Alameda Theater lobby and restroom area and floors 2-4 of the Casa de Mexico Office Building for eventual use as performing arts theater or auditorium, broadcast television/radio studio, assembly halls, offices, support facilities for same, school for the arts, parking and loading. City reserves the right to use the Alameda Theater and Koehler Auditorium portion of the premises up to 25 days per lease year with no rental charge once Tenant renovations to the Theater are completed and Theater becomes operational.

Commencement Date: The later of the effective date of the Authorizing Ordinance or the later of the signatures of the representatives of Landlord and Tenant on this Lease

Initial Term: 25 Years

Base Rent: \$1 annually; however, City reserves the right to increase the Base Rent if sub-lease(s) with for-profit entity(ies) are agreed to, in which case Base Rent will be due and payable on a monthly basis, and Base Rent

paid to Landlord shall be the greater of:

(1) a formula as follows:

The gross monthly rent paid by the for-profit subtenant(s)

Minus

A figure equal to \$1.25 multiplied by the number of rentable square feet of the for-profit sub-leased premises,

= the amount of Base Rent rent to be paid to the Landlord;

or

(2) 8% of the gross monthly rent per square foot paid by the for-profit sub-tenant(s)

Address for Payment of Rent: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Finance Department)

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

Operating Expenses: Tenant is responsible for all operating expenses of the Premises at its sole cost and expense.

Capital Improvement Funding Agreement This Lease is subject to Capital Improvement Funding Agreement No. 3 dated _____, 2011, by and between Landlord and Tenant, attached hereto as **Exhibit B**.

Grant and Development Agreement with Bexar County This Lease is subject to that certain Grant and Development Agreement dated _____, 2011, by and between Bexar County and Tenant ("County Development Agreement"), said Development Agreement thereof being incorporated herein by reference for all purposes.

Additional Definitions:

"**Approved Sublease**" means a sublease of the Premises that complies with the requirements and has received the approval described in Section 33 of this Lease.

"**Casualty**" means a complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected, or unusual nature affecting any part of the Premises (whether or not covered by a policy of insurance).

"**Casualty Loss**" means any damage or loss caused directly or indirectly by a Casualty.

"**Casualty Loss Insurance**" means insurance maintained by Landlord or on its behalf which is intended to provide proceeds in the event of a Casualty to the Premises or any portion thereof.

"**Casualty Notice**" means a written notice to be delivered by Landlord to Tenant in accordance with Section 22 following a Casualty.

"**Construction Escrow Agreement**" means the Construction Escrow Agreement in the form attached as Exhibit D.

"**Consulting Architect**" means an architect registered by the Texas Board of Architectural Examiners who is a member of the American Institute of Architects and is experienced in the restoration or rehabilitation of historic structures.

"**Execution Date**" means the later date on which this Lease has been signed by Landlord or by Tenant.

"**Extended Restoration Period**" means the extension of the Restoration Period for up to thirty-six (36) months.

"**Force Majeure Event**" means and refers to any event or circumstance that is beyond the commercially reasonable control of such party (excluding the unavailability of funds to the party that has the obligation to perform) and does not result from the fault or negligence of such party, including but not limited to a Casualty, strike, lockout, Laws enacted or amended after the Effective Date, war, civil commotion, riot or insurrection, act of God, generally applicable shortage of labor or materials, and act of the public enemy or terrorists.

"**Insurance Proceeds**" means the amount of the proceeds available under the Casualty Loss Insurance, if any.

"**Insurance Proceeds Notice**" means written notice of the amount of Insurance Proceeds.

"Other Restoration Proceeds" means additional funds beyond Insurance Proceeds which may be obtained by Tenant through fund-raising activities or other sources for the Restoration Work.

"Plans and Specifications" means the plans and specifications for Restoration Work approved by Tenant and Landlord following the process described in Section 22.

"Pledges" means cash and/or irrevocable commitments to donate funds.

"Restoration Costs" means the projected cost of the Restoration Work including (without limitation) contingency, professional, engineering, and other soft costs, as determined in accordance with Section 22.

"Restoration Notice" means the written notice to Landlord of Tenant's election to proceed to undertake the Restoration Work.

"Restoration Period" means the projected time period required for the Restoration Work as determined in accordance with Section 22.

"Restoration Work" means the work to restore, repair and/or replace the improvements damaged or destroyed in connection with a Casualty (including, without limitation, any and all furniture, fixtures and equipment).

"Scope of Work" means the determination of the nature and extent of the Restoration Work as determined in accordance with Section 22.

"Substantial Completion" means completion of the Restoration Work in accordance with the Plans and Specifications and approved amendments and change orders to such an extent that the Premises can be used or occupied by Tenant for the Permitted Uses. "Substantial Completion" in reference to Tenant's improvements shall have the same meaning as the definition contained in the County Development Agreement.

"Total Earned Income" means income from the entire Premises which shall include, but not be limited to, gross income received by Tenant from the total number of tickets sold by Tenant, ticket/facility surcharge from other users, valet parking, event parking, contract parking and daily parking, office and retail space rental, office expense reimbursement, theater rental fees, Performance Charges, concessions, classes, gift shop/retail operations income from the Complex, retail sales, advertising revenues, studio rental fees, Alameda Theater rental fees, Koehler Auditorium rental fees, and any and all other income collected and generated on and from the Premises. Total Earned Income shall not include Contributed Income, which is defined as income from foundation and donor gifts, corporate sponsorships, federal and state grants, municipal support, and Annual Fund.

2. Grant, Landlord's Reservations.

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

Landlord's Reservation of Use. Landlord reserves the right to install, maintain, repair, and remove wires and communications lines and other equipment and appurtenances thereto on the roof of the Alameda Theater and such other portions of the Premises as deemed necessary by Landlord to retain communications services between Landlord-owned property and/or property leased by Landlord from others for Landlord's use.

Tenant agrees that Landlord will have a license to use the Alameda Theater and/or the Koehler Auditorium portion of the Premises up to 25 days per Lease Year, with no rental charge, once Tenant renovations to the Theater are completed and the Theater becomes operational. The license to use the Theater shall be governed by procedures to be agreed upon by Landlord and Tenant regarding city days, booking procedures, and performance charges.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

3.02. Tenant must pay all rent in the amounts described in this section in advance on the first day of each year or within 10 days thereafter without penalty. If Tenant is delinquent in paying an amount for more than 10 days after the first of a month, Tenant must pay to Landlord upon demand a late charge equal to \$500. 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. Tenant must not abate Rent for any reason.

