

AGENDA ITEM NO. **82**

CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
INTERDEPARTMENTAL CORRESPONDENCE

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TO: Mayor and Council Members 2003 AUG -1 PM 3:44

FROM: Councilman Joel Williams, District 2

COPIES TO: Terry M. Brechtel, City Manager; Yolanda Ledesma, Acting City Clerk; Andrew Martin, City Attorney; Gayle McDaniel, Assistant to City Council; Lou Lendman, Director of Management & Budget; Milo Nitschke, Director of Finance

SUBJECT: REQUEST FOR COUNCIL CONSIDERATION - LEASE AGREEMENT

DATE: July 31, 2003

Your concurrence is hereby requested to place an item on the August 7, 2003 Council agenda for Council consideration.

The item will request an ordinance to authorize execution of a Lease Agreement and Tenant Addendum with Windsor Park Mall, L.L.C. for the use of 1,500 square feet at Windsor Park Mall for the District 2 Constituent Office. The agreement provides the space rent-free, but with the payment of (1) a one-time initial charge of \$1,350 for facility upgrade in lieu of the payment of rent, and (2) \$180.00 per month for electricity use for a two year Term from August 15, 2003 through August 14, 2005; and includes a renewal option of two years, subject to City Council approval and contingent upon annual appropriation of funds,

Staff members have reviewed this request and concurred with this action. Your favorable consideration of this matter is requested.



Joel Williams

Council Member District 2

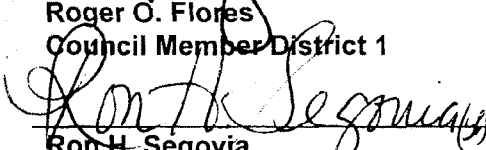
Ed Garza
Mayor

Enrique Barrera
Council Member District 6



Roger O. Flores
Council Member District 1

Julian Castro
Council Member District 7



Ron H. Segovia
Council Member District 3



Art. A. Hall
Council Member District 8



Richard Perez
Council Member District 4

Carroll Schubert
Council Member District 9

Patti Radle
Council Member District 5



Chip Haass
Council Member District 10

Windsor Park Mall, L.L.C.
Lease Agreement

Lease Name (DBA): City of San Antonio, a Texas Municipal Corporation		Lease Number:	4523-0729.03.1	
		Lease Date:	7/29/03	
		Start Date:	End Date:	8/15/03
Tenant Name (Legal): City of San Antonio, a Texas Municipal Corporation		Federal Tax ID # / Social Security # N/A		
Tenant Address: P.O.BOX 839966 San Antonio, TX 78283-3966		Sole purpose for which space can be used by Tenant: For use as office space for District 2 City Councilman, Joel Williams. Notices also sent to City Clerk and District 2 City Councilman at address listed. Management must approve all displays and signage.		
Tenant Telephone Number: 210-207-7045				
Contact Name: Gayle McDaniel				
Sq. Ft. Occupied: 1,500	Space ID: M-10	Pre-Paid Rent: N/A	Pre-Paid Rent Due: N/A	
Total Utilities: \$180.00 a mo. x 24 mo. = \$4320.00		Security / Damage Deposit: N/A	Security / Damage Deposit Due: N/A	
Period Start Date	Rent Due	Sales Percentage	Sales Base	Overage Rent Due
9/1/2003	* \$0.00	N/A	N/A	N/A

* In lieu of rent, Tenant will pay electricity at the rate of 12¢ psf per month or a total of \$180.00 a month to begin on September 1, 2003.


Landlord and Tenant agree that a Tenant Addendum is attached hereto and is considered as part of the Lease, thus to the extent that the wording and intent of the Tenant Addendum conflicts with the printed Lease, the Tenant Addendum controls.

In consideration of the premises, covenants and agreements as stated above and hereinafter set forth, it is agreed by and between the parties as follows:

1. Demise of Premises: Subject to all of the terms and conditions hereof, Landlord rents to Tenant and Tenant rents from Landlord the Space, in the Shopping Center containing the agreed approximate square footage of floor area specified above and more precisely described in Exhibit "1" attached hereto and made part of hereof. In addition, the Addenda listed below and attached to this Temporary Lease (the "Lease") is (are) hereby incorporated by reference: A. Cart Guidelines, B. Kiosk Guidelines, C. Pre-paid Rent Agreement, D. In-line Store Guidelines, E. Visual Merchandise Guidelines, F. Vehicle Display Guidelines, G. Common Area Show Guidelines, H. Carnival Rules and Guidelines, J. Storage Rules and Guidelines, K. Parking Lot Event Guidelines, L. Vending Rules and Guidelines, N. Kiddie Train Addendum, Lease Plan Exhibit.

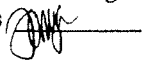
2. Use: (a) The Space may be occupied and used by the Tenant solely for the purpose stated above, and for no other purpose. Addition of product other than those specified above is subject to Landlord's advance written approval, in Landlord's sole discretion. (b) Tenant shall use the Space under

Landlord/Tenant initials


7-29-03

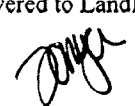
the trade name specified above; and said trade name shall not be changes at any time during the term without prior written consent by Landlord. (c) Tenant has made its own determination of the suitability of the Space and the Shopping Center for Tenant's use and business, and acknowledges that it is entering into this Lease based solely on its own investigation and not based on any representations or warranties of Landlord or its representatives. Tenant acknowledges that Landlord has made no representations to Tenant as to sales volume. (d) Tenant shall at all times maintain the Space, including all windows, doors, entryways, HVAC systems, electrical systems, lighting, walls, carpets, security devices and other portions thereof, in good condition and repair, at Tenant's sole cost and expense. (e) Tenant shall comply with all laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including without limitation those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Space. (f) Tenant shall not store any inventory, equipment or any other materials outside the Space, or do or permit anything to be done in or about the Space or appurtenant common areas which would constitute a nuisance or hazard, or which will in any way obstruct or interfere with the rights of other tenants or occupants of the Shopping Center or injure or annoy them. Tenant's use of display fixtures and Tenant's over-all display of goods or merchandise is subject to Landlord's approval. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Shopping Center of its lease or of any rules or regulations.


3. Term: Landlord's Right Of Early Termination: Tenant shall occupy and use the Space for the period, stated above, commencing on the Commencement Date and ending on the Ending Date, unless sooner terminated as herein provided. Notwithstanding anything to the contrary herein contained, Landlord may, at any time during the term of this Lease, in its sole discretion and with or without cause, elect to terminate this Lease upon thirty (30) days advance written notice to Tenant (if the term is for 30 days or more); or upon ten (10) days advance written notice to Tenant (if the term is for less than 30 days). In the event of such election by Landlord, Tenant's obligation hereunder shall be apportioned as of the effective date of such termination. Tenant understands and agrees that it is receiving terms and conditions which have been requested by and are advantageous to Tenant in return for granting Landlord flexibility with regard to the Space on account of the short term of this Lease, the Landlord's right to terminate the Lease on the short notice provided herein, and the other terms and conditions hereof; Tenant understands and agrees that it has no rights to the Space beyond the term set forth herein; and Tenant acknowledges that no one has made any representations or promises to Tenant with regard to renewal or extension of the term hereof, or limiting or eliminating the Landlord's right to terminate on short notice as set forth herein, or regarding relocation or possession of other space in the Shopping Center, or in any other manner contradicting, qualifying, or limiting the express provisions hereof.

