

CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
INTERDEPARTMENTAL CORRESPONDENCE SHEET

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2003/10/27 - 3 PM 10:38

TO: Mayor and Councilmembers

FROM: Councilman Joel Williams, District 2

COPIES TO: City Manager; City Clerk; City Attorney; Assistant to City Council;
Assistant to the Mayor; Director of Management & Budget; Director of
Finance

SUBJECT: AGENDA ITEM - DISTRICT 2 LEASE FOR CONSTITUENT OFFICE

DATE: November 3, 2003

I respectfully request Council concurrence to place on the November 6, 2003 Council Agenda an ordinance approving the terms of a Lease Agreement with Sterling Bank Inc. for the use of 700 square feet at 403 South W. W. White Rd., Suite 216, for the District 2 Field Office. The terms of this Lease establish the payment of rent in the amount of \$758.33 per month, which includes electricity, for the period from November 1, 2003 through October 31, 2005, and provides for a renewal option, of 2 years, subject to City Council approval, and is contingent upon annual appropriation of funds. Staff has reviewed and concurred with this request.

Your favorable consideration of this matter is requested.

Joel Williams (JW)
JOEL WILLIAMS, DISTRICT 2

ED GARZA, MAYOR

Enrique M. Barrera (EB)
ENRIQUE BARRERA, DISTRICT 6

R. Flores
ROGER O. FLORES, DISTRICT 1

JULIAN CASTRO, DISTRICT 7

Ron H. Segovia (RS)
RON H. SEGOVIA, DISTRICT 3

Art A. Hall (AH)
ART A. HALL, DISTRICT 8

Richard Perez (RP)
RICHARD PEREZ, DISTRICT 4

CARROLL SCHUBERT, DISTRICT 9

PATTI RADLE, DISTRICT 5

CHRISTOPHER "CHIP" HAASS,
DISTRICT 10

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:

None

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

Sterling Bank, a Texas Banking Corporation

and the name of:

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

Stream Realty, Partners, L.P.

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:

Sterling Bancshares, Inc., a Texas Corporation

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.

- (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.

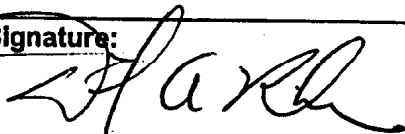
To Whom Made: None	Amount:	Date of Contribution:

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 question as to whether any city official or employee would violate Section 1 of Part 10, Chapter Economic Barriers, by participating in official action relating to the discretionary contract.

None

Signature:



David A. Ricke

Title: Vice President
Facilities Management
Company: Sterling Bank

Date: 10/17/03

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 refusal or require careful consideration of whether or not refusal is required.

**LEASE AGREEMENT
COUNCIL DISTRICT NO. 2 OFFICE PREMISES**

This Lease Agreement- Council District No. 2 Office Premises ("Lease") is entered into by and between **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 **STERLING BANK, INC.**, a Texas corporation, ("**LANDLORD**"), and is for the lease of Premises located at 403 South W.W. White Road, Suite No. 216, City of San Antonio, Texas 78219 ("Leased Premises" or "Premises") in the Sterling Bank Building ("Building"), as shown on **Exhibit "A"** attached hereto.

I. PREMISES/USE

1.1 The "Leased Premises" or "Premises" consists of approximately 700 rentable square feet, which must be used for City of San Antonio Constituent ("District") office use. The use of the Leased Premises for personal business or political campaigning is prohibited.

II. GRANTING CLAUSE

2.1 **LANDLORD**, in consideration of the covenants and agreements to be performed by **TENANT** and upon the terms and conditions hereinafter stated, leases to **TENANT**, and **TENANT** takes from **LANDLORD**, the Leased Premises, to have and to hold for the Term, Renewal Term, and any holdover period, as specified below, unless sooner terminated as herein provided, to be continuously used and occupied during said Term, Renewal Term and any holdover period, by **TENANT**, only for the use(s) permitted herein and not otherwise.