4. Term, Termination, Renewal Terms.

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

Provided an event of default does not then exist as to any material matter under this Lease, and subject to City Council approval, Tenant may request five (5) successive Renewal Terms of five (5) years each. Tenant shall provide not less than one hundred eighty (180) days' written request prior to the expiration of the Initial Term or Renewal Term as applicable, for renewal of this Lease. The first Renewal Term shall commence at midnight on the date on which the Initial

Term ends, and each successive Renewal Term shall commence at midnight on the date on which the immediately preceding Renewal Term ended.

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. Tenant shall comply with all construction requirements set forth in the Capital Improvement Funding Agreement No. 3 (Exhibit B) and the County Development Agreement.

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

5.03. Obtain and pay for all utility services.

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 the Premises at Tenant's sole cost and expense, including, but not limited to the interior and exterior of the Premises, roof, foundation, structural soundness of the exterior walls, doors, corridors, windows, window frames, plate glass, HVAC, wiring, interior and exterior plumbing, plumbing fixtures, plumbing lines and plumbing connections, all interior and exterior electrical fixtures, lamps, and/or bulbs, wiring and connections, awnings, overhangs, and sidewalks, and all other structures, systems, or equipment services the Premises.

5.06. After Casualty Loss not terminating the lease, rebuild the exterior of the building (subject to any insurance coverage that Landlord may have in place), interior partitions, ceilings, wiring, light fixtures, and plumbing.

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

5.08. Pay all operating expenses, be solely responsible for any and all day-to-day cleaning and janitorial services for the Premises, and be solely responsible for all operations of the Premises.

5.09. Pay all taxes as due for the Premises, in accordance with Section 35, Taxes.

6. Fund Raising/Financial Management

6.1 Tenant agrees to:

- (1) Raise funds for the implementation of Tenant's Development Plan (Exhibit C), which Development Plan shall include provisions for raising the Developer Contribution required by City and County in the County Development Agreement for the restoration and operation of the Premises. Tenant shall submit the Development Plan (Exhibit C) to City no later than April 15, 2012.
- (2) Provide to Landlord's designated representative, hereinafter "Landlord's Director" on or before thirty (30) days prior to the end of each calendar year during the term of this Lease, a copy of its proposed operating budget, operating reserve, and marketing plan for the following calendar year, including the following information:
 - (a) Tenant's Capital Repairs Budget, including funds to be used for the construction of improvements, the fund raising for which shall be no less than TWO MILLION, FIVE HUNDRED THOUSAND AND ZERO/HUNDRED DOLLARS (\$2,500,000), which sum shall be raised by Tenant no later than Substantial Completion of the Tenant improvements; and
 - (b) once the Alameda Theater and Koehler Auditorium are fully functional and operational, a current list of scheduled events with dates, to be updated monthly and provided to Landlord's Director; and
 - (c) once the Alameda Theater and Koehler Auditorium are fully functional and operational, proposed ticket prices to be charged, which Landlord's Director reserves the right to review (but not approve).
- (3) Provide to Landlord's Director semi-annual progress reports and an annual progress report. The semi-annual reports shall be due within ten (10) days after the end of each six-month period preceding and following the end of each Tenant fiscal year, and the annual progress reports shall be due within ninety (90) days after the end of each Tenant fiscal year during the Initial Term and Renewal Term of this Lease. All such reports must reflect Tenant's fund raising efforts and income statement, including Total Earned Income and Operating Expenses, for the previous six (6) months, and for Tenant's fiscal year, including, but not limited to the following:
 - (a) the amount of funds raised and value of all tangible assets donated in the previous six (6) months and Tenant's fiscal year; and
 - (b) funds actually expended for the construction of improvements to, and for

operation of, the Premises in the previous six (6) months and Tenant's fiscal year; and

- (c) total number of tickets (children and adults) sold for each admission cost (ticket prices), number and value of complimentary tickets distributed, and gross income from the total number of tickets sold during the previous six months, and Tenant's fiscal year; and
- (d) separately provide details of gross income received by Tenant from operations on and from the Premises from valet parking, event parking, concessions, classes, rental income and any other income collected, and related expenses and liabilities incurred or paid by Tenant from operations of and from the Premises during the previous six (6) months and Tenant's fiscal year.

6.2 Review and/or Audit. Landlord shall have the right to review all documents in Tenant's possession or control that support the information in the reports provided to Landlord in accordance with this Section 6 and that are necessary for Landlord to verify that Tenant is in substantial compliance with the terms of this Section 6. The following shall apply to any review or audit under this Section 6:

6.2.1 Tenant agrees to provide the documents and information on a timely basis to Landlord (or its designee) at the location or locations in Bexar County, Texas requested by Landlord, following not less than thirty (30) days' written notice from Landlord to Tenant. All such applicable books, records and supporting documentation shall be preserved by Tenant for five (5) years after the period to which such documents relate or until all reviews and/or audits, if any, relating to those documents are complete and any and all findings have been fully resolved, and any litigation shall be finally resolved, whichever is the greater period of time.

6.2.2 Landlord and Tenant agree to coordinate the review and/or audit of information to minimize any adverse impact on the operations of the Alameda Theater and the Premises and to minimize the costs related thereto.

6.2.3 Landlord may designate a certified public accountant, or any employee or agent of Landlord to conduct the review and/or audit under this Subsection 6.2. Subject to applicable Law, Landlord shall maintain, and shall cause its designees to maintain, any information in strict confidence and shall not use the information for any purpose other than as set forth in this Section 6. Landlord shall be responsible for failure of its designee to comply with the provisions of this Sub-subsection 6.2.3.

6.2.4 Should Landlord elect to retain an independent accounting firm to review and/or audit the information provided by Tenant, such services shall be paid by Landlord unless payable by Tenant in accordance with the following sentence. If such

accounting firm determines that the records provided by Tenant misstate either the amounts collected or the amounts disbursed by more than five percent (5%) of the aggregate amount collected or disbursed in any tenant fiscal year, the services of such accounting firm will be paid by Tenant.

6.2.5 Landlord may not initiate an audit more often than once in any tenant fiscal year.

6.2.6 The provisions of Sub-subsection 6.2.5 shall survive any termination of this Lease.

6.3 At Tenant's sole cost and expense, the annual progress report referenced above shall be prepared in accordance with Generally Accepted Accounting Practices and shall be attested to by an independent Certified Public Accountant.

6.4 Tenant will provide annual evidence of its non-profit tax status at the time the annual progress report is provided to Landlord.

6.5 Landlord will work cooperatively with Tenant, to the extent possible, regarding the development of cultural tourism and Tenant will work cooperatively with Landlord, to the extent possible, to advise same of Tenant's marketing efforts and programs.