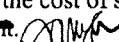
Landlord / Tenant initials 


4. Minimum Rent: Late Charge: On or before the first day of each Payment Period specified above, Tenant shall pay Minimum Rent to Landlord, without notice, demand, or offset at the Landlord's office address specified above. The parties recognize that damages will be suffered by Landlord on account of late payment which will be extremely difficult and impractical to quantify. Accordingly, the parties have made their best estimate of damages and hereby agree that Tenant shall pay Landlord as liquidated damages on account of late payment of rent a sum equal to Ten Percent (10%) of any payment of Minimum Rent or Percentage Rent which is not delivered to Landlord on or before the due date.

~~On or before the first day of each Payment Period specified above, Tenant shall deliver to Landlord, a completed and accurate written statement of gross sales in such period, on Landlord's then-current standard form. Along with said statement, Tenant shall remit to Landlord an amount equal to the Percentage rent rate multiplied by tenant's total gross sales of such Payment Period to the extent such sales exceed the Percentage Rent Base (the "Percentage Rent"). The parties recognize that damages will be suffered by Landlord on account of late delivery of the above statement, and such damages are extremely difficult and impractical to quantify, and accordingly, the parties have made their best estimate of damages and hereby agree that Tenant shall pay Landlord as liquidated damages on account of late delivery of the above statement a sum of \$50.00 for each such statement which is not delivered to Landlord on or before the due date.~~



~~Cross Sales~~ ~~As used herein, "gross sales" means the revenue received from all goods, w~~
and merchandise sold, and the revenues received from all services performed, by Tenant or any other
person or entity in, at, or from the Space, for cash, credit or otherwise, without reserve or deduction for
uncollected amounts, including but not limited to sales and services (i) where orders originate in, at, or
from the Space, regardless of where delivery of performance is made, (ii) pursuant to mail, telephone,
telegraph orders or otherwise received or filled at the Space, (iii) resulting from transactions originating in,
at or from the Space, and (iv) deposits not refunded to customers. Excluded from gross sales shall be: (i)
refunds to customers on transactions otherwise included in gross sales; and (ii) sales, excise or similar tax
imposed by governmental authority and collected from customers and paid out by Tenant. No other taxes
or other expenses shall be deducted from gross sales. 

~~and records, separated and identifiable, disclosing information pertaining to gross sales, including but not~~
and records, separated and identifiable, disclosing information pertaining to gross sales, including but not
limited to, cash register tapes sales slips, sales checks, tax reports, bank deposit records, sales journals and
other supporting data. At any time during the term of this Lease, Tenant shall upon twenty-four (24) hours
notice from Landlord, present such records at the Shopping Center Management Office for examination or
audit. Following the expiration or earlier termination of this Lease, Tenant shall, upon ten (10) days notice
from Landlord, present such records at the Shopping Center Management Office for examination or audit.
Tenant shall promptly pay any deficiency in Percentage Rent disclosed by such examination or audit. If
such examination or audit discloses a liability for Percentage Rent which is 3% or more in excess of the
Percentage Rent paid by Tenant for any period, Tenant shall promptly Landlord the cost of said audit and
the deficiency in Percentage Rent, which deficiency shall be payable in any event. 

~~Security / Damage Deposit~~ ~~Consistent with Tenant's execution of this Lease, Tenant~~
shall deposit with Landlord the Security / Damage Deposit as set forth above. Provided ~~that~~ Tenant
opens for business as required hereunder, Landlord shall hold said monies as security for Tenant's
faithful performance of each and every term and condition of this Lease, including but not limited to
the payment of all rent and other sums which become due hereunder. Landlord shall not be deemed
a trustee thereof and is not required to pay any interest thereon. At any time before or after the
expiration or earlier termination of this Lease, Landlord may apply any or all of the Security /
Damage Deposit to remedy ~~and~~ breaches of the Lease and to any unpaid rent or occupancy charges
hereunder. Within the time provided by law, Landlord shall return the unapplied balance of the
Security / Damage Deposit to Tenant. 

9. **Insurance:** Before commencing any use hereunder, Tenant shall furnish to Landlord, certificate
of insurance issued by the company or companies satisfactory to the Landlord providing evidence that the
following coverages are in full force and effect, naming Landlord's Property Manager, and Designee(s) as
additional insureds thereunder and providing that no such insurance may be canceled without at least thirty
(30) days written notice to Landlord (or such other person as Landlord shall designate in writing to the
insurer) by certified mail, return receipt requested, at Landlord's principal office address specified herein;
(i) a comprehensive or commercial general liability policy including contractual liability products /
completed operation and broad form property damage coverage, affording protection on an occurrence
basis for claims arising out of bodily injury, death, and property damage, and having limits of not less than:
a combined single limit of \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate limit of liability
and (ii) Worker's Compensation insurance as required by the laws of the state where Shopping Center is
located, and Employer's Liability insurance with a \$1,000,000.00 per occurrence limit.

10. **Indemnity and Exculpation of Landlord:** (a) Tenant shall assume liability for and shall
indemnify, defend, and hold harmless Landlord and any other owners of the Shopping Center, (and all their
shareholders, partners, directors, related and affiliated entities, ground lessors, managers, management
companies, employees, agents, guests, customers and invitees) against and from any and all liabilities,
obligations, losses, penalties, actions, suits, claims, damages, expenses, disbursements (including legal fees
and expenses), or costs of any kind and nature whatsoever in any way relating to or arising out of; (i) any
act or omission of Tenant (including without limitation the acts or omissions of the Tenant's officers,

directors, employees, agents, contractors, invitees, and/or licensees within the Shopping Center), (ii) any occurrence which takes place in or about the Space or, (iii) any damages to the Space. To the extent permitted by applicable law, Tenant's duty to indemnify Landlord under this paragraph will apply regardless of and will extend to cover losses caused by either Tenant's or Landlord's concurrent, comparative, or contributory negligence.

(b) Landlord and any other owners of the Shopping Center, (and all their shareholders, partners, directors, related and affiliated entities, ground lessors, managers, management companies, employees, agents, guests, customers and invitees) shall not be liable to Tenant for, and Tenant waives all claims against such parties, for injury, death, or damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any condition, accident or occurrence in or upon the Space, or any other part of the Shopping Center, unless such matters arise from the intentional wrongdoing of Landlord.

(c) Tenant agrees that the rent payable hereunder does not include the cost of guard services or other security measures, and that Landlord shall have no obligation to provide same. Tenant assumes full responsibility for the protection of the Space, Tenant, and Tenant's employees, invitees, licensees, guests and customers against the acts of third party, and will indemnify, defend, and hold harmless Landlord from any such claims made by the above specified persons of any damages, including attorney's fees, resulting therefrom.

(d) To the fullest extent permitted by applicable law, Tenant shall indemnify and save Landlord harmless from any and all claims, demands, or suits that may be brought against landlord by any employee, representative, or agent of Tenant, or any legal representative or successor of any of them, in any way arising out of or incident to this Lease, irrespective of whether such suits are brought about by the negligence or fault of Landlord or anyone for whose acts Landlord may be liable.

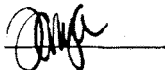
(e) The indemnification and waivers contained in this paragraph 10 shall survive expiration or early termination of this Lease.

11. Supervision and Control: Tenant shall at all times during its occupancy of the Space provide sufficient supervision and maintain adequate control of its employees, guests, customers, and invitees while the same are at or about the Shopping Center, so as to prevent unlawful or offensive actions and actions which are a breach of this Lease.