2.2 **TENANT** acknowledges that: (1) it has inspected the Leased Premises, through its District Council Member, and accepts the Leased Premises in an "As Is" condition, after completion of improvements to be made by **LANDLORD** to the Leased Premises, at **LANDLORD**'s sole cost and expense, as detailed in **Section 7.4** hereof; (2) the Leased Premises, following such completion of improvements, will be suitable for the purpose for which leased; (3) **LANDLORD** has made no warranty, representation, covenant, or agreement, expressed, implied or statutory, that extend beyond the description of the Premises, with respect to the merchantability or fitness for any particular purpose of said Premises, except as set forth in **Section 2.3**; (4) the Premises is or will be in good and satisfactory condition for **TENANT**'s use, upon **TENANT**'s taking possession on the Commencement Date; and (5) no representations as to the repair of the Premises, nor promises to alter, remodel or improve the Premises have been made by **LANDLORD**, except as set out in **Section 7.4**.

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 Leased Premises and Building are, and will continue to be during the Term, Renewal Term of the Lease, and any holdover period, after completion of the improvements set out in **Section 7.4**: (1) suitable for **TENANT**'s intended purpose and (2) in substantial compliance with the Americans with Disabilities Act and all regulations thereunder that are applicable to the Leased Premises and the Building. Further, occupancy by **TENANT** of the Premises is also subject to, and contingent upon, the following:

(1) **ASBESTOS SURVEY**. Pursuant to City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999, **LANDLORD** has provided or will provide to **TENANT**, within three (3) days following the execution of the Lease, an Asbestos Survey of the Premises. Such Survey has been or will be 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 or will review the Survey and determined that the Asbestos Survey reflects the absence of any friable or damaged Asbestos Containing Material (ACM) asbestos in the Premises and Building. Texas Department of Health (TDH) to conduct an Asbestos Survey, and will be at **LANDLORD**'s sole cost and expense. **TENANT**'s taking possession of the Leased Premises, the Commencement Date of the Term of this Lease and the payment of Rent by **TENANT** will be contingent upon one of the following occurrences:

the Asbestos Survey reflecting the absence of any friable or damaged Asbestos Containing Material (ACM); or LANDLORD providing a Management Plan (Plan) satisfactory to TENANT to properly and safely maintain the ACM; or abatement by removal of said friable or damaged ACM, if the Management Plan is not satisfactory to TENANT.

The Management Plan will be prepared by a TDH licensed Asbestos Management Planner or Asbestos Consultant. If the plan is not provided for an Operations and Maintenance (O&M) Program, or for encapsulation or enclosure of friable ACM satisfactory to TENANT, or if LANDLORD fails to provide either the Asbestos Survey or Management Plan, also at LANDLORD's sole cost and expense, or if necessary, a project design, at LANDLORD's sole cost and expense, prepared by a Licensed Asbestos Consultant providing for abatement of friable or damaged asbestos in the Leased Premises and Building, then TENANT, on 10 days' prior written notice to LANDLORD, may terminate this Lease, without any liability whatsoever on TENANT's part.

(2) MOLD: PROCEDURE IF PRESENCE OF MOLD SUSPECTED. If TENANT suspects the presence of mold within the Premises during the Term, Renewal Term of the Lease, or any holdover period, 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 Premises. If LANDLORD elects not to remediate, then TENANT may elect to terminate this Lease with 3 calendar days' written notice to LANDLORD. LANDLORD will notify TENANT of LANDLORD'S election to remediate or not at the same time as LANDLORD reports its findings to TENANT.

III. TERM/RENEWAL OPTION

3.1 The term of this Lease ("Term") shall be for a period of two (2) years and shall commence on November 1, 2003 ("Commencement Date") and shall expire on October 31, 2005, provided (1) funds are appropriated annually by the San Antonio City Council for rent payments beyond the current City of San Antonio Fiscal Year, as detailed in Section 6.5, and (2) the TENANT remains in office, unless (3) the term is sooner terminated as provided elsewhere in this ARTICLE III.