7. Naming Rights.

Naming rights for the Complex or any portions thereof must be approved in accordance with all applicable requirements and processes set out in the Uniform Development Code.

[Sections 8 and 9 intentionally omitted]

10. Tenant Construction of Improvements.

10.1 **GENERAL CONDITIONS:** Tenant improvements to be constructed shall be performed in accordance with the requirements of Exhibit B, Capital Improvements Funding Agreement No. 3. Failure to comply with the Capital Improvements Funding Agreement No. 3, and/or the terms of the County Development Agreement, as amended, shall be grounds for default and/or termination of the Lease in accordance with Section 26, Default, Remedies for Default. Tenant agrees that the Alameda Theater and Koehler Auditorium will be fully functional and available for Landlord's use of City Days no later than one (1) year following Substantial Completion of Tenant improvements.

11. Fixtures and Personal Property/Signs.

11.1 Any trade fixtures, equipment, signs, furniture, furnishings, floor covering and

other personal property of Tenant installed but not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that, during the term of the Lease, Tenant shall have the right, at any time, and from time to time, to remove any and all of its trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property which it may have stored or installed in the Premises, including but not limited to, counters, booths, shelving, mirrors, and other movable personal property. Tenant, at its expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property, and upon expiration or earlier termination of this Lease, for any reason, shall leave the Premises in the same condition as immediately prior to such installation, or better in a good neat and clean condition, free of debris and broom clean condition, except for (1) reasonable wear and tear and casualty and (2) the condition of the Basila Pharmacy Building, which is intended to be demolished by Tenant at Tenant's sole expense at such time by Tenant as part of Tenant's improvements. All trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property installed in or attached to the Premises by Tenant must be new or, if used, then in good, serviceable and attractive condition when so installed or attached. If Tenant does not remove said trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property promptly upon the termination of this Lease, Landlord may effect such removal and make any repairs necessitated thereby. The cost, therefore, shall be immediately due and payable from Tenant hereunder. Tenant agrees that any such trade fixtures, equipment, signs, etc., not removed within forty-five (45) days after the termination of this Lease shall become Landlord's property without the necessity of legal action on Landlord's part, and may be disposed of by Landlord at a private or public sale without notice and with no liability whatsoever by Landlord to Tenant. Further, Tenant will repair any damage caused by such removal and make any repairs necessitated thereby.

11.2 Tenant will be solely responsible for all costs associated with the permits, approvals, manufacture, installation and on-going maintenance of any and all signage. Tenant further agrees to obtain all necessary permits and comply with such sign design criteria and sign review procedures as may be established and amended from time to time by Landlord's duly authorized authority, including, but not limited to, securing any approval required by Landlord's Historic and Design Review Commission and the Department of Development Services. "Signs" shall also include any work to be done to the Theater marquee and tower sign.

11.3 No sign shall be placed on the improvements or Premises by Tenant or its sub-tenants, licensees or other parties who are acting by and through any authority from Tenant which will in any manner cause material structural damage or injury to the Premises or injury to any persons on or about the Premises.

11.4 Whenever Tenant's signage is repaired, removed or replaced, Tenant agrees to restore the area(s) where such signage existed to its original condition or better, and to match the surface of the existing building, except for the Basila Pharmacy Building which, subject to obtaining appropriate City approvals, will be demolished by Tenant at Tenant's sole expense.

12. Indemnity.

12.01. These definitions apply to the indemnity provisions of this Lease:

12.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of the acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Lease, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

12.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

12.01.03. "Indemnitor" means Tenant.

12.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

12.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

12.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

12.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

12.06. In addition to the indemnity required under this Lease, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or

impairing Indemnitor's obligations under this indemnity paragraph.

12.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

12.08. Nothing in this Lease waives governmental immunity or other defenses of Indemnitees under applicable law.

12.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

13. Tenant's Negative Promises.

Tenant promises that it will not:

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

13.02. Create a nuisance.

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

13.04. Permit waste.

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

13.06. Change Landlord's lock system without Tenant's giving prior written notice to Landlord, in which case Tenant must provide Landlord with duplicate keys and/or other method of secured access to Premises.

13.07. Alter the Premises except in accordance with Section 10, Tenant Construction of Improvements, and the Capital Improvements Funding Agreement No. 3, Exhibit B, or, in any event, without the Landlord's written consent and approval of any such alterations.

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

14. Landlord's Affirmative Promises.

Landlord promises that it will:

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

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

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

15. Landlord's Negative Promise.

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

16. Alterations.

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.

17. Insurance.

17.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A-(VII) or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Landlord
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of Landlord
3. Broad Form Commercial General Public Liability Insurance to include (but not be	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000

limited to) coverage for the following:

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 damages to include fire legal liability

Coverage for a minimum of 100% of the actual cash value of personal property; and replacement value of Tenant improvements and betterments to the Premises.

(g) Host Liquor Liability, if alcoholic beverages are served on the Premises

(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises

4. Business Automobile Liability, including

Combined single limit for bodily injury, death, and property damage of \$1,000,000 per occurrence

(a) Owned/Leased Automobiles

(b) Non-Owned Automobiles

(c) Hired Automobiles

5. Property Insurance for physical damage to the property of Tenant, including improvements and betterments

Coverage for replacement cost of Tenant's improvements

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

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966

and

Department of Building & Equipment
Services
City of San Antonio
P.O. Box 839966

Attention: Risk Manager

San Antonio, Texas 78283-3966

Attention: 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. This policy cannot be invalidated as to Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

17.03. During the construction of Tenant's improvements, Tenant must require general contractor to 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 required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover 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 require general contractor to maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of Council.

17.04. Within 30 days after the Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver certificates to Landlord's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. 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. 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 discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord's review and

approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

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

17.06. Nothing in this Lease limits 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.

17.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

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

18. 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, will require their insurers to waive subrogation against each other for Covered Claims.

19. Environmental Matters.

19.01. "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.

19.02. "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.

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

19.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

19.05. 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.

19.06. Tenant must to immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

19.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than one such inspection in any 12-month period.

19.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

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

warranties, and covenants..

20. Landlord's Municipal Powers.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

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 directly or indirectly 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. 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.

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

22. Casualty/Total or Partial Destruction.

22.1 Claim Settlement. In the event of a Casualty, Tenant shall give prompt written notice thereof to Landlord. Landlord shall take all actions reasonably and prudently necessary to promptly present claims in accordance with the requirements of the Casualty Loss Insurance. Landlord shall take all actions reasonably and prudently necessary to obtain the maximum recovery provided under the Casualty Loss Insurance and will provide Tenant with regularly updated information concerning the status of such claim or claims. Landlord will have the sole responsibility and authority to settle, compromise, litigate, mediate, appeal or otherwise resolve any and all matters related to a Casualty or the Casualty Loss Insurance, but Tenant may participate in any meetings or conferences with insurers to negotiate the settlement or resolution of any disputed claim.