12. Licenses or Permits: In the event there are any licenses, or permits required by an any governmental agency or authority with respect to the type of activity carried on and/or in use of the Space, Tenant shall be responsible for obtaining such licenses, authorizations, and permits. No unlawful activities shall be permitted in the use of the Space, including but not limited to, the use of alcoholic beverages or gambling. Tenant must contract in its own name and timely pay for installation and all service changes in regard to all telephone and other utility services to the Space.

13. Return of Space: Immediately upon the expiration or early termination of this Lease, Tenant will return the Space to Landlord and remove all of Tenant's personal property, trade fixtures, goods and effects; repair any damage caused by such removal, and peaceably yield up the Space, broom clean and in good order, repair and condition, damage by fire or unavoidable casualty and ordinary wear and tear excepted. Tenant agrees that all personal property remaining within the Space after Landlord takes possession of the Space is conclusively deemed to be abandoned by Tenant and the property of Landlord. Tenant waives its rights, if any, under any statutes or other legal doctrines requiring Landlord to remove, store, return or auction such property, and Landlord may dispose of such property as it sees fit, free of any claims of Tenant or other claiming through Tenant.

Landlord/Tenant initials



14. Fixtures and Alterations: All improvements to the space constructed by Tenant, including but not limited to air conditioning or heating systems, air circulation or fan systems, build-in stoves and refrigerators, hoods, paneling, floor tile or covering, decorations, partitions, walls, wall mirrors, railings and

counters which are attached to the floor coverings, walls, or ceiling of the building, and electrical and lighting systems which are hard wired into the building's electrical system, as well as all other items which have been attached to the building or building systems, shall become Landlord's property on expiration or earlier termination of this Lease, without compensation to Tenant, unless Landlord and Tenant agree otherwise in writing. However, if Landlord so requests in writing at least fifteen (15) days before the expiration or earlier termination hereof, specified for removal by Landlord's notice, repair all damage caused by such removal, and return the Space or any part thereof to its original configuration existing when delivered to Tenant. If the Space is not so surrendered at the expiration or earlier termination of this Lease, Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Space to the required condition and shall indemnify Landlord against loss or liability resulting from delay by Tenant to surrendering the Space including without limitation, any claims made by any succeeding tenant of losses to Landlord due to lost opportunities to lease to succeeding tenants.

~~16. Additional Rent: Any liquidated damages provided in this Lease or by rules and regulations promulgated by Landlord, as well as any and all other payments, fees or charges provided herein or in such rules and regulations, shall be considered to be additional rent which shall be immediately due from Tenant~~

16. No Waste, Nuisance: Rules and Regulations: Tenant agrees not to harm the Space; not commit waste, or create any nuisance; nor make any use of the Space which is offensive as determined by Landlord at its sole discretion; nor to do any act tending to injure the reputation of the Shopping Center, and Tenant shall abide by all rules and regulations established by Landlord.

17. Violation of Law: If Tenant or the Space is deemed to be in violation of any federal, state, municipal, or local fire, building or other code, Tenant shall immediately cure any and all violations at its own cost and expense and immediately pay any and all costs, fines and / or penalties attributed to all such violation(s). If Tenant fails to immediately cure said violation(s), Landlord may at its sole discretion and without waiving any other rights or remedies either (a) cure the violations at Tenant's expense, to be paid by Tenant immediately on receipt of Landlord's written statement, or (b) immediately terminate this Lease without notice, opportunity to cure, or liability to Tenant whatsoever. Landlord's election to exercise the provisions of the preceding sentence, shall not relieve Tenant of paying any and all costs, fines and/or penalties attributed to any such violation, nor shall it relieve Tenant of its default.

18. Alterations, Additions, Signs: Tenant shall not make any alterations or additions, or permit the making of any holes in the walls, partitions, ceilings, or floor, or permit the painting or placing of any exterior signs, placards, or other advertising media, banners, pennants, awnings, aerials, antennas, or the like, nor cause or permit the placement of any signs, placards, or other advertising media within the Space where it is visible from outside the Space, without on each occasion obtaining prior written consent from Landlord, which may be withheld in Landlord's sole discretion. Tenant irrevocable grants Landlord permission to enter the Space, at any time, by any convenient method, without prior notice, to remove and dispose of any sign, placard, or other media which is being displayed in violation hereof, without liability to Tenant.

19. No Mechanic's Liens: Tenant shall not suffer any mechanic's lien to be filed against the Space by reason of any work, labor, services, or materials performed at or furnished to the Space or to the Tenant, or to anyone acting in concert with Tenant. Tenant will give Landlord at least ten (10) days notice in writing and obtain Landlord's advance written permission before construction any improvements in the Space or installing any fixtures in the Space which could give rise to a lien, and shall allow Landlord entry to post legal notices declaring the Landlord's non-responsibility for any costs of construction or installation.

20. Tenant Default: In the event of any failure of Tenant to pay timely any sums or to perform timely any of the terms, conditions or covenants of this Lease to be observed or performed by Tenant, or if Tenant petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver of trustee of all or a portion of Tenants' property, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon the Space, the Landlord

may at any time thereafter, terminate this Lease and Tenant's right to possession by written notice to Tenant and/or pursue all other legal remedies available to Landlord.

21. Assigning or Subletting: Tenant shall not sell, assign, mortgage, pledge, or in any manner transfer this Lease or any interest therein, nor sublet all or any part of the Space, nor license concessions nor departments therein. Any attempted assignment, sublease, or transfer shall be void and shall further constitute a breach of this Lease. The person identified as Tenant hereunder shall be the sole person or entity having the right to occupancy or possession, and any principals or partners who are not identified herein as the Tenant, or who become principals or partners in Tenant hereafter and do not obtain written recognition as the Tenant hereunder from Landlord shall not have any rights of occupancy or possession hereunder.

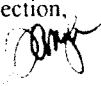
22. Hours Of Operation: Tenant shall be open for business during all Center hours as determined by Landlord. It is agreed that violation of this policy causes damage to Landlord the amount of which is difficult to determine. Accordingly, Landlord and Tenant have agreed that Tenant will be charged and will pay liquidated damages in the amount of an additional Fifty Percent (50%) of Tenant's normal daily rent for any day on which it is not open during Center hours, or \$25.00, whichever is greater. Any failure to open for at least 50% of Center hours on a single day, or any non-compliance with Center hours recurring more than 3 times in any sixty (60) day period is, in addition, a breach of this Lease on which Landlord may terminate this Lease by notice and without further opportunity to cure.


23. No Joint Venture: Nothing contained herein shall be deemed or constructed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, nor to create and fiduciary duties on the part of either party, it being understood and agreed that nothing contained herein, nor any actions of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

24. Limitation on Landlord Liability: There shall be absolutely no personal liability on persons, firms, or entities who constitute Landlord, or any management company acting under contract with Landlord, or any agent, employee, officer, partner, shareholder, or joint venturer of Landlord or such management company ("Landlord Affiliates") with respect to any of the terms, covenants, conditions, and provisions of this Lease, or of any other events, acts, omissions, or occurrences arising from or related to this Lease, and Tenant shall look solely to the interest of the Landlord in the Shopping Center for satisfaction of each and every right or remedy of Tenant in the event of default or other liability of Landlord or Landlord's Affiliates. Such exculpation of personal liability is absolute and without any exception whatsoever.