3.2 LANDLORD agrees and understands that as a local government, LANDLORD is subject to the Texas Public Information Act ("Act"), thus making this Lease subject to the terms of the Act.

3.3 LANDLORD and TENANT understand and agree that this Lease is granted for the use of the officeholder of City Council Member, District No. 2 of the City of San Antonio, Texas during the Term, Renewal Term, and any holdover period and that in the event the person holding this public office chooses to terminate such Lease during the Term, or Renewal Term or any holdover period of this Lease, whether from the results of an election, resignation, death, inability to serve, or any other reason, this 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 or Renewal Term, or any holdover period, 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 whatsoever or for specific performance for the balance of the Term or Renewal Term or any holdover period, 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. Upon advance notice to TENANT, LANDLORD shall have the right to show the Leased Premises to other prospective tenants during any said 30-day notice period referenced in this ARTICLE III.

3.4 **RENEWAL OPTION:** LANDLORD grants to TENANT the right to renew and extend the Term of this Lease for one (1) additional period of two (2) years (being referenced herein as a "Renewal Term"), upon the same terms and conditions as set forth herein, except for Rent, to be determined as described in Section 6.1 below. Further, the Renewal Term 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 thirty (30) days prior to the end of the Term if **TENANT** intends to exercise its option to renew and extend the Term.

IV. SERVICES BY LANDLORD

4.1 In addition to the duties set out in **ARTICLE VII.** below, **LANDLORD**, at **LANDLORD's** sole cost and expense, agrees to and shall provide to **TENANT** for the Term of this Lease, Renewal Term and any holdover period, the following services for the Leased Premises:

Janitorial Services for the Leased Premises, including trash removal, a fire alarm for the Leased Premises and the Building and a security system for the Building, electronic card access system for after-hours accessibility, and free surface parking for **TENANT**, its employees and invitees, along with all Common Area Maintenance charges and all other expenses related to the Leased Premises, except as noted below in **Section 5.1.** **LANDLORD** will also provide **TENANT** with one reserved, covered parking space. In the event that no reserved, covered parking space is available on the commencement date of this Lease, **LANDLORD** shall provide **TENANT** the first available reserved, covered parking space.

4.2 **LANDLORD** agrees to pay all State of Texas, City and County taxes against the real property on which the Building, including the Leased Premises, is located and all assessments and other fees that may arise out of the improvements on said real property prior to such taxes and assessments becoming delinquent.

V. UTILITIES

5.1 **LANDLORD** agrees, at **LANDLORD's** sole cost and expense, to provide to **TENANT** and to maintain and repair all utility services to **TENANT**, including extension of service, if applicable and the payment of monthly charges for such services, as necessary, including but not limited to gas, electricity, water and sewer. **TENANT** will provide its own telephone and cable or satellite television service, at **TENANT's** sole cost and expense.

VI. RENT/SECURITY DEPOSIT

6.1 **RENT:** **TENANT** agrees to pay **LANDLORD** (1) a total monthly rental of \$758.33, being \$1.08 per square foot per month or \$13.00 per square foot per year, beginning on the Commencement Date and thereafter on or before the first day of each succeeding calendar month during the Term and holdover period. Rent for the Renewal Term shall be the sum as determined by mutual agreement of **LANDLORD** and **TENANT** prior to the end of the Term in 2005, if the option to renew is exercised by **TENANT**. The monthly rental amount for any fractional portion of a month will be prorated based on the number of days that **TENANT** occupies the Leased Premises within that fractional portion of the month.

6.2 **SECURITY DEPOSIT:** **LANDLORD** agrees to waive a security deposit.

6.3 **PLACE OF PAYMENT:** **TENANT** shall mail all payments to: Stream Realty Partners, L.P., 6243 IH 10 West, Suite 105, San Antonio, Texas 78201.

6.4 **GRACE PERIOD:** **LANDLORD** agrees to allow **TENANT** a grace period of fifteen (15) days past the due date of any payment of rent or otherwise due from **TENANT** to **LANDLORD** before the payment shall be considered delinquent.