22.2 Casualty Notice. Within one hundred eighty (180) days after the date of a Casualty, Tenant will deliver to Landlord a Casualty Notice setting forth the following information:

22.2.1 Tenant's estimate of the Scope of Work;

22.2.2 Tenant's estimate of the Restoration Costs;

22.2.3 Tenant's estimate of the Restoration Period; and

22.2.4 Tenant's architect retained for the restoration project.

22.3 Landlord's Dispute of Casualty Notice. If Landlord objects to any of the information contained in the Casualty Notice, it shall respond in writing to Tenant within sixty (60) days after receipt of the Casualty Notice, specifying in detail the information to which Landlord objects. If Landlord and Tenant are unable to resolve such objection within thirty (30) days after Landlord has timely submitted such objection, the objection shall be resolved by the Consulting Architect, as follows:

22.3.1 Selection of Consulting Architect. Tenant shall identify its selection of the architect to serve as the Consulting Architect in the Casualty Notice. If Landlord has not objected to Tenant's designation of the Consulting Architect in the Casualty Notice within thirty (30) days after receipt of the Casualty Notice, the architect identified in the Casualty Notice will be the Consulting Architect. If Landlord has objected and if Landlord and Tenant are unable to agree upon a Consulting Architect, the architect named in the Casualty Notice and the City Architect shall mutually select the Consulting Architect, who shall be retained by Landlord and Tenant for the purposes of this Section 22. The time frame for Landlord's response to the Casualty Notice will be extended by

that period of time that elapses from the date of Landlord's objection to Tenant's designation of the architect to serve Consulting Architect until the Consulting Architect has been selected in accordance with this Subsection 22.3.1. The fees and expenses of the Consulting Architect and each architect retained by Landlord and Tenant will be included in the Restoration Costs.

22.3.2 Determination of Scope of Work. The estimated Scope of Work set forth in the Casualty Notice and the Landlord's objection to the estimated Scope of Work, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Scope of Work for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.3.3 Determination of Restoration Costs. The estimated Restoration Costs set forth in the Casualty Notice and the Landlord's objection to the estimated Restoration Costs, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Restoration Cost for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.3.4 Determination of Restoration Period. The estimated Restoration Period set forth in the Casualty Notice and the Landlord's objection to the estimated Restoration Period, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Restoration Period for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.4 Amendments to Casualty Notice. The Casualty Notice will be deemed amended by the determinations set forth in the preceding Section 22.3 and, as amended, deemed approved by Landlord and Tenant. Any subsequent amendments to the contents of the Casualty Notice which are of a material nature shall require the prior, written approval of both Tenant and Landlord, such approval not to be unreasonably withheld.

22.5 Election by Tenant. Within ninety (90) days following the *later* of (i) Tenant's receipt of the Insurance Proceeds Notice, or (ii) the final determination of the estimated Scope of Work, estimated Restoration Cost and estimated Restoration Period, as set out above, Tenant shall provide to Landlord either (A) written notice of Tenant's election to terminate this Lease or

(B) the Restoration Notice. If Tenant fails to timely provide either notice to Landlord, Tenant will be deemed to have delivered the Restoration Notice.

22.6 Election to Restore Premises. If Tenant provides the Restoration Notice:

22.6.1 Plans and Specifications. Tenant shall cause the Restoration Work to be carried out, in all material respects, in accordance with the Plans and Specifications, as described below.

22.6.2 Restoration Work Funded by Insurance Proceeds. To the extent reasonably practical the Restoration Work shall be carried out by Tenant and, to the extent reasonably possible, shall be marshaled in a manner which coordinates with the terms of the Casualty Loss Insurance. Landlord agrees to use its best efforts to arrange with the Casualty Loss Insurance carrier to coordinate the Restoration Work in a manner which optimizes the recovery of insurance proceeds. Subject to a Force Majeure Event or any delay caused by the act or omission of Landlord in the exercise of any approval rights granted to Landlord under the terms of this Lease, Tenant agrees to use reasonable business efforts to cause the Restoration Work to be carried out within the time frame set out in the estimated Restoration Period.

22.6.3 Restoration Work Not Funded by Insurance Proceeds. As to any portion of the Restoration Work for which Insurance Proceeds are not available, the Restoration Period will be extended for the Extended Restoration Period to permit Tenant to undertake fund-raising for the Restoration Costs that exceed the available Insurance Proceeds. Tenant shall provide to Landlord in writing, prior to the commencement of the Restoration Work, the Fund-Raising Targets.

22.6.4 Extension of Extended Restoration Period. The Extended Restoration Period will not be subject to further extension unless, after the Execution Date, Landlord increases Landlord's self-insured portion of Casualty Losses by more than \$250,000.00. In that event, Landlord and Tenant agree that the Extended Restoration Period will be increased by an additional twelve (12) months if necessary for additional fund-raising activities by Tenant.

22.7 Submittal of Plans and Specifications. Separate and apart from any approvals which may be required to be obtained from the City, in the exercise of its municipal authority, prior to submitting any plans to obtain a building permit, Tenant shall submit all proposed plans and specifications for the Restoration Work to Landlord for review and approval, which approval will not be unreasonably withheld or delayed. In the event Landlord fails to raise any objection to the proposed plans and specifications within thirty (30) days following their submission to the Landlord, the proposed plans and specifications shall be deemed approved. If a dispute exists between the Landlord and Tenant as to how to resolve any objections raised by Landlord to the proposed plans and specifications, the dispute shall be resolved following the same procedures

set out in Section 22.3 above. Landlord's prior, written approval shall be required for any material modification, alteration or amendment of any Plans and Specifications.

22.8 Submittal of Construction Contracts. Before entering into any contract for the Reconstruction Work, including (without limitation) architectural, engineering, construction and consulting contracts, Tenant shall submit such contract to Landlord for its review and comment. Final approval of any such contract shall remain with Tenant.

22.9 Escrow of Insurance Proceeds. If Tenant has provided the Restoration Notice to Landlord, then Landlord shall deposit the Insurance Proceeds, as the Insurance Proceeds are made available to Landlord, into a segregated construction escrow account to be disbursed by Escrow Agent in accordance with the terms and conditions of the Construction Escrow Agreement (Exhibit D).