25. Entire Agreement: Integration and Merger: Acceptance of Terms: This Lease is an integrated agreement, containing the entire agreement between the parties as to the matters addressed herein, and incorporating all prior discussions and agreements. There are no agreements between the parties which are not contained herein, and Tenant has not received or relied on any representations from Landlord or Landlord's agents. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this agreement. No subsequent change, modification, or addition to this Lease shall be binding unless in writing and signed by the party to be charged. As additional consideration for this Lease, Tenant agrees that the presence of Landlord's right to terminate and any exercise of such right by Landlord is fair and reasonable, and Tenant waives any right to assert that such right or the exercise thereof is inequitable or unconscionable.

26. Time Limitation for Lawsuits: Tenant shall be barred from bringing any action or cross-action against Landlord and/or Landlord's Affiliated unless Tenant files such action or cross-action in court no later than six (6) months after the occurrence, event, act or omission from which the claim arises.

~~27. Attorney's and Collector's Fees: If Landlord is required to bring or defend any litigation arising out of this Lease, or to enforce or defend the provisions hereof, Landlord shall recover from Tenant its reasonable attorney's fees and costs. Tenant further agrees to pay all of Landlord's costs of collection, including any collection fee charged by a collection agency in the event of any default hereunder.~~ 

~~28. Waiver of Jury Trial: Landlord and Tenant hereby waive trial by jury in any action or proceeding brought by Landlord for possession of the Space, whether or not including a claim for damages, and in any other action arising under this Lease. Tenant shall not interpose any counterclaim or gross-complaint in any action brought by Landlord for possession of the Space or to collect rent hereunder.~~ 

29. Holding Over: This Lease shall terminate without further notice at the expiration of its specified term. Any holding over by Tenant after expiration of the Term hereof shall not constitute a renewal or extension of the Lease or give Tenant any right in or to the Premises except as expressly provided in this Lease. Any holding over after such expiration with the express written consent of Landlord shall be construed to be a tenancy from month to month on the same terms and conditions herein specified insofar as applicable except that Minimum Rent shall be increased to an amount equal to 250% of the Minimum Rent payable during the last full calendar month of the term hereof. Any holding over without the Landlord's written consent (including any such holdover where the Tenant claims that the Landlord has given oral consent, has consented by conduct, has waived its right to withhold consent, or is stopped from withholding consent) shall constitute only a tenancy at sufferance, terminable by Landlord immediately on delivery of written notice, and during such unconsented holdover, Tenant shall be obligated to pay Landlord daily damages equal to one thirtieth of 250% of the Minimum Rent payable during the last full calendar month of the Lease Term.

30. Entry: In addition to any other rights of entry granted hereby, Landlord shall have the right to enter the Space (a) by any means necessary in the event of an emergency involving danger to person or property, (b) upon notice to Tenant to show the Space to prospective lenders, buyers, or lessees or to perform construction or maintenance on the Space or the building in which the Space is located.

31. Brokers: Tenant has not contracted or dealt with any broker agent, or finder in regard to this Lease, and will indemnify and defend Landlord against any claim of commission, fee, or entitlement by a broker, agent, or finder arising from the claimant's relationship with Tenant.

32. Miscellaneous: If any provision hereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any other provision hereof. No waiver of any rights hereunder shall be valid unless in writing, signed by the party to be charged, and no waiver except as specified in writing, shall waive any other rights of the party nor the party's future right to enforce the provisions waived. All notices to Tenant required or permitted by this Lease or relating to the Space may be delivered by hand delivery to the Space (to the person apparently in charge thereof) or by U.S. Mail, registered, return receipt requested (in which case, they shall be deemed to have been received by Tenant three (3) days after deposit in the U.S. Mail), or by recognized overnight courier service (in which case they shall be deemed delivered on the date of the courier service's proof of delivery). Time is of the essence with respect to Tenant's performance of every provision of this Lease. This Lease shall, subject to the provisions regarding assignment and subletting, bind the respective heirs, successors, executors, administrator and assigns of Landlord and Tenant. All persons constituting Tenants shall be jointly and severally liable hereunder. This Lease shall be construed and enforced in accordance with the laws of the state where the Shopping Center is located. Any legal action or proceeding relating to this Lease shall be instituted in a state or federal court in the county in which the Shopping Center is located. Landlord and Tenant agree to submit to the jurisdiction of and agree that venue is proper in the aforesaid courts in any such legal action or proceeding. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. All provisions hereof to be performed by Tenant are both conditions and covenants.

Any payment under the Lease should be made payable to the business entity identified as Landlord. Violation of this requirement is grounds for termination to the Lease.

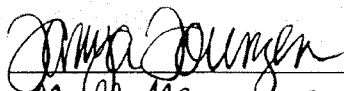
Tenant agrees that all portions of said Lease Agreement including monetary figures, exhibits, addenda, and amendments are to remain confidential between Landlord, Tenant, Tenant's Legal Counsel, and Tenant's Accountant, or as may be required by law.

In witness whereof, the parties have executed this agreement made the day and year first above written.

Landlord:
Windsor Park Mall, LLC
A Texas Limited Liability Company

Tenant:
CITY OF SAN ANTONIO, a Texas
municipal corporation

Tenant acknowledges and accepts the foregoing Lease Agreement, subject to all of the Terms, Conditions, and Covenants set forth above and Which may be contained on any exhibits attached hereto.

By: 
Title: Mall Manager

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
City Attorney

Addendum D
To Temporary Tenant Lease Agreement
Windsor Park Mall
In-line Store Guidelines

1. Hours of Operation Tenants must be open for business during all hours specified in the Lease Agreement. Late Openings and early closings will not be tolerated and may result in a fine or termination of the Lease Agreement. Landlord requires the tenant to remain open and fully stocked throughout the agreement period.
2. Display and Signage All displays and signage must be approved in advance by Landlord or its agents. Tenant shall immediately remove and displays or other items, if requested, by Landlord or its agent. All signage must be professionally produced or of professional quality. No magic marker, stencil or handwritten signs are permitted. Tenant's d/b/a signage must be approved, in advance, by center management.
3. Advertising and Solicitation Tenant shall not use any advertising medium which can be heard or experienced outside of six feet from the space, including but not limited to: flashing lights, search lights, loud speakers, CD or tape players, odors, radios or televisions, "barking & hawking", or any similar forms of solicitation or badgering of shoppers.
4. Maintenance Tenant shall keep their area in a clean and safe condition. All areas must be free of litter, boxes, cartons, coats, purses, additional personal items and other storage containers. All trash receptacles will be kept out of the shopper's sight. Tenant is also required to keep the space completely clean.
5. Alterations Tenant may not make any alteration to the physical structure of the Shopping Center nor drive or attach any nails, tape, or other materials to any part of the Shopping Center and its equipment. Any damage to the Center or its property caused by the Tenant, Tenant's employee's, etc. will result in Tenant's requirement to pay for all repairs including materials and labor. Tenant shall make no changes to the physical structure of the space without approval of center management.
6. Set Up and Tear Down All set-up, deliveries, re-stocking and tear down must be done through the service corridors. No deliveries may be made through the center's public entrances. This must be done during the hours the Shopping Center is closed. Tenants must provide their own dolly or cart as the center is unable to provide these items.
7. Fixtures Any and all fixtures / props provided by the Landlord must be returned in their original condition. Any damage noted upon return will result in Tenant being required to pay for repair and/or replacement.
8. Losses Theft, loss or damage to merchandise and personal property is the sole risk and responsibility of the Tenant.
9. Insurance A Certificate of Insurance will be provided to the Mall Management Office showing coverage as designated in the Lease Agreement. The certificate must name the business entity specified as Landlord on your lease and any management company if different from landlord.