6.5 **LANDLORD** agrees and understands that **TENANT** has projected costs for this Lease and **TENANT** expects to pay all obligations of this Lease from projected revenue sources, but all obligations of **TENANT** are subject to annual appropriation by the City Council in future years, after September 30, 2004. Accordingly, the above provisions notwithstanding, in the event the **TENANT** shall fail to appropriate sums to pay any of the **TENANT** obligations under

this Lease, and due to such failure to appropriate, fails to pay such obligations, **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' prior written notice if **TENANT** must terminate the Lease because of any non-appropriation.

6.6 **LANDLORD** agrees and understands that the Texas Constitution (Article II, 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 enforceable on its face against the **TENANT** in this Lease *void ab initio*.

VII. REPAIR AND MAINTENANCE

7.1 **LANDLORD's DUTIES.** During the Term and Renewal Term, if exercised, and any holdover period **LANDLORD** agrees to repair and maintain in first class condition, comparable to other professionally managed office buildings, useable by **TENANT** for its intended office Premises purposes, the exterior of the Leased Premises, including, but not limited to, repair and maintenance of the roof, foundation, load bearing walls, exterior windows and doors, and other structural members/elements of the Leased Premises, and of the Building in which the Leased Premises is located, as well as, the exterior and interior (i) plumbing system and fixtures, (ii) electrical systems and fixtures, and (iii) HVAC, (iv) the parking lot, (v) landscaping and (vi) Common Areas of the Leased Premises and of said Building, if any.

7.2 **TENANT's DUTIES:** **TENANT** will maintain the interior of the Leased Premises in a clean and healthful condition, limited to keeping the interior walls and windows clean, to the extent janitorial service provided by **LANDLORD** does not maintain such portions of the Leased Premises. Further **TENANT** will comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal, and other agencies or bodies having any jurisdiction thereof) with reference to use, conditions, or occupancy of the Leased Premises. **TENANT** will use its best efforts to conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb other tenants or **LANDLORD**.

7.3 **NO WASTE:** **TENANT** will not commit or allow any waste or damage to be committed on any portion of the Leased Premises and shall at the Termination Date of the Term of this Lease or at the end of the Renewal Term or any holdover period deliver up said Premises to **LANDLORD** in the same original condition as of date of possession, ordinary wear and tear and acts of God excepted, and upon such Termination Date, **LANDLORD** shall have the right to enter and resume possession of the Leased Premises.

7.4 **LEASEHOLD IMPROVEMENTS:** Prior to the Commencement Date of this Lease, **LANDLORD** agrees to repaint the Leased Premises and to install new building standard carpet, at **LANDLORD's** sole cost and expense.

VIII. ACCESS TO PREMISES

8.1 Provided a representative of **TENANT** is present and always accompanies **LANDLORD** or **LANDLORD's** authorized representatives, **LANDLORD** shall have the right, upon twenty-four (24) hours notice, to enter upon the Leased Premises during **TENANT's** business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon or for the purposes of exhibiting the same to prospective purchasers, at any time during the Term or Renewal Term or to prospective tenants within thirty (30) days before the Termination Date of the Term, or Renewal Term, unless otherwise agreed to in writing by **TENANT**. Further, **LANDLORD** shall have the right, without **TENANT's** consent, to enter upon the Leased Premises for emergency purposes, such as, but not limited to, curing of plumbing or electric problems and for termination and relocation purposes.

IX. MORTGAGE OF LANDLORD'S INTEREST

9.1 **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 Building, including the Leased Premises, located thereon (hereinafter referred to collectively as "Property") with the following conditions:

a. **TRANSFER OF LANDLORD'S INTEREST:** LANDLORD shall notify TENANT of any transfer of the Leased Premises and the name and address of the transferee, and date upon which TENANT is to commence tendering the payment of rent to such transferee.

b. **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 Leased Premises, 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 Leased Premises under the existing Lease with LANDLORD, if TENANT is not in default in payment of rent or otherwise.

c. **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 Premises; the Premises are acceptable; the Lease is in full force and effect, the Lease is unmodified; TENANT claims no present charge, lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepared for more than one month in advance; 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 Leased Premises. Such statements may be executed by the City Manager or his designee and will not require City Council approval.