22.10 Progress Reports. Tenant acknowledges the importance to Landlord of receiving current information concerning the Restoration Work. Tenant shall provide to Landlord a monthly Progress Report which:

22.10.1 describes the major aspects of the Restoration Work then being performed, the progress of the Restoration Work (quality/quantity), any revision to the scheduling of the Restoration Work;

22.10.2 updates the governmental permit status of the Restoration Work and inspection approvals;

22.10.3 provides an analysis of any deviation from the estimated Restoration Period and identifies any anticipated amended to the Restoration Period;

22.10.4 provides an analysis of any deviation from the estimated Restoration Costs and identifies any anticipated amended to the Restoration Costs; and

22.10.5 identifies the quantity of Pledges received by Tenant and calculates the current difference between (1) the sum of the Insurance Proceeds and Pledges and (2) the estimated Restoration Costs.

22.11 Abatement During Restoration. All obligations of Landlord and Tenant under the terms of this Lease which are inconsistent with the damaged state of the improvements shall be abated from the date of such casualty occurrence until the restoration and rebuilding of the Premises to Substantial Completion. During any such abatement, reasonable operating expenses necessary to maintain the Premises shall be shared between Landlord and Tenant on an equitable basis, taking into consideration their respective interests and obligations relating to the Premises.

22.12 Delivery of Information. In the event of a Casualty, Landlord and Tenant agree to promptly deliver to the other any and all information it has or may receive concerning the

Casualty, including, without limitation, its causation, the Casualty Loss and the availability of any insurance proceeds. Without limiting the generality of the foregoing, Landlord will provide to Tenant the Insurance Proceeds Notice.

22.13 Restoration Work and Standards. To the extent reasonably possible and to the extent of (i) the Insurance Proceeds and/or (ii) Other Restoration Proceeds, the parties agree that the Restoration Work shall be undertaken with due regard to the historic nature of the improvements. If the Premises sustains a Casualty Loss that is adjusted or otherwise evaluated by Landlord's Department of Risk Management or other professional analysts retained by Landlord as a total loss with only minimal remaining value of the improvements, the manner of Restoration, if any, will be determined by Landlord with due regard to the highest and best use for the Premises, the surrounding improvements and such additional factors as Landlord may deem relevant in the exercise of its sole discretion.

22.14 Pre-Construction Milestones. To assure Landlord that Tenant's efforts to restore the Casualty will result in commencement of construction in a timely manner to comply with the requirements of the Casualty Loss Insurance in undertaking the Restoration Work described in the Casualty Loss Notice, Tenant shall provide to Landlord the following:

22.14.1 within three (3) months following approval of the Plans and Specifications by Landlord and all governing agencies, evidence of Tenant's receipt of competitive bids of contractors based upon the Plans and Specifications; and

22.14.2 within six (6) months following approval of the Plans and Specifications by Landlord and all governing agencies, executed copies of the approved construction contracts necessary to complete such Restoration Work.

If Tenant fails to timely perform any of the foregoing obligations, Landlord may, at its option, provide notice to Tenant that Landlord will assume the responsibility for the Restoration Work, including any Restoration Work not funded by Insurance Proceeds. Upon receipt of such notice, Tenant shall immediately provide to Landlord any and all materials in Tenant's possession or subject to Tenant's control concerning the Restoration Work and assign its rights under all construction contracts to Landlord. Upon such assignment and surrender of all such materials to Landlord, Tenant will have no further obligation to manage or control the Restoration Work but agrees to cooperate with Landlord's efforts to effect the Restoration Work.

22.15 Required Commencement of Work. If, prior to the completion of the Pre-Construction Milestones described in Section 22.14 above, the Restoration Work must be commenced in a manner which satisfies the requirements of the Casualty Loss Insurance regarding commencement of construction, Landlord and Tenant will cooperate with each other to cause such Restoration Work to commence. If such Restoration Work has commenced to the extent necessary to avoid the loss of Insurance Proceeds before the completion of the Pre-Construction Milestones described in Section 22.14 above, Landlord may not assume responsibility for the Restoration Work in accordance with Section 22.14.

22.16 Advance of Funds. Restoration Costs expended by either Landlord or Tenant before Insurance Proceeds are paid under the Casualty Loss Insurance shall be reimbursed to Landlord or Tenant, as applicable, from the Insurance Proceeds as soon as the Insurance Proceeds are made available.

23. Condemnation/Substantial or Partial Taking.

23.01. 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.

23.02. 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.

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

24. Holdover.

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (a) Tenant is a tenant at sufferance and (b) the Base Rent is \$5,000 a month.

25. Contractual Lien.

25.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

25.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale, provided, Landlord gives Tenant at least ten (10) days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (a) if held at the Premises or where the Collateral is located; and (b) if the time, place,

and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

25.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

26. Default, Remedies for Default.

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

26.01.01. Tenant fails to comply with any term, provision or covenant of this Lease, including, but not limited to, the Capital Improvements Funding Agreement No. 3, or the Grant and Development Agreement with Bexar County, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

26.01.02. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

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

26.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

26.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

26.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

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

26.01.08 The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

26.01.09 This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

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

26.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If

Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

26.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

26.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

26.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease;

(ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord;

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

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

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

26.03. Repossession and Alteration of Locks. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (a) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices; and (b) all claims for damages by reason of any distress warrant, forcible

detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

26.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

26.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

26.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (a) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (b) the costs of removing and storing Tenant's or any other occupant's property; (c) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants; (d) all rental concessions as a result of reletting; and (e) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

26.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

26.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

26.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

26.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to

Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

26.11. *Delinquent Rents and Other Sums.* Any amounts owing hereunder not paid within five days after they are due bear interest at the lesser rate of (a) the maximum nonusurious rate allowed by law; or (b) 18% per annum, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. In addition to the interest due on delinquent rents and other sums hereunder, if Tenant fails to make any payment when due, and such failure to pay continues for a period of five days (without any notice), then Tenant must pay, in addition to the amount due and owing, a late charge of 10% of such amount due and owing. The late payment charge is liquidated damages for Landlord's administrative inconvenience in dealing with late payments. The damages suffered by Landlord in case of a late payment are not capable of being ascertained precisely, but the foregoing charge is a reasonable and good faith estimate by the parties of the extent of the damage, which is reasonably certain to occur. Receipt of the late payment charge does not void the occurrence of an event of default or eliminate any of Landlord's remedies therefor.

26.12. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

27. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

27.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant.

27.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Complex suitable for the prospective tenant's use is (or soon will be) available.

27.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Complex, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Complex.

27.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Complex;
- (ii) adversely affect the reputation of the Complex; or
- (iii) be incompatible with other users of the Complex.

27.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner.