Certificate Holder: Windsor Park Mall, LLC
Additional Insured: Windsor Park Mall, LLC

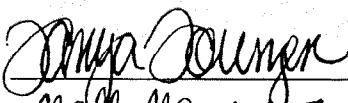
If the minimum insurance requirements have not been met or the additional insured wording is not listed as above, the tenant will not be permitted to set-up.

10. Tenant Contact As part of the Lease Agreement, Tenant shall furnish to the Mall Management Office the name, social security number, address, tax ID number and telephone number of the contact person(s) responsible for daily operations and emergencies.
11. Utilities The tenant is responsible to contact the Utility provider for the following utility services and have them put the necessary service in their sole name: Phone.
12. Sampling Distribution or sampling of materials by Tenant may be conducted only after prior written approval by Mall Management and shall be strictly limited to the designated sales area of the Tenant.
13. Return and Exchange Policy Tenant and its employees must be aware of the Tenant's return and exchange policy. The return / exchange policy must be printed and visible displayed in the store.
14. Parking Tenant and its employees shall park in designated areas, where applicable. Tenant shall not park any camper, recreation vehicle, trailer, bus, large truck or other vehicles which exceed the size of an individual parking space. Tenant shall not park any vehicle on the Shopping Center property overnight. Tenant may not use any portion of the Shopping Center property for lodging purposes.
15. Early Entry or After Hour Notification Tenants are required to notify the Landlord of planned early entry or after hour stay late. These may be arranged by contacting the mall office.
16. Merchandise Content Any and all material determined by the Landlord to be inappropriate and / or in poor taste for the community and / or Landlord shall be prohibited. Refusal to remove merchandise at the request of the Landlord may result in termination of the lease.

Landlord:
Windsor Park Mall, L.L.C.
A Texas Limited liability Company

Tenant:
CITY OF SAN ANTONIO, a Texas
municipal corporation

Tenant acknowledges and accepts the foregoing Lease Agreement, subject to all of the Terms, Conditions, and Covenants set forth above and Which may be contained on any exhibits attached hereto.

By: 
Title: Mall Manager

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
City Attorney

TENANT ADDENDUM

This Tenant Addendum is to that certain Windsor Park Shopping Center, L.L.C. Lease Agreement ("Lease"), Addendum D and Sign Criteria thereto, entered into by and between Windsor Park Shopping Center, L.L.C., a Limited Liability Company, acting by and through its duly authorized Members ("Landlord") and The City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or designee ("Tenant"), pursuant to City of San Antonio Ordinance No. _____ dated _____ 2003, and is for the lease of Space ID. M10 ("Space"), located in Windsor Park Shopping Center ("Shopping Center"), 7900 IH 35 North, City of San Antonio, Texas 78218, as shown on Exhibit "A" attached to the Lease. References below are to the same Paragraph numbers as shown in the Lease and, Landlord understands and agrees that to the extent that the wording and intent of this Tenant Addendum conflicts with the printed Lease, this Tenant Addendum controls.

I. ADDENDUM to Paragraph 1. Premises:

Landlord and Tenant agree that Paragraph 1. Premises: is modified by adding the following:

"Landlord acknowledges that this is not a Temporary Lease and that, since Tenant is a municipal government and not a retail establishment, then Addenda A., B., C., E., F., H., L. and N. and all references in the Lease thereto are deleted in full, however, the Tenant Addendum is made a part of this Lease, along with Sign Criteria, Addenda D., G., J., and K., as applicable. There is no Addendum I. or Addendum M."

II. ADDENDUM to Paragraph 2. Use:

A. Landlord and Tenant agree that the original Paragraph 2. (d) is modified to read follows:

"(d) Tenant may maintain the Space, including all windows, doors, entryways, HVAC systems, electrical systems, lighting, walls, carpets, security devices and other portions thereof, in good condition and repair, at Tenants sole cost and expense."

B. Landlord and Tenant agree that the original Paragraph 2. Use: is further modified by adding the following:

"2.1. Landlord and Tenant agree that the Space will be used for City of San Antonio Constituent ("District") office use, but prohibiting personal business or political campaigning.

2.2. Tenant acknowledges that (1) it has inspected and accepts the Space in an "As Is" condition, following completion of improvements to be made by Tenant to the restroom located in the Space, at Tenant's sole cost and expense, as detailed below; (2) the Shopping Center and improvements comprising the same are suitable for the purpose for which the Space is leased and Landlord has made no warranty, representation, covenant, or agreement with respect to the merchantability or fitness for any particular purpose of the Space, except as set forth hereafter, (3) the Space is in good and satisfactory condition, (4) no representations as to the repair of the Space, nor promises to alter, remodel or improve the Space have been made by Landlord and (5) there are no representations or warranties, expressed, implied or statutory, that extend beyond the description of the Space, subject to the provisions of subparagraph 2.3.

" 2.3. Landlord agrees to comply with the San Antonio City Charter, City Code, City and County ordinances, Federal and State laws and specifically warrants that the Space and Shopping Center are, and will continue to be during the Term and Renewal Term of the Lease, (1) suitable for Tenant's intended purpose and (2) in relatively substantial compliance with the Americans with Disabilities Act and applicable regulations thereunder, limited to the restroom located within the Space, after completion of Tenant improvements to be made to such bathroom, in lieu of the payment by Tenant of Rent, with such improvements limited to the amount of funds available and appropriated for Tenant's use in making such improvements. Further, occupancy by Tenant of the Space is subject to the following:

- (1) ASBESTOS SURVEY. Pursuant to City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999, Landlord has provided to Tenant, within 3 days following the execution of the Lease, an Asbestos Survey of the Space or the Shopping Center in which the Space is located. Such Survey has been prepared by an individual licensed by the Texas Department of Health (TDH) to conduct an Asbestos Survey, and will be at Landlord's sole cost and expense. Tenant has reviewed the Survey and determined that the Asbestos Survey reflects the absence of any friable or damaged Asbestos Containing Material (ACM) asbestos in the Space and Shopping Center.
- (2) MOLD: PROCEDURE IF PRESENCE OF MOLD SUSPECTED. If Tenant suspects the presence of mold within the Space during the term or Renewal Term of the Lease, Landlord will send a representative to make an inspection within 3 business days from the date of receiving notice from Tenant. Landlord's representative will report the findings to Tenant within 3 business days from the date of the inspection. If mold is present, Landlord may, at its election, remediate the Space. If Landlord elects not to remediate, then Tenant may elect to terminate this Lease with 3 calendar days' written notice. Landlord will notify Tenant of Landlord's election to remediate or not at the same time as Landlord reports its findings to Tenant."

III. ADDENDUM to Paragraph 3. Term: Landlord's Right of Early Termination:

Landlord and Tenant agree that the original Paragraph 3. Term: Landlord's Right of Early Termination: is modified as follows:

3. Term: Right of Early Termination/Renewal and Extension of Term:

"3.1 Tenant shall occupy and use the Space for a period of two (2) years, commencing on the Commencement Date and ending on the Ending Date, unless sooner terminated as herein provided. Notwithstanding anything to the contrary herein contained, Landlord may, at any time during the term of this Lease, in its sole discretion and with or without cause, elect to terminate this Lease upon sixty (60) days advance written notice to Tenant. In the event of such election by Landlord, and both Landlord and Tenant will be relieved of any further obligations whatsoever hereunder. Both parties obligation hereunder shall cease upon the effective date of such termination, unless sums, if any, are due by either party to the other through the date of termination. If, however, Landlord does not elect to terminate early, nor does Tenant elect to terminate early, as provided hereafter, then Landlord grants to Tenant the option to renew and extend the term of this Lease for an additional period of two (2) consecutive years ("Renewal Term") upon the same terms and conditions as set forth herein, except that the terms as to whether or not there will be Rent payable upon such renewal and extension are subject to renegotiation. Further any renewal and extension must be approved by the passage of a future ordinance by the San Antonio City Council. Tenant agrees to advise Landlord in writing at least forty-five (45) days prior to the end of the term if Tenant intends to exercise its option to renew and extend the term and the parties will renegotiate whether or not there will be Rent payable upon such renewal and subject to renegotiation, at least thirty (30) days prior to the end of the original term, or failing to do so, the term will end, as scheduled and Tenant agrees to peacefully vacate the Space, unless the parties mutually agree to continue Rent negotiations until or past the End Date of the term, if Landlord proposes that Rent is to be paid during the Renewal Term."