X. ASSIGNMENT OR SUBLEASE

10.1 TENANT agrees not to assign or sublease the Leased Premises, lease any part thereof, or any right or privilege connected therewith, or to allow any other person, except TENANT's agents and employees, to occupy the Leased Premises or any part thereof, without first obtaining the LANDLORD's prior written consent, such consent not to be unreasonably withheld. LANDLORD agrees and understands that if the TENANT's elected official occupying the Premises fails to continue in office for any reason whatsoever during the Term, or Renewal Term or holdover period referenced above, then TENANT may, without penalty, provide the Leased Premises to the successor in office, at said successor's option to continue peaceful occupancy of the Premises during said Term, Renewal Term, or any holdover period upon the same terms, condition, and provisions herein, as modified for Rent during the Renewal Term. Such process of succession and exercise of the option to occupy are detailed in Section 3.4 above.

10.2 Notwithstanding the provisions of Section 10.1, LANDLORD agrees that TENANT has the right to substitute an entity of the City of San Antonio such as a Department or office, as TENANT, for use of the entire Leased Premises or any portion thereof for the remainder of the Term, Renewal Term and any holdover period without LANDLORD's approval, including any changed use, provided LANDLORD's obligations hereunder are not increased.

10.3 LANDLORD may make an assignment to a mortgagee without prior consent of TENANT provided the provisions of ARTICLE IX. above are complied with.

XI. ALTERATIONS AND ADDITIONS/SIGNAGE

11.1 **TENANT** shall not permit, make or allow to be made, any alterations or physical additions in or to the Leased Premises without the prior written consent of **LANDLORD**, which consent will not be unreasonably withheld. However, **TENANT** may, at its own cost and expense, install an alarm/security system within the Leased Premises, without **LANDLORD**'s prior written consent, including the right for the installer of such system to enter into the Leased Premises on or before the Commencement Date for the purpose of such installation, if so desired by **TENANT**. **TENANT** shall have the right, within fifteen (15) days after the Termination Date, or any holdover period, to remove from the Leased Premises all of its furniture, fixtures, equipment, trade fixtures, furnishings, and other personal property, including any partitions, any alarm/security systems or other items which are not the property of **LANDLORD** and with respect to any damage caused by **TENANT**'s negligence in such removal, **TENANT** shall have the obligation to restore the Leased Premises to its condition prior to such removal, save and except for damage from normal wear and tear, and subject to appropriation of funds by the San Antonio City Council for such restoration. **TENANT** may place pictures and decorations on the interior walls and doors without **LANDLORD**'s prior written consent, provided no large holes are made in the walls by such placement.

11.2 **SIGNAGE**: **LANDLORD** grants to **TENANT** the right to place a sign or signs in the Leased Premises at a location or locations mutually agreed to by the parties. **LANDLORD** shall provide building standard signage at the entrance door of the Leased Premises and on the Building Directory at **LANDLORD**'s sole cost and expense.

XII. QUIET ENJOYMENT

12.1 **LANDLORD** hereby covenants that **TENANT**, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on **TENANT**'s part, shall and may peacefully and quietly have, hold and enjoy the Leased Premises. **LANDLORD** agrees to use its best efforts to protect **TENANT** from interference or disturbance by other tenants or third persons.

12.2 **LANDLORD** also agrees to abide by the provisions of **ARTICLE IX** of this Lease as to any mortgage holders, lienholders, and subsequent transferees during the Term, Renewal Term, and any holdover period.

XIII. DESTRUCTION OF LEASED PREMISES

13.1 If the Leased Premises 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, Renewal Term or any holdover period, then **LANDLORD** shall (1) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within thirty (30) 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 ninety (90) days after the date of destruction. Rent for the Leased Premises will be reduced proportionately or fully abated to the extent to which the repair operations interfere with the normal conduct of **TENANT**'s business on the Leased Premises. If the repairs cannot be so made within ninety (90) days after the date of such partial destruction, **TENANT** may terminate this Lease, with ten (10) days' prior written notice to **LANDLORD**.