27.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

- (i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or
- (ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

[Section 28 Intentionally Omitted]

29. Tenant's Bankruptcy.

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

29.01. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

- (i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;
- (ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;
- (iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

29.02. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

29.03. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

29.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

29.05. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

29.06. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer; and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than twenty (20) days after Tenant's receipt of the proposal, but in no event later than ten (10) days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

29.07. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

30. Warranty Disclaimer.

30.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

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

31. Abandoned Property.

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

32. 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.

33. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

34. Dispute Resolution.

34.01. 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.

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

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

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

34.05. 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.

34.06. Mediator fees must be borne equally.

34.07. 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.

35. Taxes.

35.01 Tenant shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and Local taxes and fees, which are now or may hereafter be levied upon the Premises, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith or upon Tenant's leasehold interest or upon Landlord's fee interest; and Tenant shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by Tenant. If real property taxes are assessed against Landlord's fee simple interest or Tenant's leasehold interest, then Tenant agrees to pay such taxes.

35.02 Tenant shall pay all ad valorem taxes, general and special assessments or other similar items relating to its personal property situated on the Premises in a timely manner and before the final due date for such taxes. Landlord shall pay all ad valorem taxes, general and special assessments or other similar charges relating to its personal property (if any) situated on the Premises in a timely manner and before the final due date for such taxes.

35.03 In the event any taxes or other impositions may be payable in instalments, Tenant shall have the right to pay the same as such instalments fall due.

35.04 Tenant shall pay all Public Improvement District Tax assessments.

35.05 All of the above notwithstanding, Tenant, as to taxes owed, shall have the right, at its own costs and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed. If required by law, Tenant may take any such action in the name of Landlord, provided, however, that Tenant shall fully indemnify and save Landlord harmless from all loss, cost, damage and expenses incurred by, or to be incurred by, Landlord as a result thereof, and further provided that Tenant shall, at Landlord's request, escrow or post a bond for the full amount of the tax claimed pending such proceeding. Any tax being subject to a valid contest, in accordance with the terms of this Lease, shall in no event be deemed to be due and payable for the purpose of Tenant's obligation under the terms of this Lease, only.

36. Miscellaneous.

36.01. *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.

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

36.03. *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.

36.04. *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.**

36.05. *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. The City Manager or an authorized designee may approve and sign amendments to this Lease provided they do not relate to appropriation of funds or renewal of Terms.

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

36.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in Section 1. 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.

36.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

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

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

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

36.12. *Administrative Actions and Agreements.* Landlord's designated representative may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

36.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way and there is a conflict, the lowest number controls.

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

36.15. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

37. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

*[remainder of page intentionally blank]
[signatures on next page]*

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

Landlord:

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Tenant:

Alameda Theater, a Texas Non-Profit
Corporation

Signature: Ernest W. Bromley

Printed
Name: ERNEST W. BROMLEY

Title: CHAIRMAN

Date: 10/3/11

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A

Legal Description and Site Plan Showing the Premises

HOUSTON

ALAMEDA
Lot 18 NCB 105
PROPERTY

BASILA PROPERTY Lot 19

2.550 Ac

LARDO

COMMERCE

EXHIBIT A

TRACT I:

A 0.542 ACRE (23,623 SQUARE FEET) TRACT OF LAND, MORE OR LESS, KNOWN AS LOT 18, NEW CITY BLOCK 105, SAN ANTONIO, BEXAR COUNTY, TEXAS AND BEING THAT SAME PROPERTY CONVEYED TO G. A. LUCCHESI AND WIFE, LULA V. LUCCHESI BY IGNACIO TORRES, TRUSTEE, BY DEED RECORDED IN VOLUME 2260, PAGE 297, DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING at an iron pin found in the South right-of-way line of W. Houston Street and its intersection with the 3.0 foot City Monument Line in the East line of N. Laredo Street, Thence North 88 degrees 19 minutes 05 seconds East, a distance of 123.00 feet to the Northwest corner and Point of Beginning for the herein described tract;

THENCE along said South right-of-way line of W. Houston Street, North 88 degrees 19 minutes 05 seconds East, a distance of 151.15 feet to a building corner in the West bank line of San Pedro Creek for the Northeast corner of the herein described tract;

THENCE departing said South right-of-way line of W. Houston Street, South 01 degree 59 minutes 00 seconds East, a distance of 50.97 feet along the said West bank line of San Pedro Creek to an "X" found in concrete for an angle point in the herein described tract;

THENCE South 02 degrees 06 minutes 18 seconds West, a distance of 103.70 feet along the said West bank line of San Pedro Creek to a building corner in the North line of Lot 19, New City Block 105, said point being the Northeast corner of the herein described tract;

THENCE South 89 degrees 38 minutes 43 seconds West, a distance of 155.72 feet along the said North line of Lot 19 to a 1 inch iron pipe found for the Southeast corner of Lot 16A and the Southwest corner of the herein described tract;

THENCE North 02 degrees 31 minutes 43 seconds East, a distance of 151.27 feet along the East line of Lot 16A to the POINT OF BEGINNING.

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EXHIBIT A (COPY USED)

LEGAL DESCRIPTION-
BASILA PHARMACY PROPERTY

Lot 19, New City Block 105, TEX R-78, ROSA VERDE PROJECT, URBAN
RENEWAL AGENCY, UNIT V, in the City of San Antonio, Bexar County, Texas,
according to plat thereof recorded in Volume 7300, Page 37, Deed and Plat
Records of Bexar County, Texas.

Exhibit B

Capital Improvement Funding Agreement No. 3

Exhibit C

Tenant's Development Plan (Fund Raising) *(to be submitted by Tenant no later than April 15, 2012)*

Exhibit D

Construction Escrow Agreement

Exhibit D

CONSTRUCTION ESCROW AGREEMENT

This **CONSTRUCTION ESCROW AGREEMENT** (the "Agreement") is executed effective the _____ day of _____, 20__ by and among ALAMEDA THEATER, a Texas non-profit corporation ("Alameda Theater"), the City of San Antonio ("City"), A Texas home ruled municipality, and _____ ("Escrow Agent"). Alameda Theater and City are sometimes collectively referred to herein as "the Parties" and individually as a "Party."

RECITALS

A. City and Alameda Theater have entered into that certain Master Lease, executed on _____, 20__, but effective _____ (the "Master Lease"), between Alameda Theater, as Tenant, and City, as Landlord. Each capitalized term appearing in this Agreement that is not otherwise defined herein will have the meaning ascribed to such capitalized term in the Master Lease, unless the context clearly indicates otherwise.