"3.2. Landlord and Tenant understand and agree that this Lease is granted for the use of the officeholder of City Council District No. 2 of the City of San Antonio, Texas during the term, holdover period and Renewal Term and that in the event the person holding this public office chooses to terminate such Lease during the term, or holdover period, or Renewal Term of this Lease, whether from the results of an election, resignation, death or any other cause whatsoever, said Lease will terminate and no further action is necessary to continue this Lease in full force and effect for the remaining portion of the term, holdover period, or Renewal Term, as applicable. Upon such termination, as upon all other termination rights herein vested in Tenant. Tenant shall not be liable to Landlord for any further payments of sums due, if any, or for any damages whosoever or for specific performance for the balance of the term, holdover period or Renewal Term, as applicable, following the termination, except for sums, if any, due through the date of termination. Tenant will give Landlord thirty (30) days prior written notice of termination and both Tenant and Landlord will be relieved of any further obligations whatsoever hereunder.

"3.3. Notwithstanding the foregoing Subparagraph 3.2., if such event occurs whereby the current officeholder of District No. 2 is no longer able to continue in office, as detailed in said Subparagraph 3.2., then Landlord grants the right to said officeholder's successor in office, at said successor's option, to continue occupancy of the Space for the remainder of the term, or holdover period, or Renewal Term, as applicable, upon the same terms and conditions herein, as such right is detailed in the assignment provisions hereafter. Alternatively, a successor in office who does not wish to continue occupancy of the Space will give Landlord thirty (30) days' advance written notice of termination. Any end of the Term or Renewal Term as provided herein shall be designated "Termination." Further, if prior to the Commencement Date or at anytime during the Term holdover period or Renewal Term hereof, the boundaries of District 2 are modified for any reason to the extent that the Space is no longer included within the boundaries of District 2, then this Lease shall terminate with thirty (30) days' prior written notice by Tenant to Landlord and both Tenant and Landlord will be relieved of any further obligations whatsoever hereunder. Upon advance notice to Tenant, Landlord shall have the right to show the Space to other prospective tenants during said 30-day period."

IV. ADDENDUM to Paragraph 4. Minimum Rent: Late Charge:

A. Landlord and Tenant agree that the original Paragraph 4. Minimum Rent: Late Charge: is deleted in full.

B. Landlord and Tenant agree that a new Paragraph 4. Minimum Rent: Late Charge: is substituted for the original Paragraph 4 to read as follows:

"4. Rent: In lieu of the payment of a any Rent whatsoever, Landlord agrees to accept Tenant's commitment, at Tenant's sole cost and expense, to make certain improvements to the restroom located within the Space. Landlord agrees and understands that Tenant has projected costs for this Lease and Tenant expects to pay all obligations of this Lease, including cost of the improvements, from projected revenue sources, but all obligations of Tenant are subject to annual appropriation by the City Council in future years. Accordingly, the above provisions notwithstanding, in the event the Tenant shall fail to appropriate sums to pay any of Tenant's obligations under this Lease, and due to such failure to appropriate, fails to pay such obligations, the Landlord's sole option shall be to terminate Tenant's right under this Lease and Tenant shall have no further obligations hereunder. Tenant agrees to give Landlord a minimum of thirty (30) days written notice if Tenant must terminate the Lease because of any non-appropriation."

V. ADDENDUM to Paragraph 5. Percentage Rent: Landlord and Tenant agree that the original Paragraph 5. Percentage Rent: is deleted in full, as not applicable.

VI. ADDENDUM to Paragraph 6. Gross Sales:

Landlord and Tenant agree that the original Paragraph 6. Gross Sales: is deleted in full, as not applicable.

VII. ADDENDUM to Paragraph 7. Tenant's Books and Records:

Landlord and Tenant agree that the original Paragraph 7. Tenant's Books and Records: is deleted in full, as not applicable.

VIII. ADDENDUM to Paragraph 8. Security/ Damage Deposit:

Landlord and Tenant agree that the original Paragraph 8. Security/ Damage Deposit: is deleted in full, as not applicable, since Landlord agrees that Tenant will not have to pay a Security/Damage Deposit.

IX. ADDENDUM to Paragraph 9. Insurance:

Landlord and Tenant agree that the original Paragraph 9. Insurance: is modified by adding the following wording:

"9.1. TENANT's INSURANCE COVERAGE: Landlord agrees that the requirement for insurance herein will be satisfied if Tenant provides to Landlord a certificate of self-insurance or a letter of self-insurance, evidencing such self-insurance as Tenant deems advisable to insure against loss of any of its property in the Space.

"9.2. LANDLORD's INSURANCE COVERAGE: Landlord agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 combined single limits for bodily injury and property damage; and property and casualty insurance for physical damage in an amount not less than 80% of actual cash value of said Space."

X. ADDENDUM to Paragraph 10. Indemnity; Exculpation of Landlord:

Landlord and Tenant agree that the original Paragraph 10. Indemnity; Exculpation of Landlord: is deleted in full and the following wording is substituted for such Paragraph 10:

"10. Indemnity: Landlord understands and agrees that the Texas Constitution (Article 11, Section 5) prohibits the creation of an unfunded debt by a local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause in the Lease void ab initio. Landlord and Tenant both acknowledge and understand that Tenant is a political subdivision of the State of Texas (a "local government"), thus is prohibited from contracting for unfunded debt. Further Landlord understands and agrees that Tenant is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

"10.1 Tenant agrees that the cost of guard services or other security measures, including an alarm system is not included with the Lease of the Space, thus Tenant may choose to provide its own alarm system, at Tenant's sole cost and expense, subject to the appropriation of funds. Landlord agrees to allow Tenant to remove such system at the end of the term, holdover period or Renewal Term, if applicable, provided that Tenant, subject to appropriation of funds, will repair any damage done to the Space by such removal."

XI. ADDENDUM to Paragraph 14. Fixtures and Alterations:

Landlord and Tenant agree that the original Paragraph 14. Fixtures and Alterations: is modified to the extent that Landlord and Tenant agree that all references in this Paragraph 14 as to the request by Landlord for Tenant's removal of improvements to the Space constructed by Tenant, and returning the Space or any part thereof to its original configuration existing when delivered to Tenant are hereby deleted in full, in light of the improvements Tenant agrees to make to the Space. Further, Landlord understands and agrees that Tenant will not be liable to Landlord for "all costs incurred by Landlord in returning the Space to the required condition "in light of the improvements made to the Space by Tenant, which improvements Landlord acknowledges enhance the value and tenantability of the Space. Landlord and Tenant further agree that the wording beginning with the words "and shall indemnify Landlord..." and ending with "...lost opportunities to Lease to succeeding tenants." are hereby deleted in full."