13.2 If 50% or more of the Leased Premises 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, Renewal Term 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. Rent will cease to be due as of the date the Leased Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason.

13.3 If neither party terminates under the provisions of Section 13.2, then **LANDLORD** shall be obligated to provide written notice (the "Restoration Notice") to **TENANT** within (10) 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 Leased Premises. **TENANT** shall thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period shall be in excess of ninety (90) 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 (ii) **LANDLORD** shall fail to substantially complete the repair and restoration of the Leased Premises 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. Rent will abate as of the date the Leased Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason.

XIV. INSURANCE

14.1 TENANT's INSURANCE COVERAGE: During the Term, Renewal Term, and any holdover period **TENANT** shall provide such self-insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

14.2 LANDLORD's INSURANCE COVERAGE: During the Term, Renewal Term, and any holdover period **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 the actual cash value of said Leased Premises and the Building.

XV. INDEMNIFICATION

15.1 **LANDLORD** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, **TENANT** and the elected officials, employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives of **TENANT**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon **TENANT** directly or indirectly arising out of, resulting from or related to **LANDLORD's** activities or **TENANT's** activities or the acts of other parties, under this Lease, including any acts or omissions of **LANDLORD**, any employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives of **LANDLORD**, and their respective employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives, or of other tenants of the buildings in the complex located adjacent to the Leased Premises, or of **TENANT**, its elected officials, employees, agents, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees and representatives while in the exercise of performance or non-performance of the rights or duties under this Lease, all without however, waiving any governmental immunity available to **TENANT** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LANDLORD** shall promptly advise **TENANT** in writing of any claim or demand against **TENANT** or **LANDLORD** known to **LANDLORD** related to or arising out of **LANDLORD's** activities or **TENANT's** activities or other party's acts or omissions as noted herein under this Lease and shall see to the investigation and defense of such claim or demand at **LANDLORD's** cost. Notwithstanding any condition imposed by a policy of insurance to which **LANDLORD** and **TENANT** are named, **TENANT** shall retain the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of **LANDLORD** under this **ARTICLE** without relieving **LANDLORD** of any of its obligations under this **ARTICLE**.

15.2 It is the **EXPRESS INTENT** of the parties to this Lease that the **INDEMNITY** provided for in this **ARTICLE** is an **INDEMNITY** extended by **LANDLORD** to **INDEMNIFY**, **PROTECT** and **HOLD HARMLESS** **TENANT** from the consequences of **TENANT'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided

for in this section SHALL APPLY only when the NEGLIGENT ACT of TENANT is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of TENANT is the sole active cause of the resultant injury, death, or damage. LANDLORD further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF TENANT AND IN THE NAME OF TENANT, any claim or litigation brought against TENANT and its elected officials, employees, officers, volunteers, directors, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

15.3 LANDLORD and TENANT both acknowledge and understand that TENANT is a political subdivision of the State of Texas and 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 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Therefore, TENANT shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or any other loss or claim except as results from TENANT's sole active negligence, as determined by non-binding mediation, to which the parties agree to submit.

XVI. EFFECT OF EMINENT DOMAIN PROCEEDINGS

16.1 Eminent domain proceedings commenced which result in the condemnation of a portion or all of the Leased Premises herein or of the Building will allow TENANT to terminate this Lease in its entirety, with thirty (30) days' notice to LANDLORD. If less than fifty (50%) of the Premises is condemned and TENANT elects to continue in possession, following thirty (30) days written notice to LANDLORD, then TENANT's monthly rental for the remainder of the Term, Renewal Term, and holdover period shall in such case be reduced by the amount that the Leased Premises taken bears to the total rentable square footage of the original Leased Premises. If 50% or more of the Leased Premises is condemned or otherwise made untenable, 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 pursue their rights to such compensation separately. Rental payments shall be abated proportionately for any period of time in which TENANT is unable to occupy any portion of the Premises, based on the number of useable square feet therein.