B. Pursuant to the Master Lease, in the event of a Casualty, Alameda Theater has certain duties with respect to the restoration and reconstruction of the Premises utilizing the Insurance Proceeds, and the Parties have agreed that the Insurance Proceeds, when received by City from time to time and following City's receipt of a Restoration Notice, shall deliver the Insurance Proceeds referable to such Restoration Notice to Escrow Agent for disbursement in accordance with the terms hereof.

NOW, THEREFORE, for other good and valuable consideration, the receipt of which is hereby acknowledged, including but not limited to the considerations as set forth below, the parties hereto do hereby agree as follows:

ARTICLE 1
ESTABLISHMENT OF ESCROW

1.1 **Appointment of Agent.** The Parties do hereby appoint Escrow Agent to act as escrow agent for the purposes herein set forth, and Escrow Agent agrees to act as escrow agent in accordance with this Agreement.

1.2 **Investment of Escrow Receipts.** As the Insurance Proceeds are received by the Escrow Agent (sometimes referred to herein as the "Funds" or "Escrow Funds"), such Funds shall be invested by Escrow Agent in United States government securities, money market funds or cash, provided such investments can be converted to cash funds upon no more than three (3) business days advance notice. The manner of investment of the Escrow Funds in the investments described above shall be invested in accordance with the City of San Antonio investment policies which are based on V.T.C.A. Government Code Section 2256.001 et seq., (more commonly known as the Public Funds Investment Act) as may be amended from time to time. All interest

earned on the Escrow Funds shall be added to this Escrow and held in accordance with the terms herewith. At such time as a disbursement is to be made under the terms of this Agreement and cash is required by the Escrow Agent to meet the disbursement obligations of this Agreement, Escrow Agent is authorized to convert to cash that portion of the Escrow Funds necessary to meet such disbursement obligations.

ARTICLE 2 RECEIPT AND DISBURSEMENT OF ESCROW PROCEEDS

2.1 **Obligations to Fund.** Except as may otherwise be agreed to between the Parties from time to time, if Alameda Theater has provided to City the Restoration Notice with respect to a Casualty, City will be obligated to deposit into this Escrow certain funds received by it as Insurance Proceeds for such Casualty, as described in the Master Lease.

2.2 **Use of Escrow Funds.** Escrow Funds shall be used to pay Restoration Costs approved by the Parties or the Consulting Architect, as applicable, in accordance with the Master Lease.

2.3 **Disbursement Procedure.** As the Restoration Work is carried out and construction costs are incurred, due or become due for services, materials, labor or other items furnished and draw requests are submitted pursuant to the approved construction contracts (each, a "Draw"), Alameda Theater may present the Draw to the Escrow Agent for the payment of such items. This request for a Draw shall state (A) the amount of the requested Draw, and (B) that the Draw has been approved by Alameda Theater in accordance with the requirements of the approved construction contract. Alameda Theater shall also furnish a copy of each Draw request to the City Architect of City and to the City's designated representative, with copies of each of the following items relating to that Draw:

- 2.3.1 copies of available supporting invoices, statements or bills for such Draw;
- 2.3.2 a description of the Restoration Work performed relating to the expenses to be paid with the proceeds from such Draw, if any;
- 2.3.3 a description of the materials provided relating to the expenses to be paid with the proceeds from such Draw, if any;
- 2.3.4 a description of the services rendered relating to the expenses to be paid with the proceeds from such Draw, if any;
- 2.3.5 a description of other items relating to the expenses to be paid with the proceeds from such Draw, if any;
- 2.3.6 a certificate as to the Restoration Work performed and to which the Draw relates, which certifies that the Restoration Work has been done in substantial compliance with the Plans and Specifications for such Restoration Work; and
- 2.3.7 a letter from the project manager retained by Alameda Theater and approved by City, if any, identifying the line item or items within Restoration Costs for this purpose.

The documentation described above shall be delivered in the manner and to the addresses set out in Article 4 below, however, there shall be no requirement that documents be delivered

to those persons who are to receive copies as set out in that Article. Within ten (10) business days (the "Objection Period") after City has received such documents, City may object to the substance of the Draw (that is, items pertaining to the sufficiency of the back up documentation for the charges reflected in the Draw, matters relating to the completeness of the Restoration Work described in the Draw, if the Draw is properly calculated, etc.) but not the mere form of the Draw. Any such objection must be provided in the 10-day time period specified above, in writing, delivered to Escrow Agent, Alameda Theater and the project manager (if any) and must state the specific reason for the objection(s). If no objections exist, the City shall approve the Draw and return the Draw marked "Approved" to the Escrow Agent within the Objection Period. If no objection is timely raised during the 10-day time period specified above, the Draw shall be deemed approved. When the Draw is approved or deemed approved, as the case may be, the sums requested in the Draw shall be disbursed by the Escrow Agent within one (1) business day thereafter from the Escrow Funds to Alameda Theater for the purpose of providing funds for the payment of the charges listed in the Draw. If an objection is raised by City, the Draw may be restructured to exclude any portion to which an objection was raised and that restructured Draw is submitted Alameda Theater to Escrow Agent. As to any portion of a Draw to which an objection has been properly raised, all parties hereto shall act reasonably to resolve such objection within ten (10) days from the receipt by all of the parties of such objection. Once the objection to the portion of Draw objected to has been resolved by the Parties, the portion of the Draw objected to shall be disbursed by Escrow Agent from the Escrow Funds within one (1) business day following the Escrow Agent's receipt of an approval by the Parties as to that portion of such Draw, as it may have been modified.

2.4 **Lien Waivers.** Within thirty (30) days after a Draw is disbursed by the Escrow Agent from the Escrow Funds, Alameda Theater or the project manager, if any, will use reasonable efforts to obtain lien waivers from all contractors, sub-contractors and any other possible lien claimant who received proceeds from the Draw.

2.5 **Termination of Escrow.** The Agreement shall terminate upon the earlier to occur of (A) the termination of the Master Lease and delivery to Escrow Agent of a certificate to that effect by City, (B) Substantial Completion of the Restoration Work and payment of all required Draws therefore, or (C) the Escrow Funds have been fully depleted. Upon the termination of this Escrow Fund, the Parties agree to execute any and all documentation reasonably necessary to terminate this Agreement upon the request of Escrow Agent and any remaining Escrowed Funds shall be delivered to City.

ARTICLE 3 POWERS AND RIGHTS OF ESCROW AGENT

3.1 **Powers - Generally.** Escrow Agent shall have only the rights, powers, privileges and duties expressly set forth in this Agreement, together with those rights, powers, and privileges reasonably incident thereto, and is not a party to, and is not bound by, or charged with notice of any agreement other than this Agreement.