XII. ADDENDUM to Paragraph 15. Additional Rent:

Landlord and Tenant agree that the original Paragraph 15. Additional Rent: is deleted in full, as not applicable.

XIII. ADDENDUM to Paragraph 17. Violation of Law:

Landlord and Tenant agree that Paragraph 17. Violation of Law: is modified by adding the following wording:

"17.1 References to "Tenant shall immediately cure any and all violations at its own cost and expense" and commitment to pay any and all costs, fines and/or penalties" is modified by adding the words "subject to appropriation of funds for such expense," and the references to Landlord "curing the violations at Tenant's expense" and to not relieving "Tenant of paying any and all costs, fines and/or penalties" are also modified by adding the words " subject to appropriation of funds for any such expense and costs, upon receipt of Landlord's written statement showing payment by Landlord."

XIV. ADDENDUM to Paragraph 18. Alterations, Additions, Signs, to SIGN CRITERIA and to ADDENDUM D-Paragraph 2. Display and Signage:

Landlord and Tenant agree that Paragraph 18. Alterations, Additions, Signs, SIGN CRITERIA and ADDENDUM D-Paragraph 2. Display and Signage are modified to add the following wording:

"Notwithstanding any restriction by Landlord as to making any holes in the walls, partitions, ceilings, or floor, and to exterior signs, placards, signs, etc. Landlord agrees that Tenant has the right to place a store front sign or signs on the Space at a location or locations mutually agreed to by the parties and in accordance with sign standards as agreed to by the parties. Landlord further agrees that Tenant may mount within the Leased Premises, a bulletin board or display maps of the City Council District 2 for use of the constituents of District 2, which mounting will require small holes in the walls from either pushpins, nails or screws, without the prior approval of Landlord."

XV. ADDENDUM to Paragraph 20. Tenant Default:

Landlord and Tenant agree that Paragraph 20. Tenant Default is modified as follows:

A. Landlord and Tenant agree that the last line of Paragraph 20. Tenant Default is modified by deleting the words "and/or pursue all other legal remedies available to Landlord." and substituting the following words for such deletion: "as Landlord's sole remedy."

B. Landlord and Tenant agree to add the following wording:

"20.1 Tenant shall have a period of thirty (30) days after the date of mailing by Landlord to Tenant of written notice of such default in which to cure such default, which notice shall specify the exact nature of said default with particularity and how the same may be cured, except for delinquency in the payment of any sums ("Tenant's obligations") wherein such delinquency is a default which must be cured within ten (10) days after receipt by Tenant of written notice of such default. Landlord shall provide notices of any default to all parties as identified in "Notice" under this Lease by mailing such notice by certified or registered mail, return receipt requested to the Tenant at the Tenant Address shown on Page 1 of this Lease and, in addition, notice of any monetary default shall also be sent by the same means to the Director of Finance, City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 and (2) Upon failure of Tenant to timely cure an Event of Default, as stated above, Landlord shall have the right to terminate this Lease by five (5) days' prior written notice to Tenant or without terminating, Landlord may without being obligated to do so, re-enter and, to the extent required under the Texas Property Code, as amended, as to Landlord's duty to mitigate, relet the Space or any part thereof upon the best best terms possible as soon as reasonably possible and with reasonable effort on the part of Landlord. Landlord's remedy shall be "limited" to termination of this Lease.

"20.2 LANDLORD'S DEFAULT (1) An Event of Default in the Lease shall occur should Landlord neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Landlord's part to be performed or in any way observed and if such default should continue for a period of thirty (30) days after the date of mailing by Tenant to Landlord of written notice from the Tenant, which notice shall specify the exact nature of said default with particularity and how the same may be cured, Further, in addition to the general provisions for an Event of Default set forth herein, an Event of Default shall occur in the instance of any of the following events:

- a. Appointment of a receiver to take possession of Landlord's assets,
- b. Landlord's general Assignment of assets for the benefits of creditors,
- c. Landlord's insolvency,
- d. Landlord's taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease.

(2) Upon failure of Landlord to timely cure an Event of Default, as stated above, Tenant shall have the right to immediately terminate this Lease by five (5) days' prior written notice to Landlord. Tenant's remedy shall be "limited" to termination of this Lease and Landlord's liability for the payment of any amounts due to Tenant shall be limited to amounts due as of the date of termination."

XVI. ADDENDUM to Paragraph 21. Assigning or Subletting:

Landlord and Tenant agree that Paragraph 21. Assigning or Subletting is modified by adding the following wording:

"21.1 However, Tenant may assign or sublease the Space, or any part thereof, or any right or privilege connected therewith, or allow any other person, including Tenant's agents and employees, to occupy the Space or any part thereof, if and only if Tenant first obtains Landlord's prior written consent, which consent will not be unreasonably withheld. Landlord agrees and understands that if the Tenant's elected official occupying the Space fails to continue in office for any reason whatsoever during the term or holdover period or Renewal Term including, but not limited to, failure to get reelected, then Tenant may, without penalty, provide the Space to the successor in office, at said successor's option to continue peaceful occupancy of the Space during said the term or holdover period or Renewal Term, upon the same terms and conditions herein. Such process of succession and exercise of the option to occupy are detailed in III. ADDENDUM to Paragraph 3. Term: Landlord's Right of Early Termination: subparagraphs 3.2 and 3.3 above.

"21.2 Notwithstanding the provisions of this Paragraph, Landlord agrees that Tenant has the right to substitute a Department of the City of San Antonio or portion thereof as Tenant, without Landlord's approval, including any changed use, provided Landlord's obligations hereunder are not increased.

"21.3 Landlord may make an assignment to a mortgagee without prior consent of Tenant provided the provisions of **XXIII. ADDENDUM to Paragraph 32. Miscellaneous**, subparagraph 26.3: are complied with".

XVII. ADDENDUM to Paragraph 25. Entire Agreement: Integration and Merger: Acceptance of Terms:

Landlord and Tenant agree that Paragraph 25. Entire Agreement: Integration and Merger: Acceptance of Terms: is modified to include the following:

"Landlord and Tenant agree that the references herein to the Lease being an integrated agreement, containing the entire agreement between the parties and similar references herein are intended by Landlord and Tenant to also include the Tenant Addendum, as well as the Sign Criteria and all other applicable Addenda."

XVIII. ADDENDUM to Paragraph 27. Attorney's and Collector's Fees:

Landlord and Tenant agree that the original Paragraph 27. Attorney's and Collector's Fees: is deleted in full.

XIX. ADDENDUM to Paragraph 28. Waiver of Jury Trial:

Landlord and Tenant agree that the original Paragraph 28. Waiver of Jury Trial: is deleted in full.

XX. ADDENDUM to Paragraph 29. Holding Over:

Landlord and Tenant agree that the original Paragraph 29. Holding Over: is modified as follows:

All references to Minimum Rent being increased and daily damages equal to one thirtieth of 250% of the Minimum Rent are deleted in full as not applicable, since there is no Minimum Rent due under this Lease.

XXI. ADDENDUM to Paragraph 30. Entry:

Landlord and Tenant agree that the original Paragraph 30. Entry: is modified by adding the words "24 hours' prior" in front of the words: "notice to Tenant to show the Space..."

XXII. ADDENDUM to Paragraph 31. Brokers:

Landlord and Tenant agree that the original Paragraph 31. Brokers: is modified by deleting the wording which starts with the words "...and will indemnify and defend Landlord" and concludes with the words "relationship with Tenant."