XVII. DEFAULT AND REMEDIES-TENANT'S DEFAULT

17.1 An Event of Default in the Lease shall occur should TENANT neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on TENANT'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 LANDLORD to TENANT of written notice from LANDLORD, 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 installment of rent or additional rent wherein such delinquency is a default and must be cured within ten (10) days after receipt by TENANT of written notice of such default. LANDLORD shall notify TENANT of any monetary default by certified or registered mail, return receipt requested through the Director of Finance, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 and LANDLORD shall also provide notices of any default to all parties as identified in Section 19.6 of this Lease.

17.2 Upon failure of TENANT to timely cure an Event of Default, as stated above, LANDLORD shall have the right to terminate this Lease by ten (10) 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 Leased Premises or any part thereof upon the best rent and 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 and TENANT's liability for the payment of rent shall be limited to rent due as of the

date of termination, without acceleration of rent for the balance of the Term of the Lease, Renewal Term or any holdover period.

XVIII. DEFAULT AND REMEDIES-LANDLORD'S DEFAULT

18.1 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, and
- D. LANDLORD's taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease.

18.2 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 ten (10) 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.

XIX. MISCELLANEOUS

19.1 **NON-WAIVER:** Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. LANDLORD's acceptance of rent installments after a breach is not a waiver of the breach except of a breach of the covenant to pay the rent installment or installments accepted.

19.2 **HOLDOVER:** Except as otherwise provided in this Lease, should TENANT hold over the Leased Premises, or any part thereof, without LANDLORD's prior written approval, after Termination Date of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to 200% of the rent paid for the last month of the Term of this Lease or Renewal Term, unless otherwise agreed to in writing by LANDLORD and TENANT. The inclusion of the preceding sentence, and subject to City Council approval (only if funds have not been previously appropriated for such rent), shall not be construed as LANDLORD's consent to TENANT to hold over.

19.3 **SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, Renewal Term or any holdover period, then it is the intention of the parties that the remainder of this Lease shall not be affected and that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The caption of each Article and Section hereof is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

19.4 **COMPLETE AGREEMENT:** This Lease and all exhibits attached hereto constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

19.5 **BINDING EFFECT**: This Lease shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns unless otherwise provided herein.

19.6 **NOTICES**: Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified or registered mail, return receipt requested, addressed to the respective party to whom notice is intended to be given at the following address:

LANDLORD:

Property Manager of Sterling Bank Building,
c/o Stream Realty Partners, L.P.
6243 IH 10 West, Suite 105
San Antonio, Texas 78201

TENANT office of notification:

City Clerk	and	City Council Member, District 2
P.O. Box 839966		P.O. Box 839966
San Antonio, TX 78283-3966		San Antonio, TX 78283-3966

19.7 **ONE AGREEMENT**: This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one agreement. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.8 **REPRESENTATION OF AUTHORITY**: The signer of this Lease for **LANDLORD** represents, warrants, assures and guarantees that he or she has full legal authority to execute this Lease on behalf of **LANDLORD** and to bind **LANDLORD** to all of terms, conditions, provisions and obligations herein contained.

19.9 **APPLICABLE LAW**: This Lease shall be construed under and in accordance with the Constitution and laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

19.10 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, as TENANT herein, a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

EFFECTIVE: Ten (10) days after the date of passage of the ordinance referenced on Page 1 ("Effective Date").

TENANT:

CITY OF SAN ANTONIO, a Texas municipal corporation

By: _____

Print Name: _____

Title: _____

ATTEST:

City Clerk

Date Signed: _____

APPROVED AS TO FORM:

City Attorney

LANDLORD:

STERLING BANK, Inc., a Texas Corporation

By: David Ricke

Print Name: David Ricke

Title: Vice President Facilities Management

Sterling Bank

Date Signed: 10/17/03

ATTACHMENTS:

Exhibit "A" Floor Plan of the Leased Premises