3.2 **Liability of Escrow Agent.** Except as set out in Section 3.7, below, Escrow Agent shall not be responsible or liable for any loss which may occur by reason of depreciation

in value of any property constituting a part of the Escrow Funds to be held hereunder which are held in accordance with the terms of this Agreement.

3.3 **Actions on Notice, etc.** Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other document which Escrow Agent, in good faith, reasonably believes to be genuine and to be signed by the proper party or parties hereto.

3.4 **Advice of Counsel.** Escrow Agent may rely on the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and shall incur no liability as a result of reliance on such advice.

3.5 **Compensation for Services.** Escrow Agent shall be entitled to reasonable compensation for normal services, as Escrow Agent hereunder, according to its standard rate sheet for these services (or lower if agreed to by Escrow Agent, in its discretion) and all such compensation shall be paid out of the Escrow Funds. The fees may be revised from time to time to reflect the current rates for such services. Fees will be deducted on a pro rata basis from each Escrow Fund based upon the sums invested in each Fund.

3.6 **Resignation.** Agent shall have the right to resign hereunder upon seven (7) days prior written notice to the other parties hereto. If Escrow Agent resigns or otherwise fails or refuses to act as Escrow Agent, then the Parties shall use their best efforts to agree upon a substitute Escrow Agent. In addition, Escrow Agent may be removed by the mutual agreement of the Parties. If Escrow Agent resigns, is removed or otherwise fails or refuses to act as Escrow Agent and no successor Escrow Agent is agreed upon within forty-five (45) days following the resignation of the existing Escrow Agent, City shall have the right to designate the successor Escrow Agent provided such Escrow Agent is a Federally Insured Financial Institution, with an office in San Antonio, Texas. If Escrow Agent shall transfer to a successor Escrow Agent the Escrow Funds or any other property or rights acquired and held by such Escrow Agent under the terms of this Agreement, then the Escrow Agent shall be required to provide to the successor Escrow Agent copies of all of the monthly reports of the Escrow which shall serve as an accounting relating to this Escrow.

3.7 **Liability- Negligent Acts.** Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection with this Agreement, except for acts which constitute gross negligence, or willful misconduct or which constitute a breach of its fiduciary duties hereunder.

ARTICLE 4 NOTICES

Any notices or communications hereunder must be in writing. If given by mail they, shall be deemed to have been given and received on the earlier to occur of (i) actual receipt or (ii) three (3) days following the date the letter containing such notice, properly addressed, is overnight delivery service, notice shall be deemed to have been given on the next business day following delivery to the delivery service for next day service. If notice is given other than by mail or over

night delivery service, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at the following addresses:

ALAMEDA THEATER:

Attn: _____
401 East Houston St.
San Antonio, TX 78205

WITH COPY TO:

ESCROW AGENT:

CITY:

City Architect
Attn:
City of San Antonio
San Antonio, Texas 78205

WITH COPY TO:

Veronica Zertuche
Deputy City Attorney
City of San Antonio
City Hall, 3rd Floor
100 South Flores
San Antonio, Texas 78205

Any party hereto may designate a substitute address by giving five (5) days written notice to the other parties hereto.

**ARTICLES 5
WAIVER**

Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by instrument in writing signed by the parties against which the enforcement of such waiver, modification, amendment, discharge or termination is sought and then only to the extent set forth in such instrument.

**ARTICLE 6
BINDING EFFECT; SURVIVAL**

This Agreement shall be binding upon and inure to the benefit of all parties hereto and their respective successors and assigns. Any provision hereof which must survive the expiration or termination of this Agreement for any Party to have the anticipated benefit of such provision shall so survive.

**ARTICLE 7
INVALIDITY**

In the case any one or more of the provisions contained in this Agreement shall for any reasons be held be invalid, illegal or enforceable in any respect, such invalidity, illegality or unenforceability shall not effect any of the provisions hereof, and this Agreement shall be construed as if that provision had never been contained herein.

**ARTICLES 8
BOOKS AND RECORDS**

Escrow Agent shall maintain prior books and records for the Escrow. All amounts to be paid or disbursed by Escrow Agent under this Agreement shall be paid solely out of the Escrow Funds.

**ARTICLE 9
TIME**

Time is of the essence in the performance of each provision of this Agreement.

**ARTICLE 10
INDEMNIFICATION**

10.1 **Generally.** Each Party hereby agrees to hold harmless Escrow Agent from and against any and all losses, claims, liabilities, costs and expenses, including as to Alameda Theater only (but not to the City) reasonable cost of investigation and counsel fees and disbursements, which may be imposed upon or incurred by Escrow Agent, in connection with its entering into this Agreement or carrying out the performance of its duties hereunder, including any litigation arising from this Agreement or involving the Escrow Funds to the extent such loss, claim, liability, damage, cost or expense relates to such Party's negligence, contributory negligence, gross negligence or willful misconduct only. **IT IS THE EXPRESS INTENTION OF THE CITY AND ESCROW AGENT THAT THE AGREEMENT BY THE CITY TO HOLD THE ESCROW AGENT HARMLESS, AS PROVIDED FOR HEREIN, IS TO PROTECT THE ESCROW AGENT FROM THE CONSEQUENCES OF THE CITY'S NEGLIGENCE TO THE EXTENT OF THOSE ACTS OF THE CITY WHICH ARE ATTRIBUTABLE TO CITY'S SOLE ACTIVE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND THEN ONLY TO THE EXTENT OF THE CITY'S**

LIABILITY UNDER THE TEXAS TORT CLAIMS ACT, UPON FINAL ADJUDICATION OR SETTLEMENT. FURTHER, THE CITY EXPRESSLY DENIES AND DISCLAIMS ANY AGREEMENT HEREIN TO INDEMNIFY ESCROW AGENT. IN ADDITION, THE PROVISIONS HEREIN DO NOT IN ANY WAY WAIVE ANY RIGHTS OR IMMUNITIES AVAILABLE TO THE CITY UNDER TEXAS LAW.

10.2 **Payment of Escrow Funds.** In no event shall Escrow Agent be responsible to pay any party or parties in connection with its performance of its obligations under this Agreement any sum which is greater than those sums which are on deposit as Escrow Funds.

**ARTICLE 11
JURISDICTION**

THIS AGREEMENT SHALL BE GOVERNED BY TEXAS LAW AND PERFORMABLE IN BEXAR COUNTY, TEXAS.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Dated effective the _____ day of _____, 20_____.

ALAMEDA THEATER:

By: *Ernest W. Bromley*
Printed Name: ERNEST W. BROMLEY
Title: CHAIRMAN

CITY OF SAN ANTONIO

By: _____
Printed Name: _____
Title: _____

[ESCROW AGENT]

By: _____
Printed Name: _____
Title: _____