XXIII. ADDENDUM to Paragraph 32. Miscellaneous: Landlord and Tenant agree that the original Paragraph 32. Miscellaneous: is modified as follows:

The next to last sentence which begins with the words "Tenant agrees that all portions of said Lease " and concludes with the words "...or as may be required by law," is modified by adding the following words: "under the Texas Public Information Act."

The following additional subparagraphs are added:

"32.1 **TAXES**. Landlord agrees to pay all state, City and County taxes, against the real property on which the Shopping Center, including the Space, is located and all assessments and other fees that may arise out of the improvements on said real property prior to such taxes, assessments and other fees becoming delinquent.

"32.2 **MORTGAGE OF LANDLORD'S INTEREST**.

"A. **LANDLORD'S RIGHTS**: Landlord shall have the right to (1) mortgage and/or (2) sell or otherwise transfer, ("sell or otherwise transfer is collectively hereinafter referred to as "transfer", whether used as a verb or noun) its fee simple interest in the real property and Shopping Center, including the Space, located thereon (hereinafter referred to collectively as "Property") with the following conditions:

"(1) **TRANSFER OF LANDLORD'S INTEREST**: Landlord shall notify Tenant of any transfer of the Space and the name and address of the Transferee.

"(2) **SUBORDINATION AND ATTORNMENT**: With respect to any future mortgages against, or transfers, of, the Property, and in connection with any requested subordination, Tenant agrees to subordinate its leasehold interest to any mortgage or other transfer instrument executed by Landlord, as Owner or Transferee or otherwise, which said mortgage or other transfer instrument creates a lien or other encumbrance against the Space, or to the Transferee's interest, if a transfer occurs. Further, Tenant agrees to attorn to the Mortgage Holder of said mortgage, if foreclosure occurs, or to the Transferee, if a transfer occurs, in exchange for said Mortgage Holder's or Transferee's written recognition of Tenant's right to remain in peaceful possession of the Space under the existing Lease with Landlord, if Tenant is not in default under the Lease.

"(3) **ESTOPPEL CERTIFICATE**: Tenant agrees to furnish from time to time, within thirty (30) days after receipt of a written request from Landlord or Landlord's mortgagee, a statement certifying, if applicable and to the extent true, the following: Tenant is in possession of the Space; the Space is acceptable; the Lease is in full force and effect, the Lease is unmodified; Tenant claims no present charge, lien, or claim of offset against sums due by Tenant to Landlord, if any, that no Minimum Rent or other rent is due under the terms of the Lease; there is no

existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee, including evidence of the subordination of Tenant's leasehold interest referenced herein, and attornment to said mortgagee or Transferee in exchange for written recognition of Tenant's right to remain in peaceful possession of the Space. Such statements may be executed by the City Manager or his designee and will not require City Council approval.

"B. Landlord also agrees to abide by the provisions herein as to any mortgage holders, lienholders, and subsequent transferees during the term, any holdover period and Renewal Term.

"32.3 QUIET ENJOYMENT. Landlord hereby covenants that Tenant, upon performing all covenants and agreements herein contained on Tenant's part, shall and may peacefully and quietly have, hold and enjoy the Space. Landlord agrees to use its best efforts to protect Tenant from interference or disturbance by other tenants or third persons.

"32.4 DESTRUCTION OF SPACE.

"A. If the Space is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover period or Renewal Term, Landlord shall (1) commence the repair of the Space to the condition it was in prior to such damage or destruction within sixty (60) days after the partial destruction, and (2) diligently pursue the repair work in the order of priority designated by Tenant, and (3) complete such repairs within one hundred eighty (180) days after the date of destruction. If the repairs cannot be so made within one hundred eighty (180) days after the date of such partial destruction, Tenant may terminate this Lease, with ten (10) days' prior written notice to Landlord.

"B. If 50% or more of the Space is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the Term of this Lease, or any holdover period, then either Landlord or Tenant may terminate this Lease in its entirety, with thirty (30) days prior written notice to the other party.

"C. If neither party terminates under the provisions hereof, then Landlord shall be obligated to provide written notice (the "Restoration Notice") to Tenant within sixty (60) days of such event of casualty stating a good faith estimate, certified by an independent architect, of the period of time (the "Stated Restoration Period") which shall be required for the repair and restoration of the Space. Tenant shall thereafter have the right, at its election, to terminate the Lease if either (1) the Stated Restoration Period shall be in excess of one hundred eighty (180) days following the event of casualty, whereupon Tenant may terminate this Lease with written notice thereof to Landlord within ten (10) days following delivery of the Restoration Notice, or (2) Landlord shall fail to substantially complete the repair and restoration of the Space within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of materials or other causes which are agreed to by Tenant) and Tenant delivers written notice of such termination to Landlord within ten (10) days following the expiration of the Stated Restoration Period deadline.

"32.5 EFFECT OF EMINENT DOMAIN PROCEEDINGS. If eminent domain proceedings commence which result in the condemnation of a portion or all of the Space or the Shopping Center herein or render such Space untenable, then either Landlord or Tenant may terminate this Lease in its entirety, and Tenant and Landlord shall each be entitled to compensation for any loss arising from such condemnation. Landlord and Tenant may each pursue their rights to such compensation separately.

"32.6 CONFLICT OF INTEREST. Landlord acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Landlord warrants and certifies, and this Lease is made in reliance thereon, that it, its partners, employees and agents are neither officers nor employees of the City. Landlord further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code."

ADDENDUM to ADDENDUM D

In addition to the modifications to ADDENDUM D above, Landlord and Tenant further agree as follows:

A. Paragraph 4. Maintenance is modified by adding the following:

"4.1 LANDLORD'S DUTIES: Landlord agrees to repair and maintain in first class condition useable by Tenant for its intended office space purposes, the exterior of the Space and Shopping Center, including, but not limited to, repair and maintenance of the roof, foundation, load bearing walls, and other structural members of the Space, and of the Shopping Center in which the Space is located, as well as, the parking lot, (i) landscaping and (ii) Common Areas of the Space and of said Shopping Center, if any."

B. Paragraph 9 Insurance. is modified by adding the word "self" in front of the word "Insurance" to allow provision of a Certificate of Self-Insurance.

C. Paragraph 10 Utilities, is modified by adding the following additional wording:

"Electricity will be billed to and paid for by Tenant at the rate of 12¢ per square foot per month or a total of \$180.00, based on 1500 square feet in the Space, to be prorated based on move-in date for the Tenant."

D. Paragraph 13. Return and Exchange Policy, is deleted in full as not applicable.

EFFECTIVE ON THE START DATE ("COMMENCEMENT DATE") ON PAGE 1 OF THE LEASE.

LANDLORD:
WINDSOR PARK SHOPPING CENTER, L.L.C.,
A Limited Liability Company

By: 

Printed Name: Tanya Tounzen

Title: Mall Manager

TENANT:
CITY OF SAN ANTONIO, a Texas
municipal corporation

By: _____

Title: City Manager

Attest:

City Clerk

Approved:

City Attorney

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City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Tanya Tounzen, Mall Manager
Haywood Whichard, Owner

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

Windsor Park Mall, L.L.C.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

None

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

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- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

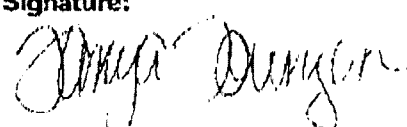
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Mall Manager Company: Windsor Park Mall, L.L.C.	Date: 7-29-03

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.